EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 168

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"). It delivers a number of changes to ensure the continued alignment in treatment of international arrivals, testing positive on their post-arrival test, who have not been in a red-list country in the previous 10 days, and domestic COVID-19 cases in the current epidemiological context. Updates are made to remove the legal obligation for travellers who have not been in a Red List country in the previous 10 days and do not meet the conditions of an eligible traveller ("non-eligible travellers") to self-isolate following the receipt of a positive post-arrival test result. The legal obligation for non-eligible travellers to self-isolate upon a void or inconclusive test result, or upon a failure to test is also removed. Consequential amendments are made to ensure that obligations on the bespoke workforce testing cohort are no more onerous than those on the general population. Notably, this amendment does not make any changes to the current testing requirements for non-eligible travellers.

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"). The Government considers these measures are urgently necessary to ensure that our regulations are effectively updated at the point at which the domestic Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (the "Self-Isolation Regulations") expire. This will ensure that the public health restrictions in place remain proportionate, in the context of the evolving epidemiological and immunological picture.

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 and Operator Liability) (England) Regulations 2021 which came into force on 17 May 2021 to replace the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 which were due to expire on 2 June 2021. 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 updates the Regulations following the decision to revoke the domestic Self-Isolation Regulations early, at 12am on 24th February 2022. This revocation means that there will no longer be a legal requirement for individuals testing positive for COVID-19 in England to self-isolate under the current domestic framework, instead moving to a guidance-based model for self-isolation.

7.2 Given the prevalence of Omicron both domestically and internationally, there is little difference between a positive COVID-19 case as a result of travelling into England and a case contracted domestically. Accordingly, there is limited public health rationale for treating domestic and international arrival cases separately. As such, this instrument will deliver changes to align the self-isolation requirements of these two cohorts, irrespective of vaccination status. The legal obligation for non-eligible travellers to self-isolate upon receipt of a positive test result, void or inconclusive test result, or upon a failure to test is removed. Consequential amendments are made to ensure that obligations on the bespoke workforce testing cohort are no more onerous than those on the general population.

Non-eligible travellers testing positive on their post-arrival test

7.3 At present, non-eligible travellers who receive a positive post-arrival test result follow the same rules as individuals testing positive domestically and are under a legal obligation to self-isolate for a default of 10 days. These travellers may also end their self-isolation period early in accordance with early release provisions. This amendment updates the Regulations to ensure that there is not a disproportionate difference in treatment between arrivals receiving a positive test result and the domestic position following the revocation of the domestic Self-Isolation Regulations at 12am on 24th February 2022. Accordingly, this instrument removes the legal obligation for non-eligible travellers to self-isolate following the receipt of a positive

post-arrival test result. Non-eligible travellers are instead strongly encouraged to stay at home and avoid contact with others when testing positive, under the new domestic guidance model. This ensures the continued alignment in treatment between these two groups.

7.4 The effect of this instrument is to allow non-eligible travellers who are already in self-isolation before the coming into force (CIF) date of this amendment (12am on 24th February 2022), to leave their self-isolation from the CIF date. These individuals will be strongly encouraged to stay at home and avoid contact with others, under the domestic guidance model.

Bespoke workforce testing cohort

7.5 At present, the Regulations specify that non-eligible travellers following the bespoke workforce testing regime are under the legal obligation to self-isolate in accordance with the domestic Self-Isolation Regulations when receiving a positive workforce test result. This instrument delivers a consequential amendment to remove this obligation to ensure that the treatment of this cohort is aligned with the general non-eligible traveller population. The bespoke workforce testing cohort are instead strongly encouraged to stay at home and avoid contact with others when testing positive, under the new domestic guidance model.

Void or inconclusive tests, and failure to test

7.6 The Regulations also require non-eligible travellers who receive a void or inconclusive post-arrival test result to self-isolate for a default of ten full days from the day after the test was taken. Individuals who fail to take their post-arrival or workforce test must self-isolate for fourteen days from the day after arrival in England by default. This amendment removes the self-isolation obligations on each of these cohorts, when the individual has not been in a red list country in the previous 10 days, in order to ensure that the treatment of these individuals remains proportionate to the domestic context. However, offences and penalties applying to individuals who fail to take a post-arrival or workforce test are retained to ensure that the requirements on individuals remain enforceable and to encourage compliance.

