

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (SELF-ISOLATION) (ENGLAND) (AMENDMENT) (NO. 4) REGULATIONS 2021

2021 No. 1338

#### 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 Self Isolation (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020/1045 (the "Self-Isolation Regulations") to respond to the emergence of the Omicron variant.
- 2.2 It makes specific provision in relation to self-isolation where NHS Test and Trace to notify an individual that they are a close contact of a case suspected or confirmed as having the Omicron (B.1.1.529) variant of COVID-19.
- 2.3 The existing provision exempting close contacts from self-isolation providing they have completed a full course of an authorised vaccine, have taken part in a clinical vaccine trial, are medically unable to be vaccinated or are under the age of 18, will not apply if a person is notified that they are a close contact of a suspected or confirmed case of the Omicron variant.
- 2.4 The effect of this amendment will be that anyone in England who is notified by NHS Test and Trace (or other specified bodies) that they are a close contact of a suspected or confirmed case of the Omicron variant will be legally required to self-isolate regardless of age or vaccination status. The affected individuals will also be unable to benefit from the exemption from the self-isolate requirement which applies to those who participate in a Daily Contact Testing Scheme. The length and requirements of the self-isolation period required under this new provision remains the same as for non-Omicron contacts.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c.22) ("the 1984 Act"). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being so laid and approved.
- 3.2 The Regulations come into force at 4am on 30 November 2021 and are published on [www.legislation.gov.uk](http://www.legislation.gov.uk). The Regulations cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. The

Self-Isolation Regulations which this instrument amends will expire at the end of 24 March 2022.

#### **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.

#### **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under-Secretary of State for Vaccines and Public Health, Maggie Throup MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 4) Regulations 2021 are compatible with the Convention rights.”

#### **6. Legislative Context**

##### **Background**

- 6.1 The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales.
- 6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious diseases, or contamination from chemicals or radiation. Part 2A includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the amended 1984 Act sets out a framework for health protections which requires much of the detailed provisions to be delivered through regulations.
- 6.3 Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in England and Wales. The threat of infection or contamination can come from outside England and Wales.
- 6.4 A number of regulations under section 45C of the 1984 Act have been made, including regulations relating to severe acute respiratory syndrome Coronavirus 2 (SARSCoV-2) (“COVID-19”).
- 6.5 In particular, the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 which came into force on 28 September 2020, imposed requirements on people who are notified of a legal obligation to self-isolate. This plays a key role in slowing or preventing a rise in the rate of reproduction (R) of COVID-19. The instrument required persons who have been notified, other than through the NHS COVID-19 app, that they have tested positive for coronavirus or have been identified as a close contact of someone who has tested positive, to self-isolate for a specified period.
- 6.6 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021, which came into force on 19 July 2021, made amendments to the legal duty to self-isolate. The following amendments to the Self-Isolation Regulations were included:
  - From 19 July 2021, a person can leave self-isolation to post an antibody test.

- From 16 August 2021, a person is not required to self-isolate if they are notified that they have been in close contact with a person who has tested positive, if the person:
  - has completed a course of an authorised vaccine administered in the UK; or,
  - has participated or is participating in an authorised clinical trial of a coronavirus vaccine; or,
  - can evidence that they are unable to be vaccinated for clinical reasons.
- A removal of the duty on a child under the age of 18 to self-isolate where they are notified that they have been in close contact with a person who has tested positive.

6.7 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (No. 3) Regulations 2021, which came into force on 27 September 2021 extended the Self-Isolation Regulations until the end of 24 March 2022, and extended the exemption from the duty to self-isolate for fully vaccinated persons to those who have received doses of two different Medicines and Healthcare Products Regulatory Agency (MHRA) authorised vaccines in the UK.

6.8 In accordance with section 45R of the 1984 Act, the Parliamentary Under-Secretary of State for Vaccines and Public Health is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament. This is required due to the significant potential risk posed by the newly identified Omicron (B.1.1.529) variant of COVID-19.

#### **Legislative Changes**

6.9 Regulation 2(3)(a) introduces new provisions in regulation 2B(1) of the Self Isolation Regulations. It creates a new category of close contact notification so that a relevant person can notify an individual that they are a close contact of a suspected or confirmed case of the Omicron variant of COVID-19. This regulation also provides that such a notification can be given to an individual in respect of a child for whom they are the responsible adult.

6.10 Regulation 2(3)(b) inserts new paragraphs 2B(3A) and 2B(3B) in the Self Isolation Regulations which provides that where such a notification is given, the individual must self-isolate for the period of self-isolation (as determined by Regulation 3 of the Self-Isolation Regulations ). This means the exemptions to the self-isolation requirement contained in Regulation 2B(6) of the Self-Isolation Regulations do not apply to close contacts of a suspected or confirmed case of an Omicron variant. These individuals will also be unable to participate in DCT or take part in coronavirus-related research

6.11 Regulation 2(3)(c) re-inserts references to children in paragraphs (4) and (5) of Regulation 2B of the Self-Isolation Regulations. These consequential amendments are needed because this statutory instrument reintroduces a duty to self-isolate for children who are close contacts of confirmed or suspected Omicron cases.

