EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 11) Regulations (Northern Ireland) 2021

S.R. 2021 No. 323

Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 25B and 25F(2) of the Public Health Act (Northern Ireland) 1967 ("the 1967 Act") and is subject to the negative resolution procedure.

Purpose

2.1 The Statutory Rule amends the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021 ("the principal Regulations") to the effect that the Passenger Locator Form (PLF) must be completed 48 hours before arrival, and updates pre-departure requirements. All individuals aged 12 and over, regardless of whether they qualify as an 'eligible arrival', are required to possess notification of a negative coronavirus test result upon arrival in Northern Ireland from outside the common travel area. The time frame in which a traveller must provide proof of a negative coronavirus test is reduced from a test taken within three days of departure to Northern Ireland, to a test taken within two days of departure to Northern Ireland, and applies to all travellers required to provide proof of a negative coronavirus test. The Statutory Rule provides for widening the scope for enforcement of isolation rules for children so that they apply to children who fail to comply with the isolation rules irrespective of whether they arrived from a red list country or a non-red list country, and clarifies that for multi-leg journeys on commercial transport services, where the changeover is outside the CTA, the two-day time window for taking the pre-departure test counts back from the scheduled time of departure of the first leg of the service.

2.2 The Statutory Rule also amends the Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) Regulations (Northern Ireland) 2021 ("the Operator Liability Regulations") to update the information that must be provided to passengers travelling to Northern Ireland as a consequence of the changes outlined above.

2.2 The Statutory Rule came into operation at 4.00am on 7 December 2021.

Background

3.1 The temporary modifications to the 1967 Act made by the Coronavirus Act 2020 provide regulation making powers that were previously not available in Northern Ireland.

3.2 The Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021 ("the principal Regulations") and the Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) Regulations (Northern Ireland) 2021 ("the Operator Liability Regulations") came into operation on 16 April 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) into Northern Ireland. 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.

3.3 The principal Regulations were updated on 4 October 2021 to introduce a new system of "red list" and "non-red list" countries, and to provide a new set of rules for non-red list arrivals based on their vaccination status. Robust health protection measures, including hotel quarantine, remain in place for red list arrivals. Non-red list arrivals who can prove that they have received the required doses of an authorised vaccine, and who were vaccine certificated in specific countries, are deemed "eligible arrivals". They are required to complete a Passenger Locator Form; book, pay for and undertake a day 2 PCR test; and enter self-isolation immediately upon arrival in Northern Ireland and remain in self-isolation at least until they receive a negative test result from their day 2 PCR test. They are not required to take a pre-departure test, or a day 8 test, provided that they have not been in a red list country in the last ten days. The Statutory Rule introduces an additional requirement whereby eligible arrivals aged 12 and over must now provide evidence of a negative pre-departure test taken within 2 days of departure.

3.4 The arrangements for "eligible arrivals" include persons ordinarily resident in Northern Ireland and who have participated, or are participating in, a clinical trial for a vaccine against Coronavirus regulated in the UK or USA, or in Phase 2 or Phase 3 clinical trials for a vaccine against Coronavirus regulated by the European Medicines Authority or a regulatory authority (other than in the UK or USA) which is designated as a Stringent Regulatory Authority by the World Health Organisation. They also include persons who have completed a course of doses of a vaccine under the UK Vaccine Rollout Overseas; and persons under 18 years of age upon arrival in Northern Ireland.

3.5 All other arrivals from non-red list countries are deemed "non-eligible arrivals" and are required to complete a Passenger Locator Form; provide evidence of a negative pre-departure test; book, pay for, and undertake day 2 and day 8 post arrival PCR tests; and self-isolate for ten days immediately upon arrival in Northern Ireland.

3.6 Arrivals from red list countries are required to complete a Passenger Locator Form, provide evidence of a negative pre-departure test, and enter managed quarantine immediately upon arrival in Northern Ireland where they will also be required to undertake day 2 and day 8 post arrival PCR tests.

3.7 The Statutory Rule amends the requirements in relation to the timeline for completion of the PLF so that a passenger must now complete the PLF 'in the 48 hours before arrival', rather than 'on arrival or in the 48 hours before arrival' in Northern Ireland.

This amendment will reduce bottlenecks at the airport resulting from arrivals completing their PLF upon arrival, and aligns with GB provisions.

3.8 The Statutory rule introduces pre-departure testing for eligible non-red list arrivals aged 12 and over. This is deemed necessary to further strengthen defence at the borders. Pre-departure tests are an effective barrier to stopping infected individuals from travelling into Northern Ireland, and for reducing the risk of transmission between passengers during travel. The reduction of the time frame in which a traveller must take the pre-departure test, from "no more than three days before departure" to "no more than two days before departure" reduces the likelihood of transmission during travel, and the likelihood of importation of the newly identified "Omicron" variant into the country by ensuring that the test is performed closer to the point of travel, and therefore closer to the time of arrival in Northern Ireland.

3.8 The Statutory rule clarifies that for multi-leg journeys on commercial transport services, where the changeover takes place in a country or territory outside the CTA, and is for the sole purpose of continuing a journey to Northern Ireland, then the two-day time window for taking the pre-departure test applies to the scheduled time of departure of the first leg of the service; and also widens the scope for enforcement of isolation rules for children. Enforcement will now apply to all children who fail to comply with the isolation rules irrespective of whether they have arrived from a red list country or a non-red list country.

3.8 The overall policy intent behind these changes is to delay the import of a newly identified Covid-19 variant, now known as the "Omicron" variant, into Northern Ireland, and to suppress its onward transmission within the community as much as is reasonably possible. This variant is potentially vaccine or immune escaping, making it high risk to public health and to the domestic vaccination programme. The introduction of pre-departure testing for eligible non-red list arrivals aged 12 and over, the reduction of the pre-departure testing window from three days to two days, and the widening of the scope for enforcement of isolation rules for children, will combine to reduce the likelihood of travellers arriving from red list and non-red list countries transmitting this Covid-19 variant within the community in Northern Ireland.

3.9 The Statutory Rule makes the necessary amendments to the Operator Liability Regulations to update the required information that must be given to passengers travelling to Northern Ireland.

3.9 The principal Regulations and the Operator Liability Regulations cease to have effect on the 24 March 2022 and 23 March 2022 respectively.

Consultation

4.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease there has been no public consultation in relation to this Statutory Rule.

Equality impact

5.1 An Equality Impact Assessment screening was not conducted for this amendment. However for the principal Regulations the EQIA screening identified no disproportionate impact. Given these measures would reduce the transmission of coronavirus, there were positive benefits noted for those groups that are known to be, or suspected to be, more susceptible to the adverse effects of the virus, including older people, those with a disability and those in ethnic minority groups.

Regulatory impact

6.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no assessment of regulatory impacts in relation to this Statutory Rule.

Financial implications

7.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no assessment of the financial impacts in relation to this Statutory Rule.

Section 24 of the Northern Ireland Act 1998

8.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations are not incompatible with any of the Convention rights; are not incompatible with Community law; do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

EU implications

9.1 This Statutory Rule does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

Parity or Replicatory Measure

10.1 These amendments are introduced to ensure alignment with Great Britain and will also be made in England, Scotland and Wales at the same time.

Additional information

11.1 Not applicable.