EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 14) REGULATIONS 2021

2021 No. 1130

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 list of category 3 countries and territories referred to colloquially and in guidance as the "Red List". Arising out of these changes to the red list is the need for consequential amendments to the provision for road hauliers and the direct flight ban. The "eligible traveller" category will be expanded to include individuals vaccinated in a larger list of countries, as well as individuals vaccinated by a person authorised and acting on behalf of the United Nations and individuals able to show evidence of their US vaccination through the NHS COVID-Pass. A self-isolation exemption is being introduced for all UK-accredited or appointed diplomats, and their dependants, arriving from non-red list countries. Additionally, the list of accepted forms of pre-departure testing (PDT) certification will be updated to include the use of a valid EU Digital Covid Certificate (DCC) for EU citizens. A number of exemptions will be introduced and updated for specified categories of individuals, including specific domestic elite sportspersons, as well as for events of national importance in the UK, such as the COP26, allowing the events to be successfully delivered whilst robustly protecting public health aims. The instrument will also update eligible traveller criteria and correct a minor error identified in relation to the mandatory testing regime.

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 ("the 21- day rule"). Having reviewed the latest assessments of public health risk, the Government considers these measures are urgently necessary to protect public health whilst ensuring that restrictions in place remain proportionate.

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. Section 45F makes supplementary provision relating to regulations made under section 45B - they may include provisions relating to the conferral of functions, creation of offences, the execution and enforcement of restrictions and requirements imposed by the regulations and the levy of charges.

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 Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ("the Regulations") which came into force on 17 May.

7. Policy background

What is being done and why?

7.1 This instrument updates the list of Category 3 countries and territories (colloquially known as "the red list"), as a part of the regular three-weekly review, to ensure that allocations align with the latest epidemiological and public health data.

7.2 Further updates are also made to take advantage of the increasing evidence of vaccine efficacy overseas by expanding the "eligible traveller" category to recognise vaccinations from a larger number of countries internationally. This will reduce the costs associated with the travel system and make it less complex to navigate, further facilitating family reconnections, holidays and business travel. Stringent public health measures, including managed quarantine, are retained for arrivals from red list countries. The instrument also amends a number of requirements relating to the category of "eligible traveller" to ensure that the provisions remain effective and proportionate.

7.3 This instrument introduces and amends a number of exemptions for events of national importance in the UK to allow the events to be successfully delivered whilst robustly protecting public health aims.

7.4 Amendments are also made in this instrument to correct an error arising in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 12) Regulations 2021. Accordingly, the free issue procedure applies.

This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) ("the Regulations") to bring the following provisions into force at 4am on Monday 11th October 2021, with the exception of COP26 exemption updates which will come into force at 4am on Saturday 9th October 2021:

- Remove Afghanistan, Angola, Argentina, Bolivia, Botswana, Brazil, Burundi, Cape Verde, Chile, Congo, (Democratic Republic), Costa Rica, Cuba, Eritrea, Eswatini, Ethiopia, French Guiana, Georgia, Guyana, Indonesia, Lesotho, Malawi, Mayotte, Mexico, Mongolia, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Paraguay, Philippines, Réunion, Rwanda, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Suriname, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Uganda, Uruguay, Zambia, and Zimbabwe from the list of category 3 countries and territories, referred to colloquially and in guidance as the "Red List".
- Arising out of the removal of the above countries and territories from the red list is the need for two further changes:
    - Removal of the exemption from managed quarantine applying to road hauliers travelling from or through Georgia and Montenegro when they arrive in England;
    - Removal of Argentina, Brazil, Cape Verde, Chile, Cuba, Ethiopia, Indonesia, Georgia, Mexico, Montenegro, South Africa, Thailand and Tunisia from the list of countries in the Regulations that prohibits passenger aircraft landing in England from red list countries with scheduled direct passenger flights to England;
- Add Albania, Bahamas, Bangladesh, Bosnia and Herzegovina, Brazil, Chile, Colombia, Egypt, Georgia, Ghana, Grenada, Hong Kong, India, Indonesia, Jamaica, Jordan, Kenya, Kosovo, Maldives, Moldova, Morocco, Nambia, Nigeria, North Macedonia, Oman, Pakistan, The Philippines, Serbia, South Africa, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Thailand, Turkey, Ukraine, Vietnam to the list of countries in regulation 3A(4). If a traveller can show they have been fully vaccinated in one of these countries with a vaccine which is authorised for supply in the UK (i.e. Pfizer/BioNTech, Oxford/AstraZenica, Moderna, Janssen) then they will meet the definition of "eligible traveller" and will not be required to self-isolate after arrival, take a pre-departure test or day 8 test.
- Expand the definition of eligible traveller to treat individuals who have received a course of doses of a vaccine which is the same brand as those authorised by the MHRA, and administered by a person acting on behalf of the United Nations in an authorised capacity, as if they have received those doses in a relevant country listed in paragraph 4. These travellers will need to show evidence of a vaccination by way of a certificate containing prescribed information.
- Remove the requirement on an individual to provide evidence of a right of residency in the US in order to benefit from eligible traveller status where the individual is able to show evidence of their US vaccination through the NHS COVID-Pass;
- Update the category of eligible traveller to ensure that the EU DCC and CDC are the only accepted forms of vaccination evidence for individuals vaccinated

in the EU and US respectively. This update is being made to ensure that public health aims are robustly protected and fraud risks are mitigated;

