

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENTRY TO
VENUES AND EVENTS) (ENGLAND) REGULATIONS 2021

2021 No. 1416

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 makes provision to take public health measures to ensure an appropriate response to the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease COVID-19. This instrument creates a series of legal obligations on people and organisations that implements a policy of ensuring that access to settings with large crowds, mixing and close contact where the risk of Covid-19 transmission may be increased is restricted to attendees/visitors who can demonstrate their COVID Status or exemption. COVID Status is obtained by being either fully vaccinated against Covid-19 (not including a 'booster') with any authorised COVID-19 vaccine; proof of a negative polymerase chain reaction (PCR) test or lateral flow (LFD) test, which has returned a negative result within 48 hours of entry; or proof of a medical exemption from vaccination or through participation in a clinical trial.
- 2.2 It also makes minor amendments to the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021.

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 the Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the Omicron variant of concern (B.1.1.529).
- 3.2 The instrument was made on 13 December, laid on 13 December 2021 and published on www.legislation.gov.uk later that day. Regulations 1 and 20 will come into force on 14 December 2021, with all other provisions to come into force at 6am on 15th December 2021. 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

Regulations will expire at the end of 26 January 2022, except in relation to regulation 20 (which amends the Face Coverings Regulations and will expire with those Regulations), and the requirements in regulation 7(7), which expire at the end of 26 April 2022.

- 3.3 Provisions amending existing legislation will be reviewed in accordance with the timescales already provided in those instruments.

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 (including the English territorial sea).

5 European Convention on Human Rights

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

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021 are compatible with the Convention rights.”

6 Legislative Context

- 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 protection 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.
- 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 This instrument is made under section 45C to provide for public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of severe acute respiratory coronavirus 2 (SARS-CoV-2). The measures provide for vaccine or test certification requirements for visitors in certain settings.
- 6.6 Regulation 1 sets out the date on which these Regulations come into force and the extent and application.
- 6.7 Regulation 2 sets out the definitions of terms used in this instrument.

Qualifying test

- 6.8 Regulation 3 sets out what is considered acceptable as a qualifying test for the purposes of these Regulations.

Venues and events subject to these Regulations

- 6.9 Regulation 4(1) sets out that certification applies to all venues in category A, unless hosting an exempt event, and all events in categories B, C or D which are not otherwise exempt.
- 6.10 Regulation 4(2) sets out that category A venues are listed at Schedule 1.
- 6.11 Regulation 4(3) sets out that where a category A venue is part of a larger premises, certification only applies to persons attending the category A venue, provided that—
there is an entrance to the category A venue at which checks can be made on persons wishing to attend the venue and persons attending the category A venue are separated from persons using any other part of the premises, except when using shared toilets, corridors, entrances, stairwells, lifts and similar shared facilities.
- 6.12 Regulations 4(4), 4(5) and 4(6) set out the criteria for category B, C and D events. Category B events are those attended, or likely to be attended, at any point by 500 or more people in those parts of the event which take place indoors where people are likely to stand or move around during all or part of the event. Category C events are those which take place outdoors, in whole or in part, and are attended, or likely to be attended, at any point by 4000 or more people, where people are likely to stand or move around during all or part of the event. Category D events are those attended or likely to be attended by 10,000 or more people.
- 6.13 Regulation 4(7) sets out that exempt events are listed in Schedule 2.
- 6.14 Regulation 4(8) sets out that persons leaving their seat to use toilet facilities, obtain food or drink, or leave the event are not considered to be moving around for part of the event. It also sets out how the likely number of attendees must be calculated. It also sets out that where two or more events are taking place at the same venue and at the same time, those events are to be treated as a single event unless the events are held in different rooms, and people attending one event are separated from people attending any other event at that venue, except when using shared toilets, corridors, entrances, stairwells, lifts and similar shared facilities.

Requirements: entry to venues or events

- 6.15 Regulations 5(1), 5(2) and 5(3) set out that responsible persons must take reasonable measures to ensure that only persons who are can demonstrate their COVID status, or are exempt persons as set out in regulation 10, are permitted to enter, or be present in, settings where certification applies. This includes performing checks of every person's certification status unless regulations 5(4) or 6(1) applies.
- 6.16 Regulation 5(4) outlines that 5(1) and (3) do not apply where a person is being admitted to a venue solely to enable that person to avoid injury or escape a risk of harm.
- 6.17 Regulations 5(5) and 5(6) set out that where a venue has capacity to host an event which would bring it in scope of certification, but which is not used for such an event (e.g. the event will be under 500 indoors or under 4000 outdoors, likely to stand or move around), the responsible person for the venue, or the event, as appropriate, must take reasonable measures to ensure that the number of attendees at any event in that venue does not exceed the threshold for certification.
- 6.18 Regulation 5(7) sets out the definition of a responsible person.