6.12 Regulation 2(3)(d) inserts new paragraphs 5A and 5B into regulation 2B of the Self Isolation Regulations. It provides that if a relevant person notifies an individual subject to such a notification that the person who tested positive is no longer suspected

or confirmed as having an Omicron variant, then Regulation 2B(1)(a) of the Self Isolation Regulations applies from the date of the fresh notification. This provision captures circumstances where a close contact of a positive case is no longer considered to be a close contact of an Omicron variant and will enable that individual to be exempt from self-isolation as a close contact of a positive case who does not have the Omicron variant, provided that they satisfy one of the conditions in paragraph 2B(6) of the Self-Isolation Regulations.

- 6.13 Regulation 2(3)(e) inserts a provision in new paragraph 2B(9) of the Self Isolation Regulations which clarifies that for the purposes of the new obligation a person who has tested positive for coronavirus is suspected or, or confirmed as having an Omicron variant where molecular testing has identified that the case is likely to have, or does have, an Omicron variant. The molecular testing in question will include (but is not necessarily limited to) PCR tests, genotyping or sequencing.
- 6.14 Regulation 2(5)(a) provides a definition of Omicron variant for the purposes of the Self Isolation Regulations.
- 6.15 Regulation 2(6) amends the enforcement provision in regulation 10(4) of the Self-Isolation Regulations to enable an authorised person direct a responsible adult to ensure as far a reasonably possible that a child who is a close contact of a suspected or confirmed Omicron case is self-isolating.
- 6.16 Regulation 2(7) amends the definition of “notification information” in paragraph 14(4D)(a) of the Self Isolation Regulations to include the fact that the individual is a close contact with someone who is a suspected or confirmed case of an Omicron variant.

## **7. Policy background**

### *What is being done and why?*

- 7.1 These changes are being made in response to the Omicron variant of COVID-19, which was first detected in countries in southern Africa from 23 November 2021 and was designated a variant of concern by the World Health Organization on 26 November 2021. Cases have now been detected in European countries, including several cases in the UK.
- 7.2 The Omicron variant has 32 spike mutations and the World Health Organisation’s Variant Technical Group has designated it Very High Priority, meaning it may pose a substantial risk to public health.
- 7.3 Initial data indicates that this variant may pose significant risk to the UK. A number of mutations are in key locations in the genome, suggesting possible changes in transmissibility and vaccine effectiveness.
- 7.4 The amendments to the Self-Isolation Regulations that came into force on 16 August 2021 provided that close contacts of a positive case of COVID-19 are exempt from self-isolation if they have completed a full course of an authorised vaccine, have taken part in a clinical vaccine trial, are medically unable to be vaccinated or are under the age of 18. This was in recognition of the success of the UK vaccination programme and the effect that this has on reducing the serious impacts of COVID-19.
- 7.5 Due to the significant public health concerns around the potential impact of the Omicron variant and how it may respond to current vaccines and treatments, the above

exemptions will not apply to any close contacts of a suspected or confirmed case of the Omicron variant. Daily Contact Testing will also not be available to exempt close contacts of an individual with, or suspected of having the Omicron variant from the legal requirement to self-isolate. This is in order to reduce transmission of the variant as much as possible to protect public health while further data is gathered and studied on the effectiveness of vaccines and treatments against this variant.

- 7.6 Where someone is found to be a close contact of a suspected or confirmed case of the variant, they will be notified that they must self-isolate. This will be for the same duration and calculated in the same way as currently occurs for other non-exempt close contacts. Suspected or confirmed cases will be identified through molecular testing (including through PCR tests, genotyping or sequencing).

## **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.

## **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 [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus) and this guidance will include updated information in relation to the 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 this instrument will cease to have effect after 24 March 2022 an Impact Assessment is not required and would be disproportionate. This extension falls under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency COVID-19 legislation in advance of the wider reform of the better regulation framework.

## **13. Regulating small business**

- 13.1 This instrument does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021 that this instrument establishes will expire and cease to have effect at the end of 24 March 2022.

## **15. Contact**

- 15.1 Sophie George ([Sophie.George@DHSC.gov.uk](mailto:Sophie.George@DHSC.gov.uk)), Head of COVID-19 Self-Isolation Policy Team at the UK Health Security Agency, can be contacted with any queries regarding the instrument.
- 15.2 Ben Dyson ([Ben.Dyson@DHSC.gov.uk](mailto:Ben.Dyson@DHSC.gov.uk)), Director of Cross Cutting Policy and Parliamentary & Public Accountability at the UK Health Security Agency, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maggie Throup MP, the Parliamentary Under-Secretary of State for Vaccines and Public Health at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.