- Ensure that specified categories of people who are exempt from completing the Passenger Locator Form (PLF) are able to benefit from eligible traveller status without the requirement to make a PLF declaration, when arriving in England from non-red list countries and territories;
- Ensure that specified categories of people who are exempt from having to purchase and undertake a day 2 test, for example people who are in England temporarily because they are transiting through, are able to benefit from eligible traveller status. Accordingly mandatory testing is disapplied for these individuals;
- Amend the existing exemption for foreign diplomats to introduce a self-isolation exemption for all UK-accredited or appointed diplomats, and their dependants, arriving from non-red list countries;
- Update the list of accepted forms of pre-departure testing (PDT) certification to include the use of a valid EU Digital Covid Certificate (DCC) for EU citizens;
- Introduce a Managed Quarantine exemption for specific domestic elite sportspersons to enable them to compete in elite sports events in category 3 (red list) countries and thereafter return to England to train for, or compete in, specified sports events without being subject to the measures set out in Schedule 11. These people will be required to self-isolate when they are not participating in an elite sports event or training;
- Amend the exemption currently in place for the international climate conference hosted by the UK in Glasgow, known as "COP26", and COP26 World Leaders Summit (WLS) to ensure that:
    - Persons who meet the requirements to be an eligible non red list arrival are only required to take a day 2 test;
    - Persons attending or facilitating COP26 are not required to book PCR tests. This is because the tests will be provided to those required to take them;
    - COP26 participants who are under the age of eighteen or who have participated in a COVID-19 vaccination clinical trial are treated as vaccinated and therefore eligible for reduced requirements, regardless of their nationality, country of departure or where they did their clinical trial;
    - The testing provisions operate effectively in relation to an eligible COP participants who is required to enter managed quarantine for 5 days;
    - The relevant head of mission or post, relevant foreign representative office, relevant organization, or the individual themselves are required to provide written confirmation that they will comply with the health protocols for the event as outlined in the COP26 Code of Conduct in order for WLS exemptions to apply;
    - The individual themselves is required to provide written confirmation that they will comply with the health protocols for the event as outlined in the COP26 Code of Conduct in order for COP26 exemptions to apply; and

- Operators will not be required to carry out certain checks where a person is in possession of a letter from a relevant government Department that confirms that they meet the requirements to benefit from a COP or WLS exemption.

- This instrument moves the amendments that relate to the COP exemption into a Schedule to make it easier to navigate which provisions apply to participants.
- Amend Schedule 5 of the Regulations to remove sporting events which have finished and add events which will take place later in the year.
- An amendment is also made in this instrument to correct an error in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 12) Regulations 2021. Accordingly, the free issue procedure applies:
    - The Number 12 Regulations purported to bring road passenger transport workers out of the mandatory testing regime and into the workforce testing regime. However, there was an error and the Department neglected to omit the provision in regulation 5(1) which applied mandatory testing to this category of traveller. This instrument amends that error by omitting regulation 5(1)(e)(ii).

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

7.5 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, 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 the UK irrespective of vaccination status.

7.6 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, whilst robustly protecting public health aims.

Why is it being changed?

7.7 The list of Category 3 countries and territories (colloquially known as "the red list") is being updated to limit the risk of importation of harmful variants of Covid-19 from

destinations where there is a higher incidence. The revisions to the country listing reflect the latest epidemiological data following the latest three-weekly red list review. Consequential amendments are also being made to remove specific exemptions and travel bans which apply to red list countries only.

7.8 This instrument expands the "eligible traveller" category to recognise vaccinations received in a larger number of countries internationally. The purpose of this change is to further facilitate international travel by simplifying measures for travellers vaccinated in a wider range of countries, given that they have not been in a red list country in the last 10 days. This will reduce the burden of self-isolation and cost of testing for the traveller, as well as the impact on carriers, who perform checks. This builds on the existing list of recognised countries in the context of the altered epidemiological and immunological situation seen domestically and worldwide and the increased protection provided by effective vaccines.