Entry to events and venues: spot checks

- 6.19 Regulation 6(1) sets out under which circumstances responsible persons may perform spot checks of certification status of attendees where 100% checks are not reasonably possible in settings where certification is required.
- 6.20 Regulation 6(1)(d) sets out that where the criteria in 6(1) applies the responsible person should carry out an assessment, taking into account relevant Government guidance, of the potential risks to the safety of persons attending the venue or event in question (“attendees”), or of any other person, which may be caused by carrying out a check on every person, and what percentage of people within regulation 5(3) it is reasonably possible to check without endangering the safety of attendees and other persons. Regulation 6(2) sets out that where the criteria outlined in 6(1) are met, the responsible person may, if the local authority in whose area the venue is located (“the relevant local authority”) approves the assessment made by the responsible person under regulation 6(1)(d), satisfy its obligations under regulation 5(1) by checking the percentage of attendees assessed under paragraph (1)(d)(i)(bb).
- 6.21 Regulations 6(3) outlines that if a responsible person wants to implement spot checks, then unless regulation 6(4) applies they must submit their assessment to the relevant Local Authority at least 10 working days before the date on which the responsible person wishes to admit people to the event or venue in question, providing a written description of the assessment made under regulation 6(1)(d) .
- 6.22 Regulation 6(4) outlines that where the date on which the responsible person wishes to admit persons to an event or venue falls before 29th December 2021, the application referred to in paragraph (3) must be made as soon as practicable before the date of the event.
- 6.23 Regulation 6(5) outlines that the relevant local authority can approve the assessment, or approve on condition that the responsible person takes further reasonable measures specified by the local authority, or reject the assessment.
- 6.24 Regulation 6(6) outlines that if the relevant local authority rejects the assessment the responsible person must either comply with the requirements in regulation 5(3) (i.e. 100% checks), or close the venue or cancel the event as appropriate.
- 6.25 Regulation 6(7) outlines that an assessment is considered approved without conditions if the relevant local authority does not reply to an application made under regulation 6(3), until a day which is less than 5 working days before the date on which the responsible person wishes to admit people to the event or venue. For events taking place before 29th December 2021, an application is considered approved if submitted to the relevant local authority before the date on which the responsible person wishes to admit people to the event or venue.

Requirements: statements and records

- 6.26 Regulation 7(1) sets out that a responsible person must produce and keep up to date a statement of the measures they intend to take to satisfy their obligations under regulation 5(1), including how those measures are to be implemented and drawn to the attention of every person attending the venue or event.
- 6.27 Regulations 7(2) and 7(3) set out that a responsible person must keep records for each venue or event subject to certification, containing information on the date of the event or the date to which the records relate (in the case of a venue), and the number of

attendees. On any occasion where they have deviated from the statement referred to in regulation 7(1), they must set out the reasons why, what measures were adopted, and how an individual's eligibility was checked. Additionally, the responsible person must record the number of occasions on which spot checks have been carried out under regulation 6, or persons have been admitted to avoid injury or escape a risk of harm.

- 6.28 Regulation 7(5) sets out that these records must not contain personal information which could identify a person.
- 6.29 Regulation 7(6) sets out that a person responsible for a venue, or an event at a venue, with capacity to host an event which would bring it in scope of certification, but which is not used for such an event (e.g. the event will be under 500 indoors or under 4000 outdoors, likely to stand or move around), must produce and keep up to date a statement of the measures they intend to take to ensure the threshold is not exceeded.
- 6.30 Regulation 7(7) sets out that statements pursuant to 7(1) or 7(6) must be retained for the time period in which this regulation is in force (that is, until 26 April 2022, per regulation 21), and the records referred to in regulations 7(2) and 7(3) must be retained for a period of 3 months after the event or the day to which the record refers.

Criteria for entrance and exemptions

- 6.31 Regulation 8(1) sets out the criteria for an individual to be eligible for certification. This includes being fully vaccinated with an authorised vaccine, with the final dose at least 14 days prior to attending the venue or event, or receiving a negative LFD or PCR test result within 48 hours of entry.
- 6.32 Regulation 8(2) sets out the criteria for an individual to be exempt from the requirements to be vaccinated or regularly tested. A person is exempt if they have taken part in a relevant clinical trial of a vaccine against coronavirus disease or have a clinical reason not to be vaccinated with any authorised vaccine.
- 6.33 Regulation 8(3) sets out what is considered to be fully vaccinated for the purposes of regulation 8(1).
- 6.34 Regulation 8 (4) sets out the definition of a relevant clinical trial for the purposes of regulation 8(2).
- 6.35 Regulation 8(5) defines terms used in this regulation.

