

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL)
(ENGLAND) (AMENDMENT) (NO.7) REGULATIONS 2021

2021 No. 150

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) (England) Regulations 2020 ("the International Travel Regulations") to introduce a new system of:
 - (i) managed quarantine – for travellers who have been in one of the designated countries which poses high risk to the UK from importation of a variant of concern (a "red-list country") in the 10 days prior to arrival in England; and
 - (ii) mandatory testing – for all travellers who have been outside the Common Travel Area in the 10 days prior to arrival in England.
- 2.2 The measures are designed to reduce the public health risks posed by the spread from international travellers of acute severe respiratory syndrome coronavirus 2 ("SARS-CoV-2") which causes the disease COVID-19, in particular with respect to the possibility of a variant of concern being imported to the UK.

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, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the latest assessments of public health risk, the Government considers these measures as urgently necessary to protect public health and is acting accordingly to prevent the ingress from overseas of a variant of concern. Delaying the implementation of these measures could allow a variant of concern to spread.
- 3.2 This instrument was laid on 12 February 2021 and was published on www.legislation.gov.uk later that day. This instrument will come into force on 15 February 2021.
- 3.3 This instrument also amends the Health Protection (Notification) Regulations 2010 ("the Notification Regulations"). We draw the Committee's attention to the errors it has previously identified in S.I. 2020/1175 amending the Notification Regulations (33rd Report of Session 2019-21) which DHSC has undertaken to remedy. We are aware that amendment of these errors remains outstanding and regret we were unable

to include the necessary amendments in this instrument, owing to the need to give priority to the urgent public health measures contained in these regulations.

- 3.4 This instrument also amends the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 (“the Passenger Information Regulations”) and the Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021 (“the Operator Liability Regulations”).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.5 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

6. Legislative Context

- 6.1 The legislative context is set out in paragraphs 6.1 to 6.5 of the explanatory memorandum to the International Travel Regulations published on www.legislation.gov.uk.
- 6.2 The International Travel Regulations came into force on 8th June 2020 and introduced a requirement for people arriving into England who have been outside the Common Travel Area in the past 14 days to provide their personal and contact details and travel information (called “passenger information”) by completing the Passenger Locator Form (“PLF”), and to self-isolate for a period of 14 days.
- 6.3 The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020 (S.I. 2020/691). With effect from 10th July 2020, these amendments exempt passengers arriving in England from the requirement to self-isolate where, during the 14 days preceding their arrival, they have only been in “exempt countries or territories” which are listed in Schedule A1. There are currently no exempt countries or territories in Schedule A1.
- 6.4 Following the UK Chief Medical Officers decision to change the self-isolation period from 14 to 10 days for contacts of those who test positive, the period of 14 days was also shortened to 10 days by the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1517).
- 6.5 Further amendments to the International Travel Regulations have been made to:
- (i) amend the definitions of “exempt country or territory” to allow the Government to take a regionalised approach (see S.I. 2020/959);

- (ii) add or remove countries or territories from Schedule A1, as appropriate; and
 - (iii) add or amend exemptions from the requirements to self-isolate (and/or provide information) in Schedule 2 of the International Travel Regulations, as appropriate.
- 6.6 Schedule B1, which sets out the red-list countries, was introduced by the Health Protection (Coronavirus, Travel from South Africa) (England) Regulations 2020 (S.I. 2020/1644) following the identification of a new variant of coronavirus in South Africa and more countries were added by the Health Protection (Coronavirus, International Travel) (England) (Amendment) Regulations 2021 (S.I. 2021/18). A number of countries have been added to this list since that instrument was made following the identification of new variants of SARS-CoV-2 around the world.
- 6.7 Regulation 5 inserts a new section 3B into the International Travel Regulations which requires a person arriving in England to book a testing package and undertake a test on or before the end of day 2 (“day 2 test”) and a test on or after the start of day 8 (“day 8 test”). These tests will be booked in a single bundle of both tests, provided or arranged by the same testing provider. Subject to specified exceptions, travellers must have booked the tests on arrival in England. Travellers can only leave managed quarantine or self-isolation once they have received a negative result from their day 8 test and quarantined until the end of the 10 day period with the exception of those who travel from non-red list countries who will be able to opt into the existing Test to Release scheme in Schedule 2A.
- 6.8 Schedule 2C makes further provision on the day 2 and day 8 tests including the testing requirements and standards (which differ depending on the type of test), when the tests must be undertaken (for day 2, on or before the end of the second day of quarantine; for day 8, on or after the end of the seventh day of quarantine) and the notification of test results. It also provides that Test to Release is still available eligible travellers from non-red list countries but travellers who are released under this scheme will still be required to take the day 8 test. Children under 5 will not be required to take the day 2 or day 8 test.
- 6.9 Schedule 2C also describes the consequences of a positive result taken from either the day 2 or day 8 test. In general, a traveller who tests positive to either test will need to continue in managed quarantine or self-isolation until 10 days have passed since they undertook the corresponding test (counting from the day after they took the test). Failure to take both tests will result in an automatic 14 days of quarantine or self-isolation.
- 6.10 Regulation 6 inserts a requirement for travellers who have been in a red-list country in the 10 days prior to their arrival in England to self-isolate in accordance with the new Schedule B1A. They must book, pay for and travel to designated accommodation, and to quarantine there until the later of either the end of the 10 days after the day they arrived in England or the end of the period for which they must quarantine under the new Schedule 2C.
- 6.11 Schedule B1A makes further provision on the quarantine regime for these travellers. They must enter England only via a designated port (as set out in Schedule B1A) and they must pay for and possess a “managed self-isolation package” on arrival in England which means:
- (i) a booking for a place in accommodation designated by the Secretary of State;

