

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 21) REGULATIONS 2021

2021 No. 1339

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to update the self-isolation and testing requirements applying to eligible travellers arriving in England, as well as reporting requirements applicable to non-eligible travellers and private providers. The option for eligible travellers to complete a Lateral Flow Device (LFD) test on or before Day 2 of their arrival in England is removed, meaning that all eligible travellers are required to complete a PCR test on or before Day 2 of their arrival when not having visited a red-list country in the previous ten days. Eligible travellers are now also required to self-isolate until at least the point at which they receive a negative result from their PCR test or a maximum of 14 days if the result is not received before the end of this period. In the event that the traveller fails to take a test or the result of the test is inconclusive or positive, they would be required to self-isolate in accordance with the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Regulations 2020 (the Self-Isolation Regulations)). Accordingly, the instrument updates obligations, offences, penalties and reasonable excuses for eligible travellers and providers accordingly.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 DHSC regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid 21 days before the instrument comes into force (“the 21- day rule”). Having reviewed the latest assessments of public health risk and the newly identified Covid-19 variant, the Government considers these measures are urgently necessary to protect public health.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 provides a legislative framework for health protection in England and Wales. Section 45B(1) enables the appropriate Minister (defined in section 45T as, for England, the Secretary of State) to make regulations for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place and preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place. Section 45P(2) provides that the power to make regulations includes the power to make different provision for different cases or areas.
- 6.2 The Secretary of State made the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 on 12 February, which came into force on 15 February. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They have now been replaced by the Regulations which came into force on 17 May. The Regulations are currently subject to a formal review at least once every 28 days.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the ITOLRs to update the self-isolation and testing requirements applying to eligible travellers arriving in England, as well as reporting requirements applicable to non-eligible travellers and private providers. The alternative option for eligible travellers to complete a Lateral Flow Device (LFD) test on or before Day 2 of their arrival in England is removed and eligible travellers are now required to isolate until at least the point at which they receive the result of their PCR test. The purpose of this is to reduce the risk of transmission into the UK of a newly identified Covid-19 Variant of Concern which could pose significant risk to public health and the UK vaccination programme.
- 7.2 This change means that all eligible travellers are required to complete a PCR test on or before Day 2 of their arrival in England when not having visited a red-list country in the previous ten days. In the case that this test result is positive, the individual will be required to isolate for ten days from the point at which they received their PCR test result. If the PCR test result is negative, the individual is no longer required to self-isolate. In the case that the PCR test result is inconclusive (void), the individual's period of self-isolation begins from the point at which they receive their inconclusive result. If the individual does not take a replacement day 2 test, then they must remain in self-isolation up to the tenth day after they took the day 2 test. If they take a replacement day 2 test, the individual follows the same path as would have occurred following a positive or negative result of the original day 2 test.
- 7.3 The instrument also updates corresponding obligations, offences, penalties and reasonable excuses for travellers and providers accordingly. Where an individual receives a positive test result, in addition to the requirement to self-isolate in accordance with the Self-Isolation Regulations, they must, when contacted by NHS Test and Trace, provide the contact details of their household members. Household

members of people who are suspected of having the new COVID-19 variant will be contacted by NHS T&T and required to self-isolate.

This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 to bring the following provisions into force at 4am on 30th November:

- Remove the alternative option for eligible travellers, not having been in a red-list country in the previous ten days, to complete a Lateral Flow Device (LFD) test on or before Day 2 of their arrival in England.
- Require eligible travellers to isolate until at least the point at which they receive the result of their PCR test. In the case that the test result is positive, the individual will be required to self-isolate in accordance with the Domestic Self-Isolation Regulations. If the PCR test result is negative, the individual is no longer required to self-isolate.
- Update obligations, offences, penalties and reasonable excuses applying to travellers and providers accordingly. All international arrivals who test positive following a day 2 test are required to provide the contact details of their household members, when contacted by NHS Test and Trace, and new offences are introduced for non-compliance. Private providers of tests are required to notify the travellers and UKHSA if the traveller is suspected to have the new variant of Covid-19.

What did any law do before the changes to be made by this instrument?

- 7.4 The Regulations came into force on 17 May 2021 to deliver a package of enhanced border measures in response to the risk of importation of harmful variants of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England. This included setting out the requirement for persons returning from areas where this risk is especially elevated (red list countries or territories) to book a managed quarantine hotel package. The Regulations were updated on 4 October 2021 to introduce a new system centred around the red list and to provide a new set of rules for non-red list arrivals which are determined by a traveller's vaccination status. Robust health protection measures, including hotel quarantine, remain in place for red list arrivals. Vaccinated arrivals certified in specific countries, those who are participants or have participated in clinical trials in the UK or USA and people who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by the NHS, known as "Eligible travellers", are required to take a day 2 test but are not be required to self-isolate or take a pre-departure test or day 8 test when arriving in England, provided that they have not been in a red list country in the last 10 days. All other arrivals from non-red list countries are required to take a pre-departure test, book and take a day 2 and day 8 test and to self-isolate for 10 days. All individuals are required to fill in the Passenger Locator Form before arriving in England irrespective of vaccination status unless an exemption applies.
- 7.5 The Regulations also include a number of exemptions from self-isolation and/or testing requirements for a small proportion of people, this includes people travelling to the UK to maintain essential supply and business chains, critical national infrastructure or to contribute to crisis response or other key sectors, known as "sector exemptions". Specific exemptions are also in place to successfully deliver a select number of events of cultural and national importance in the UK. All exemptions have

been implemented alongside robust public health requirements in order to minimise any risk to public health.

Why is it being changed?

- 7.6 The self-isolation and testing requirements applying to eligible travellers arriving in England are being updated, along with reporting requirements applicable to non-eligible travellers and private providers. The intention of this policy is to delay the import of a newly identified Covid-19 variant into England as much as possible and prevent its onward transmission into England. While it is too early to draw definitive conclusions, initial data indicates that the variant could be potentially vaccine and immune escaping making it a significant risk to public health and the UK vaccination programme. The requirement for travellers to complete a PCR test on or before Day 2 of arrival in England will allow tests to detect S gene target failure, a proxy for potential Omicron cases and therefore quickly find and respond to the Variant of Concern. An LFD test does not allow for this. The requirement for eligible travellers to self-isolate until at least the point at which the test result is received, as well as new reporting requirements, will reduce the risk of travellers who may be infected with the variant transmitting that infection into the community in England.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation and there are no plans to do so at this time.

10. Consultation outcome

- 10.1 There has been no public consultation in relation to this instrument.

11. Guidance

- 11.1 The Government has published guidance in relation to COVID-19 at <http://www.gov.uk/coronavirus> and this guidance will include any updated information in relation to these amendments.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to COVID-19. As the Regulations, which this instrument amends, will cease to have effect on 16 May 2022 a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Secretary of State must review the need for the requirements imposed by the Regulations, which this instrument amends, at least every 28 days as a result of a statutory review clause.

15. Contact

- 15.1 Jessica Sterling at the Department of Health and Social Care, Email: Jessica.Sterling@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Nelson, Deputy Director for MQS, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maggie Throup, Parliamentary Under Secretary of State for Vaccines and Public Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.