Acceptable evidence for the purposes of regulation 8 (vaccination, testing or eligibility for exemptions)

- 6.36 Regulation 9(1) set out that items that may be used as evidence that a person to satisfies the criteria in regulation 8(1), or comes within an exemption in regulation 8(2).
- 6.37 Regulation 9(2) sets out that a person can use their NHS COVID pass or the equivalent from NHS Scotland, NHS Wales or the Department of Health in Northern Ireland, or an equivalent electronic application developed by or on behalf of the governments of a British overseas territory, any of the Channel Islands or the Isle of Man, or a letter from those same governments, in so far as that application or letter provides information as to whether or not the person satisfies the criteria set out in regulation 8(1) or the exemptions set out in regulation 8(2).
- 6.38 Regulation 9(3) sets out further evidence that can be provided to demonstrate that a person is fully vaccinated, including proof of vaccination from other countries.

- 6.39 Regulation 9(4) sets out where a person has received a dose of an authorised vaccine and a dose of a vaccine under the United Kingdom vaccine roll-out overseas, the evidence that the person uses must include proof of having received the dose of an authorised vaccine through a form of proof referred to in paragraph (2)(a) or (b), or any of sub-paragraphs (b) to (f) of paragraph (3).
- 6.40 Regulation 9(5) sets out the evidence required to demonstrate a person has had a negative test in the 48 hours before visiting a venue or event.
- 6.41 Regulation 9(6) sets out the evidence required to demonstrate a person has participated, or is participating, in a relevant clinical trial of a vaccine against coronavirus disease carried out in the United Kingdom.
- 6.42 Regulation 9(7) sets out the evidence needed to demonstrate that a person has participated, or is participating in, a relevant clinical trial of a vaccine against coronavirus disease regulated outside of the United Kingdom.
- 6.43 Regulation 9(8) sets out how to evidence that a person should not be vaccinated for clinical reasons with any authorised vaccine
- 6.44 Regulation 9(9) sets out the interpretation of terms in the regulation.

Exempt persons

- 6.45 Regulations 10(1) and (2) set out that a person who is under the age of 18, providing services in a Category A venue, or at a Category B, C or D event; is attending the venue or event to participate in organised sport or in an organised fitness activity, or is a person listed in 10(2) and is attending the event as part of their official duties, is exempt.
- 6.46 Regulation 10(3) sets out definitions applicable under regulation 10.

Local authority powers

- 6.47 Regulation 11(1) confers a power on a local authority designated officer, by notice in writing, to compel the production of statements referred in regulations 7(1) and 7(6) and the records referred to in regulations 7(2) and (3) within 3 working days. It also confers a power on the officer to inspect those statements and records during the course of any inspection carried out under regulation 11(2).
- 6.48 Regulation 11(2) confers a power on a local authority designated officer to enter any premises (other than a private dwelling) or land to carry out an inspection for the purpose of investigating a person's compliance with or a potential breach under these Regulations.
- 6.49 Regulation 11(3) outlines that the local authority designated officer must produce suitable identification to the owner and to any occupier of the premises or land, when requested to do so by them.

Coronavirus Improvement Notices

- 6.50 Regulation 12(1) enables a local authority designated officer to enforce the Regulations by issuing a Coronavirus Improvement Notice (CIN), requiring a person who is breaching or has breached these Regulations to end or remedy that breach.
- 6.51 Regulation 12(2) outlines what must be included in a CIN.

- 6.52 Regulation 12(3) outlines that a CIN may include suggestions as to the measures which could be taken to ensure that any requirement pursuant to measures outlined in the notice that must be met to end or remedy the contravention.
- 6.53 Regulation 12(4) outlines that a CIN must be reviewed by a local authority designated officer at, or as soon as practicable after, the end of the period for which the notice has effect.
- 6.54 Regulation 12(5) outlines that the person to whom the CIN is issued may request that a local authority designated officer review the notice if they believe they have met all requirements in the notice pursuant to regulation 12(2)(f), and the notice is still in effect.
- 6.55 Regulation 12(6) outlines that where a request is made pursuant to paragraph (5), a local authority designated officer must carry out a review as soon as practicable but in any event by the end of the period of two working days after the time at which the request is received.
- 6.56 Regulation 12(7) outlines what steps a designated officer must take when reviewing the CIN and the potential outcomes of the review.

