EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 16) REGULATIONS 2021

2021 No. 1179

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 ITOLRs") to introduce a further option allowing eligible travellers to complete a Lateral Flow Device (LFD) test on or before Day 2 of their arrival in England, when not having visited a red-list country in the previous ten days, as an alternative to PCR testing. This will be followed by a mandatory PCR test if they receive a positive LFD result, at no cost to the individual. The instrument introduces minimum standards for these LFD tests as well as minimum standards and expectations for the private providers of LFDs. It introduces corresponding obligations, offences, penalties and reasonable excuses for eligible travellers and providers accordingly.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 DHSC regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force ("the 21-day rule"). The Government considers these measures are urgently necessary to improve accessibility to travel whilst ensuring that the public health 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 45F enables the appropriate Minister to create offences, execute and enforce restrictions and requirements, and levy charges in relation to the regulations created under section 45B.

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 ITOLRs which came into force on 17 May. The ITOLRs are regularly reviewed and updated to reflect the changing epidemiological and immunological picture both in England and worldwide.

7. Policy background

What is being done and why?

7.1 This instrument will introduce a further option for eligible travellers, arriving from non-red list countries and territories, to allow them to complete their mandatory Day 2 test using an LFD test, as an alternative to a PCR test. This will be followed up with a mandatory confirmatory PCR if an individual receives a positive test result from the LFD, this will be provided free of charge.

7.2 This amendment is being implemented with a view to making travel to England more accessible and affordable to eligible non-red list travellers given that fully vaccinated individuals benefit from a reduced risk of transmission. This change is expected to be beneficial for families, international students, other long-term residents and frequent travellers arriving in England. Stringent testing measures, including a pre-departure test, Day 2 PCR test and Day 8 PCR test when arriving in England, are retained for non-eligible travellers returning from non-red list countries.

Explanations

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

7.3 The ITOLRs 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. The ITOLRs were updated on 4 October 2021 to introduce a new framework of health measures at the border on the basis of arrivals from red and non-red countries, with testing and self-isolation requirements for non-red list arrivals determined by a traveller's vaccination status (barring a limited number of exemptions including those for children and individuals who are medically exempt). Vaccinated arrivals certified in specific countries, known as "eligible travellers", are required to take a day 2 PCR test but are not required to self-isolate, 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 ten days. All other arrivals from non-red list countries are required to self-isolate for ten days and take each of the three tests.

What will it do now?

7.4 The ITOLRs are being amended to allow eligible, non-red list arrivals to complete their mandatory Day 2 test using an LFD, alongside the option of using a PCR, as is currently the case.

7.5 If an individual received a positive LFD test, they will be required to isolate for ten days from the point at which they received their LFD test result and take a confirmatory PCR test. The individual is responsible for booking their own confirmatory PCR test. If this PCR test result is negative, the individual is no longer required to self-isolate, if the result is positive then the individual must continue their ten day self-isolation period.

7.6 In the case that the LFD test result is inconclusive (void), the individual's period of self-isolation begins from the point at which they receive their inconclusive result. If the individual does not take a replacement day 2 test, then they must remain in self-isolation up to the tenth day after they took the day 2 test. If they take a replacement day 2 test, the individual follows the same path as would have occurred following a positive or negative result of the original day 2 test.

7.7 The LFD test used must, as a minimum, allow for photographic verification of the test result where the test and result are uniquely identifiable. The provider must be able to ensure that the same test result cannot be reused through the use of a unique booking reference. Photographic evidence of the test result must be sent to the private provider within 15 minutes of the result being ready to read on the test device.

7.8 The provider is responsible for verifying the result and reporting it to UKHSA and the individual. Where the test is positive, the provider must share the guidance from UKHSA regarding obtaining a confirmatory PCR. Providers will have 24 hours to report the test result of the LFD to UKHSA, and the individual, from the time that they are in receipt of the test result evidence. They must also provide daily sales and results reporting to UKHSA as required.

7.9 In order to be allowed to provide LFD tests to individuals, the private provider will need to meet a number of minimum standards to align with the existing minimum standards required of PCR providers. The private provider will be subject to offences and penalties if they do not report in accordance with regulation or meet the minimum test or provider standards, without a reasonable excuse.

7.10 Individuals will also be subject to offences and penalties if they fail to book or undertake the relevant mandatory tests without a reasonable excuse.

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 Ronnie Haynes, 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.