- (ii) a booking for transport facilitated by the Secretary of State from the port of arrival in England to the accommodation designated by the Secretary of State; and
 - (iii) a booking for the day 2 and day 8 tests.
- 6.12 Subject to specified exemptions, the traveller must quarantine in the room in the designated accommodation where they are staying. There are exceptions – such as for urgent medical assistance and to exercise or attend the funeral or visit on their deathbed a close family member or household member (but only with the permission of an authorised person). There are also exceptions to allow people to quarantine to care for a child or disabled person or with others with whom they were travelling on arrival in England and for people to enter quarantine to care for them.
- 6.13 Regulations 9, 10, 11 and 12 provide additional powers to enforce the requirements to quarantine and undertake testing, and introduce new offences and penalties. This includes powers to search and detain in certain circumstances (but not on unaccompanied children or to conduct an intimate search).
- 6.14 Regulation 13 expands the range of information that can be shared by those who exercise functions in order to deliver the quarantine and testing arrangements that the regulations put in place. The information that may be shared includes booking details and information gathered by providers in the process of providing quarantine or testing. Important safeguards apply where it is proposed to share this information – it can be shared only where necessary for a function under the regulations or another important public health function. Where information include personal data the Data Protection Act 2018 will apply at all times.
- 6.15 Regulation 18 amends Schedule 2A of the International Travel Regulations which sets out the requirements to be met in relation to an optional test taken for the purposes of the International Travel Regulations to determine whether the traveller can cease self-isolating early. This programme is called “Test to Release”. Travellers who have been in a red-list country in the 10 days prior to their arrival cannot take part in Test to Release and must instead complete managed quarantine.
- 6.16 DHSC would like to draw to the Committee’s attention to the removal of the requirement in paragraph 2(1)(c)(iii) of Schedule 2A for an appropriate test to be “suitable to be used to administer or provide a test to a person of P’s age”. The Committee reported this requirement in the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 (S.I. 2020/1337) for defective drafting in its Thirty-Sixth Report of Session 2019-21. The matter will be dealt with in guidance published by the Secretary of State on www.gov.uk.
- 6.17 Regulation 20 amends the Notification Regulations. Those regulations are made under section 45C of the 1984 Act and create a scheme for notifying actual and suspected cases of infection and contamination in humans to specified bodies with public health responsibilities. This allows prompt action to be taken by those bodies to protect public health where appropriate.
- 6.18 The Secretary of State has made a statement in accordance with section 45Q(3) of that Act. The Secretary of State is of the opinion that this instrument does not contain any provision made by virtue of section 45C(3)(c) of the 1984 Act which imposes or enables the imposition of a special restriction or requirement which has or would have

a significant effect on a person's rights. Accordingly the negative resolution procedure applies.

