EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) REGULATIONS 2022

2022 No. 11

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 remove a number of the temporary border measures introduced in response to the risk posed by the transmission of the Omicron variant. The amendment removes the requirement for eligible travellers to carry out a pre-departure test and to self-isolate until the receipt of a negative COVID-19 Day 2 test result. It also reintroduces the option for eligible travellers to take a Day 2 Lateral Flow Device (LFD) test instead of a Day 2 PCR test. Additionally, the Regulations expand the lists of approved vaccines and recognised countries for the purposes of vaccine certification.

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, in circumstances where imported cases represent a very small proportion of overall cases in the UK, the Government considers these measures are urgently necessary to ensure that restrictions in place a remain proportionate approach to protecting public health.

4. COVID-19 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 to remove a number of additional measures introduced specifically in response to the Omicron variant of Covid-19. The Regulations also update the lists of approved vaccines and recognised countries for the purposes of vaccine certification.

7.2 The initial introduction of these temporary measures delayed the ingress of Omicron into the UK, allowing time to identify the properties of the variant and prepare for its potential impact ahead of the critical winter period. However, Omicron is now the dominant variant domestically and widely seeded throughout the UK; as a result, community transmission significantly outstrips importation from international arrivals. Additionally, there is initial evidence to show that booster vaccines provide protection against the variant and the clinical outcomes from infection in immunised people are generally less severe. In this new context, it is no longer considered proportionate to retain pre-departure testing (PDT) and self-isolation requirements for eligible travellers, given that these measures are now likely to have limited impact on the prevalence of Omicron in the UK. It is also deemed proportionate to reintroduce the option for eligible travellers to take a Day 2 Lateral Flow Device (LFD) test instead of a Day 2 PCR test. Where a Day 2 LFD test is positive, the eligible traveller will be required self-isolate in accordance with the Self-Isolation Regulations and take a confirmatory PCR test.

7.3 Although pre-departure testing may detect higher numbers of the Omicron variant at the point of origin and prevent transmission during travel, this is now unlikely to have any meaningful impact on the growth of Omicron in the UK where 218,000+ cases were recorded domestically on 4th January. Similarly, although a PCR only based Day 2 testing system would likely detect a higher proportion of imported Omicron cases, the impact of reverting back to a model with the option of a Day 2 LFD test at this stage is negligible on overall domestic prevalence. Additionally, the LFD-option model provides sequencing coverage through confirmatory PCRs for positive test results. Self-isolation until receipt of a negative test result reduces the number of potential uncontrolled infectious hours of infectious travellers. However, isolation periods upon arrival have a less meaningful impact and can be deemed disproportionate once a variant becomes dominant and prevalent in the UK. These measures also carry both economic and social costs for business and leisure travellers, as well as the travel industry.

7.4 In line with this rationale and altered context, the Regulations will update the ITOLRs to remove the additional measures introduced specifically in response to the Omicron variant of Covid-19. This will reduce the cost for the traveller and alleviate the impact of self-isolation so that measures to protect public health remain proportionate. Stringent public health measures remain in place for unvaccinated arrivals.

7.5 Updates are also made to continue to take advantage of our confidence in vaccination programmes overseas by expanding the "eligible traveller" category to recognise vaccinations certified by additional 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.

7.6 The definition of an "authorised vaccine" is being updated to add Nuvaxovid and Covovax to the list of already recognised vaccines. This will mean that individuals fully vaccinated with one of these vaccines, or through mixed doses with other recognised vaccines, will qualify as an eligible traveller if they are able to provide certification to that effect from a country whose vaccine certificates we already recognise at the border. This update takes advantage of the protection offered by this vaccine against infection, hospitalisation and mortality to improve access to international travel.

What will it do now?

7.7 This instrument will bring the following changes in to force at 4am on Friday 7th January:

- Remove the requirement for eligible travellers to self-isolate upon arrival in England.
- Remove the requirement for eligible travellers to possess notification of a negative coronavirus test taken not more than 2 days before departure to England.
- Removing the part of the notification to passengers which was specific to their positive test result identifying the omicron variant.
- Correct minor errors in regulation 14 and 22 of the International Travel Regulations; accordingly, the free issue procedure applies to this instrument.
- Deliver further minor amendments including removal of spent provisions.

7.8 This instrument will bring the following changes in to force at 4am on Sunday 9th January:

- Re-introduce the option for eligible travellers to take a day 2 LFD test instead of a day 2 PCR test. Where a day 2 LFD test is positive, the eligible traveller will be required self-isolate in accordance with the Self-Isolation Regulations and take a confirmatory PCR test.
- Amend the Heath Protection (Notification) Regulations 2010, to reintroduce the requirement to report the results of day 2 LFD tests.

7.9 This instrument will bring the following changes in to force at 4am on Monday 10th January:

- Expand the "eligible traveller" category to recognise vaccinations certified by Bhutan, Cameroon, Cote d'Ivoire, Fiji, Iraq, Liberia, Mali, Mauritania, Niger, Palau, Paraguay, Solomon Islands, The Gambia, Uzbekistan, Papua New Guinea and Cyprus, northern.

- Update the definition of an "authorised vaccination" to include Nuvaxovid and Covovax which are vaccines that are listed for Emergency use by the World Health Organisation. This means that individuals who are fully vaccinated with one of these vaccines, or through mixed doses with other recognised vaccines, will qualify as an eligible traveller if they are able to provide certification to that effect from a country whose vaccine certificates we recognise at the border if the vaccine they receive has been authorised or certified in that country.
- Consequential amendments to the information for passengers that operators are required to provide and to the offences, penalties and enforcement provisions to reflect the amendments to the requirements for eligible travellers.

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 these regulations are dependent on a combination of vaccination 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. All individuals are required to fill in the Passenger Locator Form before arriving in the UK irrespective of vaccination status unless an exemption applies.

7.11 Vaccinated arrivals certified in specific countries, those who are participants or have participated in recognised clinical trials, people 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, known as "Eligible travellers", are subject to different requirements to unvaccinated travellers. 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, 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. This amendment makes changes to these requirements.

7.12 All other arrivals ("non-Eligible travellers") 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.

7.13 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.

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 Edward Argar, The Minister of State for Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.