

Passenger quarantine and the Common Travel Area (CTA): The Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020

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Summary of Key issues:

- A **14-day self-isolation period for incoming international passengers** has been under discussion in both the UK and Ireland for some time. The Irish government initiated a system on 24 April 2020. The UK Government confirmed its intention in early May to do so, with English regulations coming into force on Monday 8 June 2020;
- **Prior public scrutiny:** Despite this lead in period, the equivalent Northern Ireland (NI) Travel Regulations were made on Friday 5 June 2020 and came into force on Monday 8 June 2020 without opportunity for public scrutiny that could have highlighted deficiencies before commencement;
- **NI returnees over the land border:** There is a particular problem for NI-residents landing in Dublin airport and returning home by land to NI. Rather than there being a reciprocal arrangement in place that allows travellers to complete the Irish government's passenger locator form, the regulations instead oblige the equivalent UK form to be completed and provided 'on arrival' in NI. Whilst the form can be completed online, incoming passengers into Dublin may be unaware of it, and there is no one to provide it to 'on arrival' over the land border in NI, yet not completing it constitutes a criminal offence (subject to a reasonable excuse defence);
- **Transit passengers and the Donegal question:** The NI regulations appear to oblige a passenger landing, for example, in Dublin Airport and returning over land to Donegal to complete the UK form and self-isolate in NI on crossing the land border;
- **Dublin loophole:** The NI/English regulations close off what had been termed in the UK press the 'Dublin loophole' whereby UK resident incoming passengers could evade UK self-isolation rules by travelling home via Dublin airport. The NI Regulations cover this by obliging self-isolation in NI for passengers who had travelled outside the Common Travel Area (CTA) in the last 14 days;
- **Belfast loophole:** The NI regulations do not however close the 'Belfast loophole' whereby residents of Great Britain can evade the Irish government's self-isolation requirements by diverting their journey through NI. No reciprocal arrangement with the Irish government is provided for inbound passengers arriving into Belfast airports who have onward journeys to the Irish Republic. Should there be significant numbers of passengers diverting - e.g. work journeys from London to Dublin through Belfast airports and on public transport to Dublin - this could create a public health issue at NI airports and transport hubs;
- **Enforcement and Duration:** The regulations create criminal offences including a fine of up to £1,000 for failing to self-isolate. Enforcement powers are granted to the PSNI as well as health officials. The regulations are due to last one year, although reviews are to take place every 21 days.

Background

A 14 day self-isolation period for incoming passengers to prevent imported cases of Covid-19 has been under discussion for some time. Further background and scenario planning as regards the complex issues of operating such a system within the CTA (the open border zone consisting of the UK, Ireland, Isle of Man, and Channel Islands) were explored in a previous CAJ Briefing Paper.¹

The Irish Government were first to introduce such a quarantine measure on overseas passengers arriving into the State, from Friday 24 April 2020. This was then set up on a statutory basis from the 28 May.² Key provisions:

- Incoming passengers fill in the (Irish) *Covid-19 Passenger Locator Form* before or on arrival showing their contact details and the address at which they will self-isolate;
- A Covid-19 boundary is drawn around the island of Ireland, which exempts journeys from NI, but not arrivals from Great Britain. NI bound residents only have to fill in part of the form;

The UK Government announced plans in the Covid-19 recovery strategy in May, with a subsequent statement confirming devolved administrations would set out their own enforcement approaches.³ Key provisions:

- Incoming passengers to complete the (UK) *Passenger Locator Form* which is available online, or can be completed on arrival in a place staffed by immigration officers;
- A Covid-19 boundary is drawn around the Common Travel Area (CTA);

Both such measures apply regardless of citizenship. There are exemptions however for particular categories of person (e.g. aircraft/ship crew, diplomats, transport workers etc.)

The main difference in approaches is in the Irish and British governments drawing of the boundary around the Island of Ireland and the CTA respectively, presumably in the context of the very high number of Covid-19 cases in Great Britain.

NI Department of Health Passenger Regulations

The *Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020* were made on 5 June 2020 and came into force on 8 June 2020.⁴ Guidance was also put on the NI Direct website.⁵

A second regulation was also made at the same time. The *Health Protection (Coronavirus, Public Health Advice for Persons Travelling to Northern Ireland) Regulations (Northern Ireland) 2020*.⁶ This obliges airlines/ferry companies to provide

¹ Covid-19, passenger quarantine, and the Common Travel Area (CTA): A CAJ briefing note (19 May 2020)

<https://caj.org.uk/2020/05/19/covid-19-passenger-quarantine-and-the-common-travel-area-cta/>

² HEALTH ACT 1947 (SECTION 31A – TEMPORARY REQUIREMENTS) (COVID-19 PASSENGER LOCATOR FORM) REGULATIONS 2020 <http://www.irishstatutebook.ie/eli/2020/si/181/made/en/print>

³ <https://www.gov.uk/government/news/home-secretary-announces-new-public-health-measures-for-all-uk-arrivals>

⁴ <https://www.health-ni.gov.uk/sites/default/files/publications/health/covid-travel-regs-2020.pdf>

⁵ <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-travel-advice>

⁶ <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-public-health-advice-persons-travelling-northern-ireland-regulations>

information about the NI quarantine rules but only applies to flights/ships that travel directly to NI.

