EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 19) REGULATIONS 2021

2021 No. 1323

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". This instrument updates the list of countries from which direct passenger aircraft are prohibited from landing in England. The exception that enables otherwise prohibited flights to land in one of the two designated red list terminals will not apply from midday on Friday, 26th November until 4am on Sunday, 26th November. This instrument also introduces a requirement for individuals arriving from a red-list country from midday on Friday 26th November until 4am on Sunday 26th November to stay in alternative accommodation which includes a private residence or another place where they are able to self-isolate, with the additional requirement that the whole household residing at that accommodation must also self-isolate.

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 21 days before the instrument comes into force ("the 21- day rule"). Having reviewed the latest assessments of public health risk and the newly identified Covid-19 variant, the Government considers these measures are urgently necessary to protect public health.

3.2 Further, this instrument comes into force before being laid. In the days prior to this regulation being laid, a new variant of Covid-19 was detected on the international genomic database, GISAID, as being present in South Africa. The Secretary of State considered the rapid addition of South Africa, Botswana, Zimbabwe, Namibia, Lesotho, and Eswatini to the "Red list" essential in order to reduce the potential danger to public health. Unfortunately, it was not possible to complete this process in time to lay the document before these measures needed to come into force. The instrument will be laid on 29 November 2021.

3.3 The Department will write to the two Speakers on 29 November 2021 to explain the circumstances and has sought to mitigate the impact of this late laying through Communications and Guidance to the public.

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.

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 Regulations which came into force on 17 May. The Regulations are currently subject to a formal review at least once every 28 days.

7. Policy background

What is being done and why?

7.1 This instrument amends the Regulations to update the list of category 3 countries and territories referred to colloquially and in guidance as the "Red list" to include Namibia, Zimbabwe, South Africa, Botswana, Lesotho, and Eswatini. The purpose of this is to reduce the risk of transmission of a newly identified Covid-19 variant following concerns as to the possible high public health risk posed by this variant.

7.2 In addition, a direct flight ban will be in place for arrivals from these countries and the exception that allows flights that are subject to the direct flight ban to arrive at one of the two designated red list terminals is disapplied from midday on 26th November until 4am on 28th November.

This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 to bring the following provisions into force at 12 noon on 26th November.

- Add Namibia, Zimbabwe, South Africa, Botswana, Lesotho, and Eswatini to the list of category 3 countries and territories in Schedule 3, referred to colloquially and in guidance as the "Red List".
- Arising out of the addition of the above countries and territories to the red list is the need for three further changes:
    - Add Namibia, Zimbabwe, South Africa, Botswana, Lesotho, and Eswatini to the list of countries in the ITOLRs from which direct

passenger aircraft are prohibited from landing in England unless an exception applies;

- From 4am on Sunday 28th November, passenger aircraft flying direct from Namibia, Zimbabwe, South Africa, Botswana, Lesotho and Eswatini will be permitted to fly directly into one of two designated red list terminals.
- From midday on Friday, 26th November until 4am on Sunday,28th November, passengers that arrive in England who have been in a red list country in the previous 10 days will be required to stay in alternative accommodation which includes a private residence or another place where they are able to self-isolate, with the additional requirement that the whole household residing at that accommodation must also self-isolate for the same length of time.

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

7.3 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, those who are participants or have participated in clinical trials in the UK or USA and people who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by the NHS, 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 unless an exemption applies.

7.4 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. All exemptions have been implemented alongside robust public health requirements in order to minimise any risk to public health.

Why is it being changed?

7.5 The list of Category 3 countries and territories (colloquially known as "the red list") is being updated to include Namibia, Zimbabwe, South Africa, Botswana, Lesotho, and Eswatini. If travellers from countries listed in this part of the regulations arrive in the UK between midday on 26th November and 4am on 28th November, having been in one of these countries in the 10 days prior to their arrival, they will be required to

self-isolate in their own arranged accommodation for 10 days as if it were a managed quarantine facility. This is necessary due to the time that it takes to set up managed quarantine when no countries were previously on this list. In addition, all individuals residing in the same household will be required to self-isolate for the same period. Red list arrivals that arrive after 4am on 28th November will be required to enter Managed Quarantine Service for at least 10 days. This includes the requirement to follow an enhanced testing regime compared to non-red list arrivals and to quarantine in an HMG designated facility for at least 10 days.

7.6 The intention of this policy is to delay the import of a newly identified Covid-19 variant into England as much as possible and prevent its onward transmission into England. This variant is potentially vaccine or immune escaping making it a high risk to public health and the domestic vaccination programme. The requirement for travellers to enter self-arranged accommodation and after the 28th November at 4.00 am, Managed Quarantine Services will reduce the likelihood of travellers arriving from "red list countries" transmitting this Covid-19 variant.

7.7 This instrument also introduces a complete flight ban on direct flights from Namibia, Zimbabwe, South Africa, Botswana, Lesotho, and Eswatini from 12 noon on 26th November until 4 am on 28th November. This is to prevent direct flights bringing in red list arrivals before it is operationally possible to process these arrivals safely. From 4am 28th November, all travellers arriving on direct flights from red list countries will be able to enter the UK via designated red list terminals at Heathrow and Birmingham.

8. European Union Withdrawal and Future Relationship

8.1 This 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 Francesco Browne at the Department of Health and Social Care, Email: Francesco.browne@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 Sajid Javid, Secretary of State at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.