Coronavirus Immediate Restriction Notices

- 6.57 Regulation 13 enables a local authority designated officer to enforce the Regulations by issuing a Coronavirus Immediate Restriction Notice (CIRN), requiring a person who is breaching or has breached these Regulations to close the premises, end or remedy the breach, or ensure the breach will not be repeated. A CIRN may only be issued if the officer is of the opinion that the breach involves a risk of exposure to coronavirus. A CIRN may take effect immediately or at a time specified in the CIRN, and then has effect for a period ending 48 hours after the time at which it was issued.
- 6.58 Regulation 13(6) outlines what must be in a CIRN.
- 6.59 Regulation 13(7) outlines that a CIRN must be reviewed by a local authority designated officer before the notice ceases to have effect.
- 6.60 Regulation 13(8) outlines that the person to whom the CIRN is issued may request that a local authority designated officer review the notice if they believe the requirements in the notice pursuant to regulation 13(2) are no longer necessary, and the notice is still in effect.
- 6.61 Regulation 13(9) outlines that where a request is made pursuant to paragraph (8), a local authority designated officer must carry out a review as soon as practicable.
- 6.62 Regulation 13(10) outlines what steps a designated officer must take when reviewing the CIRN and the potential outcomes of the review.

Coronavirus Restriction Notices

- 6.63 Regulation 14 enables a local authority designated officer to enforce the Regulations by issuing a Coronavirus Restriction Notice (CRN), requiring a person who is breaching or has breached these Regulations to close the premises, or end or remedy the breach. A CRN may only be issued if a CIN has already been issued and the officer is of the opinion that the person failed to comply with the CIN and the breach involves a risk of exposure to coronavirus. A CRN may take effect immediately or at a time specified in the CRN, and then has effect for a period ending seven days after the day on which it is issued.

- 6.64 Regulation 14(6) outlines what must be included in a CRN.
- 6.65 Regulation 14(7) outlines that a CRN must be reviewed by a local authority designated officer before the notice ceases to have effect.
- 6.66 Regulation 14(8) outlines that the person to whom the CRN is issued may request that a local authority designated officer review the notice if they believe the requirements in the notice pursuant to paragraph 14(2) are no longer necessary, and the notice is still in effect.
- 6.67 Regulation 14(9) outlines that where a request is made pursuant to paragraph (8), a local authority designated officer must carry out a review as soon as practicable and within 2 working days of receiving the request, or before the CRN ceases to have effect, whichever is sooner..
- 6.68 Regulation 14(10) outlines what steps a designated officer must take when reviewing the CRN and the potential outcomes of the review.

Appeals

- 6.69 Regulation 15(1) sets out the process by which a person may appeal to a magistrates' court against a CIN, CIRN or CRN or the decision on a review of that notice.

Offences and penalties

- 6.70 Regulation 16(1) provides that a responsible person in relation to an event or venue who breaches the requirements of regulations 5(1), (5) or (6), 7(1), (2), (3), (5), (6) or (7), commits a criminal offence, unless they have a reasonable excuse.
- 6.71 Regulation 16(2) creates a criminal offence of making, adapting, supplying or offering to supply false evidence of COVID status to another person which is false or misleading.
- 6.72 Regulation 16(3) sets out the definition of evidence of COVID status for the purpose of regulation 16(2).
- 6.73 Regulation 16(4) sets out that it is an offence to fail to comply with a notice in writing to produce the statement referred to in regulation 7(1) or (6), or the records referred to in regulation 7(2) and (3), within 3 working days after the day on which the notice is received, or to prevent a local authority officer from carrying out an inspection under regulation 11(1)(b) or (2), without reasonable excuse.
- 6.74 Regulation 16(5) creates a criminal offence of failing to comply with a CIN, CIRN or CRN issued under regulation 12, 13 or 14, unless the person has a reasonable excuse.
- 6.75 Regulation 16(6) provides that an offence under this regulation is punishable on summary conviction by a fine.
- 6.76 Regulations 16(7), 16(8), and 16(9) set out the conditions under which, where a company or other body corporate commits an offence under these Regulations, an officer of that body corporate is also guilty of an offence.
- 6.77 Regulation 16(10) provides that a police constable's power of arrest without warrant under section 24 (arrest without warrant: constable) of the Police and Criminal Evidence Act 1984 applies in relation to an offence under regulation 15.

