EXPLANATORY MEMORANDUM TO

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

2022 No. 317

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 The Health Protection (Coronavirus, International Travel and Operator Liability) (Revocation) (England) Regulations 2022 ("the Regulations") revoke the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ("the ITOLRs") and make consequential amendments to the Health Protection (Notification) Regulations 2010 ("the Notification Regulations").

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 Regulations come into force ("the 21-day rule"). The Government considers the revocation of the ITOLRs is urgently necessary to 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 17th May 2021, to replace the Health Protection (Coronavirus, International Travel) (England) Regulations 2020, which were due to expire on 2nd June 2021.

6.3 The amendments to the Health Protection (Notification) Regulations 2010 are made subject to the negative resolution procedure because the Secretary of State and the Minister of State are satisfied that it does not contain any provision imposing or enabling the imposition of restrictions or requirements having a significant effect on a person's rights.

7. Policy background

What is being done and why?

7.1 This instrument revokes the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ("the ITOLRs") and makes consequential amendments to the Health Protection (Notification) Regulations 2010 ("the Notification Regulations") from 4am on 18th March 2022, following the decision to revoke all border health measures. This revocation means that there will no longer be any coronavirus-related requirements or restrictions for any traveller entering England. This includes removing the current requirement for all passengers to complete a Passenger Locator Form (PLF) within the 3 days prior to arrival in England, and the requirement for "non-eligible" travellers to book and take a pre-departure test and day 2 test. The requirement to self-isolate in managed accommodation if arriving from a "Red List" country will also be removed.

7.2 Given the prevalence of Omicron both domestically and internationally, there is little difference between a positive COVID-19 case brought into England by an international traveller and a COVID-19 case contracted domestically. Following the recent removal of all remaining domestic self-isolation and testing requirements in England, there is a limited public health rationale for treating domestic and international arrival cases differently. As such, this instrument will remove all requirements and restrictions on international travellers arriving in England.

Testing requirements for unvaccinated travellers

7.3 The ITOLRs require non-eligible travellers to possess notification of a negative test result on arrival in England and to take a further test within two days of their arrival.

7.4 These testing requirements are based on distinguishing arrivals by vaccination status. The public health justification for this distinction was that vaccinated travellers are overall less likely to spread COVID-19 and have stronger and longer lasting protection against severe disease and hospitalisation. However, while the risk of both infection and severe disease will be lower for vaccinated travellers, there is evidence that vaccine efficacy wanes over time. Whilst the properties of future variants are not known, the impact of Omicron is less severe than past variants. These factors increasingly undermine the public health rationale for continued border measures.

7.5 This evidence removes the public health justification for distinguishing between vaccinated and unvaccinated travellers at the border. Revoking the ITOLRs reduces the bureaucracy and cost of travel for all individuals entering England, not just for those who are vaccinated, and will further facilitate the reopening of travel.

Requirement to complete a Passenger Locator Form (PLF)

7.6 In England, the primary purpose of the PLF is to determine vaccination status. Beyond that it is currently unnecessary as a baseline measure since it is no longer used for the purposes of contact tracing in England following the removal of domestic requirements on people who test positive for COVID-19 or who are unvaccinated close contacts of positive cases to self-isolate. The removal of the PLF is expected to have a positive impact on the travel industry by reducing the bureaucratic and economic burden on carriers and simplifying the process for travellers entering England.

Removal of the "Red List" and associated measures

7.7 As part of the revocation of the ITOLRs, the "Red List" and associated measures will be removed. To ensure the protection of public health, the Government will maintain a range of contingency measures in reserve, which would enable it to take swift and proportionate action to delay any future harmful variants of COVID-19 entering the UK should the need arise.

Consequential amendments to the Notification Regulations

7.8 The Regulations remove the obligation on operators of diagnostic or sequencing laboratories to notify UKHSA of the results of COVID-19 tests and genomic sequencing of tests taken in accordance with the ITOLRs.

Savings provisions

7.9 Section 16 of the Interpretation Act 1978, as applied by section 23 of that Act, applies general savings provisions to the ITOLRs and to the Notification Regulations.

7.10 All individuals arriving in England prior to 4am on 18th March will be required to comply with the existing border measures including the requirement for all travellers to complete a Passenger Locator Form, and for "non-eligible" travellers to provide evidence of a negative pre-departure test and book and take a day 2 test. Where a day 2 test generates a positive or inconclusive result, the same consequences will apply to those individuals. Where a day 2 test is undertaken in these circumstances, the same obligations on private test providers will continue to apply.

What will it do now?

7.11 The Regulations revoke the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 and make consequential amendments to the Health Protection (Notification) Regulations 2010.

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

7.12 The ITOLRs came into force on 17th 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 in the ITOLRs for an individual arriving in England are dependent on a combination of eligibility status, country of vaccine certification where relevant 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.

7.13 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" if they have not departed from or transited through a Red List country in the previous ten days. They are not required to undergo any self-isolation or testing requirements. Eligible travellers remain under the legal obligation to complete a Passenger Locator Form within the 3 days prior to their arrival in England.

7.14 All other arrivals from non-Red List countries ("non-eligible travellers") are required to complete a Passenger Locator Form, provide evidence of a negative test on arrival in England, as well as book and take a post-arrival PCR test on or before day two after their arrival.

7.15 The ITOLRs 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.

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 As the ITOLRs, which this instrument revokes, will cease to have effect at the point the Regulations come into force, 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 ITOLRs are being revoked, meaning that from 4am on 18th March 2022 they will no longer be in force. Therefore no review is required.

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 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 Maggie Throup MP, Parliamentary Under Secretary of State for Vaccines and Public Health, can confirm that this explanatory memorandum meets the required standard.