

Basic public services, legal rights and permits

This is a summary of the original decision, which can be found on the Regional State Administrative Agency's website at www.avi.fi in Finnish under **Koronapäätökset or in Swedish under **Coronadelgivningar****

DECISION IN PURSUANT TO SECTION 16 OF THE COMMUNICABLE DISEASES ACT ON A COMPULSORY HEALTH CHECK AT BORDER CROSSING POINTS IN THE REGIONAL STATE ADMINISTRATIVE AGENCY FOR SOUTHERN FINLAND'S AREA

CASE

Decision pursuant to section 16 of the Communicable Diseases Act to order compulsory participation in a health examination to prevent the spread of the generally hazardous communicable disease Covid-19 caused by the SARS-CoV-2 virus in accordance with section 1 of the Government Decree on Communicable Diseases.

BACKGROUND

The World Health Organisation (WHO) declared the coronavirus epidemic a pandemic on 11 March 2020. Coronavirus is a communicable disease that poses a risk to public health.

The Ministry of Social Affairs and Health issued a letter on 27 November 2021 regarding measures under the Communicable Diseases Act for passengers who have stayed in countries where the B.1.1.529 variant of coronavirus has been found to be spreading.

The Finnish Institute for Health and Welfare (THL) issued a statement on 27 November 2021 that, based on current epidemiological information and taking into account the principle of precaution, THL considers that a person may be exposed to the new B.1.1.529 variant (Omicron) if they have stayed in the following countries: South Africa, Namibia, Botswana, Zimbabwe, Lesotho, Eswatini (Swaziland), Mozambique and Malawi.

On 27 November 2021, the Finnish Institute for Health and Welfare published a web page "Uusi huolestuttava koronavirusmuunnos omikron (B.1.1.529)" <https://thl.fi/fi/web/infektiotaudit-ja-rokotukset/ajankohtaista/ajankohtaista-koronaviruksesta-covid-19/tarttuminen-ja-suojautuminen-koronavirus/muuntuneet->

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koronavirukset/uusi-huolta-aiheuttava-koronavirusmuunnos-omicron-b.1.1.529- , where it will update a list of those countries travel to which will lead to exposure to the new Omicron virus variant.

On 1 December 2021, the Ministry of Social Affairs and Health corrected the steering letter (VN/31072/2021) it first issued on 27 November 2021. According to the correction, drivers of passenger or freight transport operating in the transport and logistics sector, the crews of ships, aircrafts or trains in their work duties and replacement crews on their transition to or in their duties may be excluded from the scope of the health check. However, these persons in the transport and logistics sector must be provided the opportunity to be tested for the coronavirus if they so wish and if they have symptoms indicating COVID-19 or otherwise have reason to believe they have been infected.

HEARING

A hearing could have jeopardised the implementation of the purpose of this decision and the resulting delay would have caused significant harm to human health and public safety, which is why no hearing was held under section 34(2)(4) of the Administrative Procedure Act (434/2003).

DECISION BY THE REGIONAL STATE ADMINISTRATIVE AGENCY AND GROUNDS

Order

The Regional State Administrative Agency orders that under section 16 of the Communicable Diseases Act that all persons arriving in Finland through the border crossing points located in the operating area for the Regional State Administrative Agency for Southern Finland, who have stayed within the last 14 days in countries where the B.1.1.529 variant (Omicron) has been observed to be spreading. must take part in a compulsory health examination organised by healthcare authorities for the purpose of preventing the spread of the generally hazardous communicable disease COVID-19.

The Finnish Institute for Health and Welfare maintains a web page where it updates the countries where the spread of the B.1.1.529 virus (Omicron) has been observed.

The order does not apply to children under the age of 6. The order also does not apply to transport and logistics personnel in their duties or in travel related to their duties.

The order will be valid for the period 01 December 2021 - 31 December 2021.

This decision amends the orders (ESAVI/2021/2021) issued by the Regional State Administrative Agency for Southern Finland on 27 November 2021 under section 16 of the Communicable Diseases Act for the period 01 December 2021 - 31 January 2022.

Justifications

Applicable legislation

Under section 14 of the Communicable Diseases Act, the municipality must arrange general vaccinations and health examinations to prevent communicable diseases. Participating in the vaccinations or health examinations is voluntary.

Under section 15 of the Communicable Diseases Act, the Regional State Administrative Agency may order a health examination to be organised in its region for persons in a specific locality or workplace, institution, vehicle or other such location within its operating area, if such an examination is necessary to prevent the spread of a generally hazardous communicable disease. Participating in the health examination is voluntary.

A health examination is conducted by a physician or by another health care professional with appropriate training under the supervision of a physician. As part of the examination, necessary specimens may be taken and other tests not causing significant harm to the person examined may be carried out.