Fixed penalty notices

- 6.78 Regulation 17 sets out the conditions under which an authorised person may issue a fixed penalty notice (FPN) and specifies the amount which that FPN may be for a given offence under these Regulations. The persons who may be authorised for this purpose are a police constable, a police community support officer, or a person designated by the Secretary of State or relevant local authority. This regulation also sets out how multiple FPNs issued to the same person or organisation interact.

Designations

- 6.79 Regulation 18 outlines that anyone who was designated under the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020, or the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, to enforce those regulations, is to be treated as designated for the purposes of these Regulations.

Prosecutions

- 6.80 Regulation 19 provides that prosecutions of offences under these Regulations may be brought by a local authority or the Crown Prosecution Service.

Amendment of the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021

- 6.81 Regulation 20 provides amendments to the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021.

Expiry

- 6.82 Regulation 21 provides that these Regulations expire at the end of 26th January 2022, except in relation to regulation 20 (which amends the Face Coverings Regulations and will expire with those Regulations), and in relation to the requirements in regulation 7(7), which expire at the end of 26th April 2022.

Schedule 1

- 6.83 Schedule 1 sets out the category A venues where certification is required, including:
- Nightclubs, dance halls and discotheques, and any other venue open any time between 1 a.m. and 5 a.m., serving alcohol after 1 a.m., and providing a dance floor and music for dancing; except where the venue does not provide music for dancing or space for dancing, where dancing only takes place as part of a performance, dance classes, exercise classes or ballroom dancing, or where the venue is a private dwelling and there is no charge for entry and no tickets are issued;
 - Live music venues, theatres or concert halls (where indoors and with 500 or more attendees expected to stand or move around);
 - Exhibition halls, conference centres and other public halls (where indoors and with 500 or more attendees expected to stand or move around);
 - A sports stadium, arena, centre, pool, rink or sports ground (where indoors, or partly indoors, and with 500 or more attendees in the indoor area, or where outdoors with 4,000 or more attendees, who are expected to stand or move around); or

- A venue which has the capacity to host a gathering of 10,000 people, on any occasion during which 10,000 or more people are expected to attend that venue.

Schedule 2

6.84 Schedule 2 sets out events which are exempt from the requirements within these Regulations, including:

- A ceremony for a wedding, civil partnership, alternative wedding as defined in schedule 2, para 1(2), or conversion of civil partnership into a marriage;
- A reception following a ceremony for a wedding, civil partnership, alternative wedding, or conversion of civil partnership into a marriage, or celebrating a significant life event as defined in schedule 2, para 2(3), is exempt as long as the reception is attended by fewer than 500 people if held in a category A venue, or if held in any other venue the person responsible in relation to the event is not a business, a charitable, benevolent or philanthropic institution or a public body;
- A funeral;
- A commemorative event unless it is held in a night club or similar venue as set out in Schedule 1, para 11;
- Communal worship;
- An event which takes place in a private dwelling (unless the event is ticketed or there is a charge for entry);
- Un-ticketed, free events taking place in a public outdoor space;
- An event in a restaurant, café, canteen, bar, public house, social club or members' club unless there is a charge for entry, the event is ticketed, or the venue (or part of the venue) has been hired or reserved for the event.

7 Policy background

What is being done and why?

- 7.1 In September 2021, the Government published the Autumn and Winter 2021 COVID-19 Response Plan. This set out the Government's approach to sustaining progress made in fighting the virus and returning to normal, while also ensuring the NHS would not come under unsustainable pressure. Plan B includes measures aimed at helping control transmission of the virus, while seeking to minimise economic and social impacts. This included our intention to use certification as part of this package of measures.
- 7.2 On 8th December the Government confirmed that England will move to Plan B following the rapid spread of the Omicron variant. On 12th December, in light of the rapid increase in Omicron cases, the UK Chief Medical Officers and NHS England National Medical Director recommended to ministers that the UK COVID-19 alert level should increase from Level 3 to Level 4. From 10th December face coverings became compulsory in most public indoor venues. From 13th December those who can are advised to work from home. The Government also announced the introduction of COVID-status certification.
- 7.3 On 27 September 2021, in advance of the emergence of Omicron, the Government published a proposal for mandatory Covid-19 certification in a Plan B scenario setting

out detailed proposals, inviting responses from industry and the public and to give organisations and the public time to prepare.¹