The NI (Coronavirus, International Travel) Regulations set out the following requirements

- Regulation 3 requires a person arriving in Northern Ireland who has been outside the CTA in the 14 days prior to arriving in NI to complete a UK Passenger Locator Form;
- Regulation 4 requires that person to self-isolate for 14 days in NI (with exemptions);
- Regulation 5 places enforcement powers into the hands of an 'authorised person', defined in Regulation 7 (11) as: a constable, an immigration officer (but only in relation to the issue of a fixed penalty notice in respect of an information offence), or a person designated by the Department of Health;
- Regulation 6 and 7 set out that offences under these regulations punishable by fines including an initial fine of £60 for failure to complete the passenger locator form ('an information offence') and a fine of £1000 for failure to comply with self-isolation;
- Regulation 11 states that the Department of Health must review the need for the requirements imposed by these Regulations at least once every 21 days, with the first review being carried out by 29 June 2020;
- Regulation 12 confirms that these Regulations expire at the end of the period of 12 months beginning with the day on which they come into force.

Effect of the regulations within the CTA

The regulations address some, but not all of the gaps highlighted in our previous briefing. There is no reciprocal arrangement with the Irish government, with whom discussions are still 'ongoing' on matters such as mutual information panels in each others airports – despite the regulations already being in force.⁷ Some of the key issues are as follows:

NI residents returning over the land border (e.g. via Dublin airport)

For NI residents arriving into e.g. a Belfast airport from outside the CTA, the process is fairly straightforward. Their travel operator will have been obliged to provide information on the self-isolation form and requirements. The UK Passenger Locator Form can then be filled in in advance or in person on arrival at the airport.

For NI residents landing into e.g. Dublin airport from outside the CTA then onwards over land to NI, the process is complex. The passenger will be obliged to fill in (relevant parts) of the Irish Passenger Locator form. However, under the NI Regulation 3(2) the passenger must provide the information on the UK Passenger Locator Form 'on their arrival' in Northern Ireland. The form can also be completed up to 48 hours in advance (Regulation 3(5)).

The first issue is that, whilst the UK form can be obtained online, it is not clear how the passenger will know this, or how passengers without a smartphone can fill it in. There is

⁷ <https://www.irishtimes.com/news/ireland/irish-news/ni-executive-seeks-panels-in-ports-and-airports-outlining-quarantine-rules-1.4274983>

no reciprocal arrangement for the form to be completed in Dublin airport. (Such arrangements are provided for if the form is completed in England, Scotland or Wales). Secondly, it is not possible for passengers to provide the form 'on their arrival' in NI when entering by land (where the vast majority of journeys will not have originated from outside the CTA). Not complying with the requirements under Regulation 3 constitutes an offence under Regulation 6(1)(a). This is qualified by a 'reasonable excuse' defence.

Transit passengers and the Donegal question

A further scenario that does not appear to have been considered is the situation of a passenger who returns from outside the CTA through Dublin Airport then travels home over land to Donegal, which will – bar a significant diversion - involve 'transiting' through NI.

This passenger therefore under Regulation 3 on crossing the land border (or 48hrs before) must complete the UK Passenger Locator Form. It is not clear if they can complete the UK Form satisfactorily however as it is supposed to contain a UK address where they are to self-isolate (see Schedule 1, Paragraph 2(a). Details required of any onward travel from the UK also do not appear to contemplate a journey by car (Sch 1, Para 2(J)).

Regulation 4 covers the requirements to self-isolate in NI. Exemptions are set out in Regulation 4(12)(d) and Schedule 2 (paragraph 5(1)) for "transit passengers". However, 'transit passenger' is defined (paragraph 5(2)) as follows (emphasis added):

"transit passenger" means a person who, on arrival in the United Kingdom, passes through to another country or territory without entering the United Kingdom.

This exemption would therefore capture a passenger in the international transit lounge of say a Belfast Airport for a further flight (who does not technically enter the jurisdiction). It would not however capture a person transiting over land through NI to Donegal, who would be entering the UK. The requirements to self-isolate can end on departure from NI (Regulation 4(7)) but this does not in itself remove the requirement. Similar issues also arises for Donegal residents who return home via a NI airport.

Dublin loophole

The NI (and English) Regulations resolve what was becoming known as the Dublin loophole in UK media. It referred to the CTA exemption allowing travellers returning from outside the CTA to avoid UK quarantine requirements by diverting their return flight through Dublin (etc.) However, the NI regulations state that anyone who has been outside the CTA in the 14 days before arriving in NI is subject to self-isolation requirements which closes this loophole.

Belfast loophole

The 'Belfast loophole' is however not addressed. This refers to where travellers resident in Great Britain who wish to evade the Irish government quarantine requirements divert their travel through NI. For example, when London-based employees of a company who wishes them to travel to Dublin re-route their journey via a London-Belfast flight, with onward bus travel to Dublin. Should this happen on a significant scale it could create public health risks at NI airports as well as other transport hubs.

Enforcement – risk of discriminatory application

Any lack of clarity in the enforcement of these regulations also increases the risk of racial profiling and discriminatory practices. Notably also, the fines are much more severe than those under ‘lockdown’ regulations.

Overall, there is a need for further clarity and amendments to the regulations.

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