EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 24) REGULATIONS 2021

2021 No. 1434

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 consequentially updates the list of countries from which direct passenger aircraft are prohibited from landing in England.

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 domestic prevalence of the newly identified COVID-19 variant "Omicron", the Government considers these measures are urgently necessary to ensure that the additional restrictions imposed on individuals travelling from countries currently included on the Red List are removed.

3.2 Further, this instrument comes into force before being laid. In the days prior to this instrument being laid, the number of Omicron cases in the UK has risen. As a result, the public health rationale for maintaining the countries on the Red List, which imposes increased restrictions, including Managed Quarantine, on individuals arriving in England from those countries, is no longer considered proportionate. Unfortunately, it was not possible to complete this process in time to lay the document before these measures we required to come into force. The instrument will be laid on the 15 December 2021.

3.3 DHSC will write to the two Speakers on the same day to explain the circumstances and has sought to mitigate the impact of 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) Regulations 2020 (S.I. 2020/568) which were last amended by the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 (S.I. 2021/150) on 12 February 2021, which came into force on 15 February 2021. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They were 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 Red List of countries and territories to remove all the countries currently included. They are South Africa, Botswana, Lesotho, Eswatini, Namibia, Zimbabwe, Malawi, Mozambique, Zambia Angola, and Nigeria. The purpose of this is to ensure that the Regulations and restrictions imposed on public liberty are proportionate, necessary, and justifiable in the interest of public health.

7.2 Arising out of the removal of all countries from the Red List is the need for a further change to remove South Africa, Botswana, Lesotho, Eswatini, Namibia, Zimbabwe, Malawi, Mozambique, Zambia Angola, and Nigeria from the list of countries in the Regulations from which direct passenger aircraft are prohibited from landing in England unless an exception applies.

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 subject to different requirements. Following the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 21) Regulations 2021 (S.I. 2021/1339), provided they have not been in a Red List country in the last 10 days, eligible travellers are required to take a pre-departure test, book and take a day 2 PCR test and self-isolate until they receive a negative result, or remain in self-isolation for a longer period if the result is positive or inconclusive. 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 is being updated to remove all the countries currently included in the red list. They are South Africa, Botswana, Lesotho, Eswatini, Namibia, Zimbabwe, Malawi, Mozambique, Zambia Angola, and Nigeria. The purpose of this is to ensure that the regulations and restrictions imposed are proportionate, necessary, and justifiable in the interest of public health. Under the Regulations, all individuals entering England from 4am on Wednesday 15 December 2021, from a country previously included in the Red List, will not be required to enter Managed Quarantine Service and may not have to follow the enhanced testing regime. From 4am on 15 December, arrivals from these countries will have to follow self-isolation and testing requirements according to their vaccination status to align with the measures for the rest of the world.

7.6 Following the detection of the new COVID-19 variant "Omicron" in South Africa, in the days prior to this amendment being laid, the number of Omicron cases in the UK has continued to rise. The travel Red List is therefore less effective in slowing the incursion of the variant from abroad and the temporary Red List measures are no longer considered proportionate. The Red List has successfully served its purpose in delaying the spread of Omicron into the UK to buy time for government and scientists to learn more about this variant and prepare for its potential impact.

7.7 Arising out of the changes to the red list, this instrument also removes the flight ban to airports without a designated red list terminal currently in place on for direct flights from South Africa, Botswana, Lesotho, Eswatini, Namibia, Zimbabwe, Malawi, Mozambique, Zambia Angola, and Nigeria.

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 Francesco Browne at the Department of Health and Social Care, Email: Francesco.browne@dhsc.gov.uk can be contacted with any queries regarding this instrument.

15.2 Sarah Nelson for MQS, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Maria Caulfield MP, The Parliamentary Under-Secretary of State for Primary Care and Patient Safety at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.