- 7.4 On 11 October, the Government's call for evidence on mandatory certification closed.
- 7.5 Mandatory vaccination or test certification is part of a package of measures aimed at reducing pressure on the NHS. Negative test results provide some assurance that an individual is not infectious when the test is taken and for a short time afterwards. There is evidence to suggest that vaccination reduces the likelihood of infection or transmission by a small degree in the context of Delta, which continues to circulate. Analysis suggests AstraZeneca reduces transmission by 25% up to 3-months post immunisation but by 0% at 4-months onwards. Pfizer has been shown to reduce transmission by 50% up to 3-months post immunisation and 25% at 4-months onwards. There is insufficient data to determine the effect of boosters on transmission at this stage. There is a high level of uncertainty about the effectiveness of vaccination against infection or transmission in the context of Omicron. It would be reasonable to suppose from initial virus neutralisation assay studies that vaccines would have less impact in reducing transmission in the context of omicron. We know that vaccination helps protect against serious illness and hospitalisation in the case of Delta, which continues to circulate. We do not yet know the impact vaccination has on the severity of illness in the context of Omicron. Overall, introducing vaccine or test certification will help reduce risks in these settings when compared with no intervention. It will however not eliminate the possibility of infectious people attending or transmitting the virus in these settings so individuals should continue to exercise caution.
- 7.6 In certain settings (set out in full below, paragraph 7.11):
- mandatory vaccine-or-test certification applies for all visitors aged 18 or over
 - advisory vaccine-or-test certification applied for the customer facing workforce aged 18 or over in these settings
- 7.7 This means that adult visitors need to be fully vaccinated or have proof of a negative LFD or PCR test result to access the settings in which certification is required. There are a small number of exemptions for those who cannot vaccinate for medical reasons, and for those who have taken part in clinical trials for a COVID-19 vaccine.
- 7.8 As of 30 September 2021, all over 18s have been offered both doses of the vaccine. LFD and PCR tests are provided at no cost by the Government, and can be easily ordered on gov.uk, through the 119 support service and by collection from community testing sites and pharmacies.

Settings

- 7.9 Mandatory vaccine-or-test certification applies to the following venues and events:
- all nightclubs and other venues open after 1am with alcohol, music and dancing
 - indoor events with 500 or more attendees where those attendees are likely to stand or move around during the event, such as large receptions, and specifically live music venues, concert halls and indoor sports stadia

¹ <https://www.gov.uk/government/publications/proposal-for-mandatory-covid-certification-in-a-plan-b-scenario/proposal-for-mandatory-covid-certification-in-a-plan-b-scenario>

- outdoor settings with 4,000 or more attendees where those attendees are likely to stand, or move around during the event, such as outdoor festivals, and specifically outdoor sports stadia.
 - any settings with 10,000 or more attendees, such as large sports and music stadia
- 7.10 There are some events that are exempt from requirements to use certification, even if they meet the criteria. These include communal worship, wedding ceremonies, funerals and other commemorative events (except those taking place in a nightclub or other late night dance venue). Free, un-ticketed events in private dwellings are exempt, as are free, un-ticketed outdoor events in public spaces, including street parties, protests and mass participation sporting events.
- 7.11 The settings where certification applies are based chiefly on public health evidence, including from the Scientific Advisory Group for Emergencies (SAGE) and the Events Research Programme (ERP). The highest risks of transmission are associated with indoor settings, particularly those which are poorly ventilated and unstructured where people are likely to mix in close proximity, and settings where people engage in energetic activity, including dancing, shouting and singing.
- 7.12 A fair and proportionate balance needs to be struck between public health benefits of these measures and their economic and social impact. The attendance thresholds are broadly related to the relative riskiness of the activity. This will help to reduce economic disruption and disproportionate burdens, such as door checks, on smaller venues. In very large settings (that is 10,000 or more attendees), although the evidence shows that seated activities are less risky, there is likely to be an additional risk of crowding, for example on public transport outside the venues or at pinch points within the venues. The impact of a super spreader event on the community would also be greater where a higher number of people are infected. Any setting with 10,000 or more attendees is therefore included.

NHS COVID Pass

- 7.13 The NHS COVID Pass (accessible via the NHS App and NHS.UK and letter via NHS.UK or by calling 119) is available as a tool that organisations in England can use to help limit the risk of transmission in their venues and events. The NHS COVID Pass will show COVID status on the basis of vaccination, a negative test result from an LFD or PCR test received within 48hours, a medical exemption from vaccination or participation in a clinical trial.
- 7.14 All visitors aged 18 and over to places where certification is required must have their COVID-19 status checked, and persons can demonstrate their status using the NHS COVID Pass or overseas equivalents, or a notification of a valid test result from NHS T&T.
- 7.15 Individuals are fully vaccinated when they have completed a course of doses of an authorised vaccine and after a period of 14 days has passed since the final dose. Booster jabs are not required in order to be considered fully vaccinated.
- 7.16 Anyone under 18 years of age is not required to demonstrate their COVID status. Individuals under 18 may not commonly have ID and therefore will not need to show proof of age.