Requirement to report household contacts

7.7 Under the Regulations, non-eligible travellers are required to provide their household contact names, upon request, to the Secretary of State; persons employed or engaged by a Local Authority in communicable disease control or to persons employed or engaged for the purposes of the health service in communicable disease control, on receipt of a positive post-arrival test. This was introduced in response to the high infectiousness of the Omicron variant in closed spaces. This amendment removes this reporting obligation to ensure that the treatment of non-eligible travellers remains proportionate to the domestic context. The requirement is retained and incorporated into the Regulations following the revocation of the domestic Self-Isolation Regulations, for arrivals who have been in a Red List country in the last 10 days, who are exempt from the requirement to enter Managed Quarantine.

Transitional provisions

7.8 In line with the removal of self-isolation requirements for non-eligible travellers in receipt of a positive, void or inconclusive post-arrival test, as well as for those failing to take a test, it is also deemed disproportionate to require non-eligible travellers

already in isolation before 12am on 24th February 2022 to continue to self-isolate beyond this point. In line with this, the amendment delivers a transitional provision to allow non-eligible travellers already in self-isolation to leave that self-isolation from the coming into force date of this amendment (12am on 24th February 2022). These individuals are strongly encouraged to stay at home and avoid contact with others, under the new domestic guidance model.

What will it do now?

7.9 This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 to bring the following provisions into force at 12am on 24th February:

- Removal of the obligation on non-eligible travellers to self-isolate following receipt of a positive post-arrival test result, to align with the domestic guidance model.
- Removal of the obligation on non-eligible travellers partaking in the bespoke workforce testing regime to self-isolate in accordance with the domestic Self-Isolation Regulations following receipt of a positive workforce test result, to align with the domestic guidance model.
- Removal of the self-isolation requirements applying to non-eligible travellers in receipt of a void or inconclusive post-arrival test result, or failing to test at all.
- Removal of the obligation on non-eligible travellers to provide their household contact names to the Secretary of State when in receipt of a positive post-arrival test.
- In consequence of the Self-Isolation Regulations being revoked, the incorporation within the Regulations of the obligation on individuals who have been granted an exemption from the Managed Quarantine Service to provide, on request, their household contact names to the following on receipt of a positive post-arrival test:
  - the Secretary of State;
  - persons employed or engaged by a Local Authority in communicable disease control; or
  - persons employed or engaged for the purposes of the health service in communicable disease control.
- Delivers a transitional provision to ensure that non-eligible travellers already in self-isolation at 12am on 24th February 2022 are not required to self-isolate beyond this point.

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

7.10 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. Currently, the requirements for an individual arriving in England under the Regulations are dependent on a combination of eligibility status, country of certification and the risk level of the country of departure, categorised as either a Red List or non-Red List country. There are currently no countries or territories on the Red List.

7.11 Vaccinated arrivals certified in specific countries, those who are participants or have participated in recognised clinical trials, those who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by the NHS, and

those under the age of 18 are known as "eligible travellers". Provided they have not been in a Red List country in the last 10 days, are not required to undergo any self-isolation or testing requirements. Eligible travellers remain under the legal obligation to complete a Passenger Locator Form in the 48 hours prior to arrival in England.

7.12 All other arrivals ("non-eligible travellers") from non-Red List countries are required to complete a Passenger Locator Form, take a pre-departure test, as well as book and take a post-arrival PCR test on or before day two.

7.13 The Regulations also include a number of exemptions from requirements relating to the PLF, pre-departure testing, post-arrival testing and MQS 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". All exemptions have been implemented alongside robust public health requirements in order to minimise any risk to public health.

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 16th 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 Mark Joannides, Deputy Director for MQS, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Lord Kamall, Parliamentary Under Secretary of State (Minister for Technology, Innovation and Life Sciences), can confirm that this explanatory memorandum meets the required standard.