- 6.19 This instrument amends the Notification Regulations by inserting a new regulation 4ZA which requires operators of a diagnostic laboratory processing day 2 tests to sequence the test sample and notify Public Health England of the required information under those regulations, as well as additional information including the genomic sequencing outcome of any positive result.
- 6.20 Additionally, the Passenger Information Regulations and the Operator Liability Regulations require the operators of commercial transport services to: (a) provide information on public health measures to passengers; and (b) ensure that passengers have complied with the requirements to possess a negative test result and provide information.
- 6.21 This instrument amends the Passenger Information Regulations to introduce further information to be provided by operators to passengers regarding managed quarantine and mandatory testing. It also amends the Operator Liability Regulations to: (a) introduce an obligation on the operators of transport services, including the operators of private aircraft, to deliver passengers subject to managed quarantine only to a port on the list of designated ports; and (b) require the operators of commercial transport services to check that passengers have included, in their provided information, booking information for the mandatory tests and, if relevant, mandatory quarantine.

7. Policy background

What is being done and why?

- 7.1 The identification of new variants of SARS-CoV-2 and the possibility of a variant of concern arising with higher transmission rates or the potential to affect vaccine efficacy could have significant adverse effects on the UK's public health. This instrument therefore implements new, strengthened measures to help prevent the ingress of new strains.
- 7.2 There are a series of measures already in place for international travellers to England, including a ban on entry for travellers who have been in a red-list country in the 10 days prior to their arrival in England (unless they are British or Irish nationals, visa holders or have residence rights in the UK), as well as a ban on the arrival of aircraft and vessels directly from certain red-list countries. For those entering England from countries outside the Common Travel Area ("CTA"), or from elsewhere in the CTA where they have been outside the CTA in the last 10 days, they are required to travel directly to their accommodation and quarantine there for 10 days.
- 7.3 Despite these measures, a significant number of people who have been in red-list countries are still arriving in England via indirect means. Public Health England has already identified the spread of a new variant of Covid-19, first identified in South Africa, in a small number of localities across England. In order to prevent the ingress of potentially harmful variants into the country, the measures require arrivals from countries with a high risk of community transmission of a variant of concern to quarantine in managed facilities for 10 days and introducing mandatory testing to improve understanding and tracing of variants of concern.
- 7.4 This instrument sets out new requirements for people who have been in a red-list country in the last 10 days to quarantine in designated accommodation for 10 days

(other than specified exemptions). Red-list countries are those judged to pose a high risk to the UK from importation of a variant of concern. Requiring self-isolation in designated accommodation will help prevent community transmission and result in important public health benefits.

- 7.5 All international arrivals will continue to be required to have received a negative Covid-19 test result within 3 days of departure and complete the PLF within 48 hours of departure.
- 7.6 This instrument also requires travellers to undertake a day 2 and day 8 test. The follow up test is designed to provide assurance that an individual is not infected with COVID-19 upon exit from quarantine. The use of the initial test to feed into genomic sequencing is aimed at improving the understanding of variants of the virus and where they are being imported from.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 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 www.gov.uk/coronavirus and this guidance will include information in relation to the new requirements for managed quarantine and mandatory testing.

12. Impact

- 12.1 The impact of coronavirus on businesses, charities or voluntary bodies has been significant. The purpose of this instrument is to manage the import of variants of concern, to protect the UK's vaccination programme and therefore reduce the ongoing impact of the virus on businesses, charities or voluntary bodies.
- 12.2 The impact of coronavirus, international border restrictions and social distancing measures on the travel and tourism industries is significant, and it is challenging to disaggregate the impact of this instrument from wider challenges. Managed quarantine for passengers who have been in red-list countries in the past 10 days will likely deter travel and delay the rebound in passenger numbers, including for business travellers and tourists, with potentially significant further financial impacts for businesses in the travel and tourism sector, including international transport operators.
- 12.3 These measures will be reviewed every 28 days and maintained only for as long as judged necessary in responding to the threat of coronavirus and overseas variants. Extensive support has already been introduced for industries affected by coronavirus.

12.4 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 International Travel Regulations, which this instrument amends, will cease to have effect on 8 June 2021 a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the managed quarantine requirement, there are exemptions for certain people and categories of person to maintain essential supply chains, critical national infrastructure or to contribute to essential government work. These exemptions will reduce the impact of the requirement on small businesses (employing up to 50 people), where their employees are travelling for these purposes.

14. Monitoring & review

14.1 A statutory review clause is included in this instrument. The Secretary of State must review the need for the requirements imposed by the International Travel Regulations, which this instrument amends, at least every 28 days.

15. Contact

15.1 Christina Head at the Department of Health and Social Care Telephone: 07761328305 or email: christina.head@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Vereker, Deputy Director at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Matt Hancock MP, Secretary of State for Health and Social Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.