- 7.17 There are a small number of other individuals that do not have to demonstrate COVID status to enter places where certification applies, although they may be asked for proof of identification. These include the following persons when attending as part of their official duties:
- police officers;
 - local authority officers and emergency services responders;
 - a diplomat or someone working for an international organisation;
 - a person undertaking essential government work related to national security.

Exemptions

- 7.18 The Regulations allow individuals to provide evidence of an exemption to access settings subject to certification requirements. Those who are unable to be vaccinated for medical reasons will have a means of proving an exemption through the NHS COVID Pass medical exemptions process or maternity certificate.
- 7.19 Medical exemptions from vaccination will require clinical sign off. Further details on this process can be found at: <https://www.gov.uk/guidance/covid-19-medical-exemptions-proving-you-are-unable-to-get-vaccinated>. Those who are exempt, either through participation in a clinical trial or on medical grounds, can obtain a domestic NHS COVID Pass that is indistinguishable from the domestic NHS COVID Pass that is already available to those who are fully vaccinated. This means that the person checking the NHS COVID Pass is not required to identify whether an individual was fully vaccinated or exempt from vaccination, just that they were certified through the NHS COVID Pass.

Workforce advisory measures

- 7.20 Every person aged 18 or over providing services in person to members of the public in settings where certification applies and who are likely to come into contact with members of the public are strongly advised to be:
- fully vaccinated, or
 - exempt (for medical reasons, or as a result of participation in a COVID-19 vaccine trial), or
 - undertaking regular testing.
- 7.21 Individuals responsible for venues or events should check the COVID status of the customer facing workforce using the NHS COVID Pass, text or email notification of a recent negative test result from NHS T&T or other accepted proofs.

Enforcement

- 7.22 Venue and event operators are expected to determine whether the venue they manage, or the event they are organising, falls in scope. Where a venue or event does fall into one of the in-scope categories, certification must be put in place.
- 7.23 Where there is the potential for attendee thresholds to be met and for a venue or event to fall within scope of certification, the person responsible for that venue or event is required to either:
- limit visitors to the venue or event in order that it falls below that threshold, or

- check the vaccination or test status of all visitors, unless they meet the relevant criteria and have agreed in advance with the relevant local authority that spot checks can be utilised in lieu of 100% checks.
- 7.24 Businesses are required to produce, and keep up to date, a statement of their certification policy, setting out the measures they have introduced to ensure that they are meeting and implementing their certification requirements and to ensure the public are aware of these measures.
- 7.25 Events held in venues with capacities greater than the thresholds, but which limit their capacities and therefore do not apply certification, need to have a statement of the measures they will take to avoid exceeding the thresholds.
- 7.26 Organisations are advised to use the NHS COVID Pass Verifier App wherever possible to ensure passes are valid and have not expired and reduce the possibility of fraud. Where use of the Verifier App is not feasible, or when checking proofs of text or email test notifications from NHS T&T, visual checks can be used. Organisations should conduct 100% checks on attendees. However, while certification is a legal requirement, designed to protect public health, the immediate safety of visitors will always come first.
- 7.27 In some limited circumstances, it may not be reasonably possible for 100% visual checks of visitors' COVID status to be carried out without endangering the safety of those attending the venue or event. Where criteria are met the responsible person must carry out an assessment of risk and determine the percentage of checks that can safely be carried out. The responsible person must submit this assessment of risk to the relevant local authority at least 10 working days in advance of the event. The criteria for allowing spot checks are:
 - the event is indoors with 500+ attendees expected to be standing and/or moving around, or the event is outdoors with 4,000+ attendees expected to be standing and/or moving around, or 10,000+ attendees are expected, and
 - the majority are expected to arrive for a fixed start time /all entrants are likely to arrive within a short space of time, and
 - it is not possible to set up checkpoints away from entry points, meaning 100% checks would lead to a crowd gathering outside the event that would either present a risk to the safety of the persons in the crowd, or to any other person, or provide a potential target for terrorism.
- 7.28 The assessment of risk must also be approved by the relevant local authority, or approved with conditions.
- 7.29 Venues or events may also admit people to enter to avoid injury or escape a risk of harm (for example to address or avoid a medical emergency) without the need for certification checks.
- 7.30 Venues where certification is required need to retain records containing the following information:
 - the date of the event, or for a venue, the date to which the records relate
 - the number of people attending the venue or event
 - if they have departed from their statement of certification policy:
 - the reasons for so doing
 - the measures which were adopted on that occasion