7.9 This instrument will also expand the definition of eligible traveller to treat individuals who have received a course of doses of an authorised vaccine administered by a person acting on behalf of the United Nations, and authorised to administer the vaccination in that capacity, as if they have received those doses in a relevant country listed in paragraph 4. For the relevant countries in this paragraph, individuals will be able to benefit from eligible traveller status given that they can demonstrate evidence of a vaccine certificate, issued by or on behalf of the United Nations, which meets a set of minimum requirements prescribed in the Regulations.

7.10 This instrument will update the category of eligible traveller to remove the US residency requirement for individuals who are vaccinated in the US and able to provide proof of that vaccination through the NHS COVID pass.

7.11 The existing exemption for foreign diplomats is being updated to introduce a self-isolation exemption for all UK-accredited or appointed diplomats, and their dependants, arriving from non-red list countries. This amendment is required to ensure that our treatment of foreign diplomats remains consistent with our international legal obligations. The current exemption requires written confirmation that the individual is undertaking 'essential' work for their mission; and it does not apply to their dependants. As the epidemiological picture improves internationally, it is important that foreign diplomats are able to benefit from the same self-isolation and testing exemptions which have been introduced for the wider eligible travelling population. This amendment is necessary to achieve these aims.

7.12 The list of accepted forms of pre-departure testing (PDT) certification is being updated to include the use of a valid EU Digital Covid Certificate (DCC) for EU citizens. Passengers from red list countries and non-eligible travellers from the rest of the world are required to provide sufficient proof of a negative PDT on arrival in the UK. The EU DCC meets all of England's PDT certification requirements except for the inclusion of the test provider's contact details. The test itself meets minimum performance and security standards. For a growing number of European countries, the EU DCC is the only available proof of PDT available and it is possible that European providers may stop issuing any certification for PDT other than via the EU DCC, in part because the system is linked to the EU's Green Pass. Accordingly, this amendment will update the regulations to recognise the EU DCC as sufficient proof and ensure that an increasing number of travellers with a valid EU DCC are able to smoothly board aircraft bound for England.

7.13 Provisions relating to COP26 and the WLS have been moved to Schedule 4A, for clarity. The exemptions are unchanged for all persons attending or facilitating the WLS, and all persons attending or facilitating COP26 who are to be granted privileges and immunities in connection with COP26 or who will be representatives of an international organisation accorded privileges and immunities in the UK.

7.14 For COP26, a person who has completed a course of vaccines in a country, where that vaccine has been authorised by that country, are treated as vaccinated. Those under 18 from any country, and those who have participated or are participating in regulated clinical trials in any country are also treated as vaccinated – this updates the position for non-red list country participants to fit with the position for red list country participants. This amendment ensures that people are treated equally regardless of their country of origin which is an important objective for COP.

7.15 The provisions for COP26 have been amended so that persons attending or facilitating COP26 are not required to book PCR tests. This is because the tests will be provided to those required to take them after they arrive in England. The requirement to undertake the tests has been maintained.

7.16 For the WLS, persons will need to be confirmed by the relevant Department as attending or facilitating the WLS. For COP26, persons will need to have been registered to attend COP26, have received confirmation of registration from the secretariat of the UNFCCC, and have been confirmed by the relevant Department as attending or facilitating COP26.

7.17 In order for the exemptions for the WLS to apply, the relevant person (as defined in the Regulations) must provide written confirmation that the individual will comply with the health protocols for the event as outlined in the COP26 Code of Conduct. For COP26 the individual themselves will be required to provide written confirmation that they will also comply with the health protocols for the event as outlined in the Code of Conduct. These robust health protocols will mitigate the additional public health risks arising from holding in-person events in the UK and the exemptions to travel restrictions.

7.18 The instrument removes the requirements on operators to carry out certain checks in relation to registered COP participants and those invited to the WLS where they are in possession of a letter from the relevant government department that confirms that they meet the requirements for the exemption. This will ensure that COP participants are processed easily.

7.19 A Managed Quarantine exemption is being introduced for specific domestic elite sportspersons to enable them to compete in elite sports events in red list countries and territories and thereafter return to England to train for, or compete in, specified sports events without being subject to the measures set out in Schedule 11. The players will be required to isolate for ten days in bespoke facilities on return from a red list country or territory and required to follow robust protocols and mitigations as a part of a Code of Conduct with the football organisations, clubs and players. The players will be allowed to leave the facility once a day for training or competition with their club. The Code of Conduct will include a requirement for all travelling players to be fully-vaccinated, sanctions for non-compliance, thorough testing programmes, restrictions on which transport can be used and measures to maintain strict club and national team bubbles. The exemption will not cover ancillary staff (e.g. coaches). Players will be required to have written evidence from the National Governing Body to benefit from

the exemption. This exemption is deemed to be a proportionate means of allowing sporting events which are of national importance to the UK to be successfully delivered whilst robustly protecting public health.

7.20 Amendments are made in this instrument to update Schedule 5 of the Regulations, by removing sporting events which have already taken place and adding events which have been authorised to take place later in the year.

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.