According to section 16 of the Communicable Diseases Act, the Regional State Administrative Agency may order compulsory participation in a health examination referred to in sections 14 and 15 if necessary to prevent the spread of a generally hazardous communicable disease or a disease that is justifiably suspected of being generally hazardous. The decision may apply to individual or multiple persons.

A physician responsible for communicable diseases in a municipality or hospital district may make a decision on a compulsory health examination for an individual if this is necessary to prevent the spread of a generally hazardous communicable disease or a communicable disease that is reasonably suspected to be a generally hazardous.

Pursuant to section 22, of the Communicable Diseases Act, in order to prevent the spread of the disease, a person who has or is justifiably suspected of having a generally hazardous or monitored communicable disease is obliged to provide the physician investigating the matter with information regarding his or her view of the manner, date and place of infection, as well as the names of persons who may have been the source of infection or may have been infected. A person who has or is justifiably suspected of having a generally hazardous or monitored communicable disease must give the health care personnel member tasked with investigating the issue an explanation of how they believe they got infected, the time and the place, as well as the names of all persons who may have been the source of the infection or who may become infected.

Section 88 of the Communicable Diseases Act refers to chapter 44, section 2 of the Criminal Code (39/1889), which provides on penalties for health protection violations. Under the provision in the Criminal Code, a person may be sentenced to a fine or to imprisonment for a maximum of three months for a health violation if he or she deliberately or through gross negligence violates the obligation imposed under section 16 of the Communicable Diseases Act.

Under section 1(1)(14) of the Government Decree on Communicable Disease, the infection caused by the new coronavirus is a generally hazardous infectious disease.

Conclusions

Preventing the spread of the communicable disease Covid-19 is of societal importance in order to safeguard citizens' fundamental rights to life and safety. In the prevention of the spread of Covid-19 infections, identification of sources of infection and persons exposed to the infection and prevention of further infections are key methods for achieving this.

A new coronavirus variant B.1.1.529 has been detected in South Africa and Botswana. The variant contains several mutations in its genome that affect the structure of the spike protein in the virus. As a result of these changes, there are concerns that the virus will spread more readily than previous variants and that it may also cause disease in people who have previously had coronavirus disease and people who have received a full vaccination series. The EU countries have made a decision on 26 November 2021 to activate the emergency brake mechanism to safeguard health security at borders, wherein EU countries must immediately suspend passenger transport from Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa and Zimbabwe. According to the EU policy, member states must test and impose quarantine on all passengers arriving from these countries,

regardless of their vaccination status, and to prevent any further transmission by ensuring the most effective contact tracing possible.

The Finnish Institute for Health and Welfare (THL) issued a statement on 27 November 2021 that, based on current epidemiological information and taking into account the principle of precaution, THL considers that a person may be exposed to the new B.1.1.529 variant (Omicron) if they have stayed in the following countries: South Africa, Namibia, Botswana, Zimbabwe, Lesotho, Eswatini (Swaziland), Mozambique and Malawi. The Finnish Institute for Health and Welfare maintains the (<https://thl.fi/fi/web/infektioaudit-ja-rokotukset/ajankohtaista/ajankohtaista-koronaviruksesta-covid-19/tarttuminen-ja-suojautuminen-koronavirus/muuntuneet-koronavirukset/uusi-huolta-aiheuttava-koronavirusmuunnos-omicron-b.1.1.529->) web page, where it updates the countries where visitors are likely to be exposed to the new B.1.1.529 variant (Omicron)

The Ministry of Social Affairs and Health considers that the new coronavirus variant B.1.1.529 constitutes a significant threat that risks the health and well-being of the population, the inadequacy of vaccination coverage and the significant deterioration of the epidemic situation. In the absence of further research data, the threat posed by the virus variant must be addressed, in accordance with the principle of precaution, with effective measures aimed at identifying all persons who may be infected with the variant in question, preventing possible transmissions and thereby preventing the spread of the disease caused by the variant. In accordance with the Ministry's view, it is justified to immediately consider that all passengers who have stayed within the last 14 days in countries where the spread of the variant in question has been observed would be ordered to undergo a compulsory health examination in accordance with section 16 of the Communicable Diseases Act, regardless of symptoms and vaccination status.

According to the Ministry of Social Affairs and Health, the decision on a compulsory health examination can also be directed at persons who have the certificates required by section 16a of the Communicable Diseases Act.

On 1 December 2021, the Ministry of Social Affairs and Health made a correction to its letter with the amendment that drivers of passenger or freight transport operating in the transport and logistics sector, the crews of ships, aircrafts or trains in their work duties and replacement crews on their transition to or in their duties may be excluded from the scope of the health check required under section 16 of the Communicable Diseases Act. However, these persons in the transport and logistics sector must be provided the opportunity to be tested for the coronavirus if they so wish and

if they have symptoms indicating COVID-19 or otherwise have reason to believe they have been infected.