- how an individual's eligibility to enter the venue was checked
 - the number of occasions on which measures other than full checks were adopted, as approved by the local authority
 - the number of occasions on which people have been permitted to enter the event or venue without the need for certification checks to avoid injury or escape a risk of harm
- 7.31 Statements must be retained until 26 April 2022. Records must be retained for a period of 3 months after the date of the event or the occasion to which the records relate. Local authorities have powers to request production of these documents within 3 working days or as part of an inspection. Failure to meet requirements to apply certification (including failure to prevent thresholds being exceeded where not applying certification, and maintaining statements and records) is an offence. A Fixed Penalty Notice (FPN) of £1,000 can be issued for the first offence, £2,000 for the second and £4,000 for the third offence. This increases to a maximum of £10,000 if a person is in receipt of 4 or more penalty notices under these or other Coronavirus regulations.
- 7.32 Offences also apply for individuals who make, adapt, supply or offer to supply false evidence of COVID Status, including vaccination documentation or proof of a negative LFD test result. This carries a penalty notice of £10,000. There is no reduction in the penalty notice for early payment for this offence.
- 7.33 Under the Regulations, prosecutions of offences under can be brought by a local authority or the Crown Prosecution Service.
- 7.34 Local authorities also have powers to issue Coronavirus Improvement Notices, Restriction Notices and Immediate Restriction Notices. These are in line with similar notices for enforcing other COVID restrictions, such as the Local Authority Enforcement Powers Regulations.
- 7.35 **Improvement Notices** enable local authorities to require venues or events to make improvements to meet the requirements of the regulations within a minimum of 48 hours. Failure to comply will result in the operators or organisers of these venues or events being issued another Improvement Notice, a Restriction Notice, Immediate Restriction Notice, or penalty notice.
- 7.36 **Restriction Notices** may be issued where a venue operator has failed to comply with the Improvement Notice, involving a risk of exposure to COVID-19. A Restriction Notice can require the closure of the premises (or part of the premises) and/or require the contravention to end or be remedied. A Coronavirus Restriction Notice has effect for 7 days after the day on which it is issued.
- 7.37 **Immediate Restriction Notices** can be issued where requirements in the Regulations are not met, and continued contravention is reasonably expected to carry a risk of exposure to COVID-19. Immediate Restriction Notices could also require the closure of the premises (or part of the premises) and/or require the contravention to end or be remedied. A Coronavirus Immediate Restriction Notice has effect for 48 hours after the time at which it is issued and would not require an operator to have failed to comply with an Improvement Notice ahead of issuing.
- 7.38 These notices may be appealed to a Magistrates' Court within 28 days of issue, or notification of the decision of the review, and in accordance with the Magistrates' Courts Act 1980.

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.

9 Consolidation

- 9.1 This instrument does not consolidate any legislation.

10 Consultation outcome

- 10.1 In July 2021 the Government published the '*COVID-Status Certification Report*'. The review was informed by evidence gathered from in-depth interviews and roundtables held with academics and specialists from relevant fields, from the experience of other countries who have introduced or are introducing their own systems of COVID-status certification, and by a public call for evidence.
- 10.2 On 27 September 2021, the Government published a proposal for mandatory Covid-19 certification in a Plan B scenario setting out detailed policy proposals on certification and inviting submissions of evidence.
- 10.3 On 11 October, the Government's call for evidence on domestic certification closed. Over 60,000 responses were received.
- 10.4 The Government has considered these responses carefully which have helped to inform the regulations and guidance.

11 Guidance

- 11.1 The Government has published guidance in relation to Covid-19 at www.gov.uk/coronavirus and this guidance will include information in relation to the introduction of certification for England, as well as medical exemptions for those who are unable to vaccinate for medical reasons.

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 in under 6 months, 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 The legislation applies to activities that are undertaken by small businesses. This includes venues to which certification will apply and those who provide the workforce to those organisations within scope. These Regulations are being implemented as part of broader measures that prioritise controlling transmission of the virus while seeking to minimise economic and social impacts, including on small business. The NHS COVID Pass will support all businesses in checking the COVID Status of visitors to settings, reducing the operational burdens in verifying visitors' vaccination status.

14 Monitoring & review

- 14.1 This instrument will expire and cease to have effect on 26 January 2022, except for regulation 7(7), which ceases on 26 April 2022, and regulation 20, which amends the Face Coverings Regulations and expires in line with those Regulations.

15 Contact

- 15.1 Georgina Stockley at the Department of Health and Social Care (georgina.stockley@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Vereker, Deputy Director for COVID Strategy, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maggie Throup, the 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.