The Regional State Administrative Agency for Southern Finland finds that the provisions on entry laid down in sections 16a–g of the Communicable Diseases Act are not enough alone now after the discovery of the new coronavirus variant, and based on an overall assessment, the decision under section 16 of the Communicable Diseases Act is necessary in this extent at border crossing points located in the operating area of the Regional State Administrative Agency for Southern Finland.

The Regional State Administrative Agency orders that as specified above in section *order* and under section 16 of the Communicable Diseases Act that all persons arriving in Finland through the border crossing points located in the operating area for the Regional State Administrative Agency for Southern Finland, who have stayed within the last 14 days in countries where the B.1.1.529 variant (Omicron) has been observed to be spreading, must take part in a compulsory health examination for the purpose of preventing the spread of the generally hazardous communicable disease COVID-19.

The Finnish Institute for Health and Welfare maintains a web page where it updates the countries where the spread of the B.1.1.529 virus (Omicron) has been observed.

The order does not apply to children under the age of 6. The order also does not apply to transport and logistics personnel in their duties or in travel related to their duties.

The order will be valid for the period 01 December 2021 - 31 December 2021. The Regional State Administrative Agency has assessed that due to the seriousness of the situation the order should be executed immediately.

This decision amends the orders (ESAVI/2021/2021) issued by the Regional State Administrative Agency for Southern Finland on 27 November 2021 under section 16 of the Communicable Diseases Act for the period 01 December 2021 - 31 January 2022.

If a person, who has been ordered to take part in a health examination under section 16 of the Communicable Diseases Act, does not comply with the obligation, the physician responsible for communicable diseases in a municipality or hospital district may request executive assistance under section 89 of the Communicable Diseases Act.

The Regional State Administrative Agency further finds that if a person refuses to undergo a compulsory health examination provided for in this

decision, the provisions laid down in chapter 44, section 2 of the Criminal Code may apply. Under chapter 44, section 2 of the Criminal Code, anyone who deliberately or through gross negligence violates the mandatory health examination referred to in section 16 of the Communicable Diseases Act must be sentenced, unless a more severe penalty is provided elsewhere in the Act, for a health protection violation to a fine or imprisonment for a maximum of three months.

LEGAL RULES APPLIED

Constitution of Finland (731/1999), sections 7, 10, 22

Communicable Diseases Act (1227/2016), sections 1, 6, 8, 9, 14, 15, 16, 16 a–g §, 22, 60, 63, 88 and 89

Criminal Code (39/1889), section 44

Government Decree on Communicable Diseases (146/2017) section 1

APPEAL

Under section 90(1) of the Communicable Diseases Act, this decision can be appealed to the Regional Administrative Court of Hämeenlinna. The instructions for appeal are attached.

IMPLEMENTATION

Notwithstanding any appeal, this decision will be implemented immediately under section 91 of the Communicable Diseases Act.

ENQUIRIES

If you have further questions concerning the matter, please contact, Senior Medical Officer Anne Hiiri, tel. +358 (0)295 016 000 (general enquiries).

Deputy Director,
Director

Riku-Matti Lehikoinen

Director,
Senior Medical Officer

Anne Hiiri

APPENDICES

Appendix 1, municipalities in the Regional State Administrative Agency for Southern Finland's operating area

DISTRIBUTION AND PROCESSING FEE

Decision on public communication

The communication of this decision will take the form of a public communication. The document will be kept available for public viewing at the Regional State Administrative Agency for Southern Finland until 31 December 2021. Notification concerning making the decision available for public viewing will be reported on a public information network on the Regional State Administrative Agency website www.avi.fi.

The communication of this decision to the public is deemed to have taken place on the seventh day following the publication of the above-mentioned notification on the Regional State Administrative Agency website.

C.C.

Municipalities and joint municipal authorities in the operating area of the Regional State Administrative Agency for Southern Finland

Hospital districts in the operating area of the Regional State Administrative Agency for Southern Finland, which are asked to inform doctors responsible for communicable diseases in the district's municipalities of the decision

Police departments in the Regional State Administrative Agency for Southern Finland's operating area

Rescue departments in the Regional State Administrative Agency for Southern Finland's operating area

Border Guard staff requested to inform the border crossing points in Southern Finland on the decision

Finnish Customs

Port of Helsinki Ltd

Lappeenranta Airport

Finavia Corporation

National Supervisory Authority for Welfare and Health

Finnish Institute for Health and Welfare

Ministry of Social Affairs and Health

Communications Department of the Prime Minister's Office

No fee