EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 2) Regulations (Northern Ireland) 2022

S.R. 2022 No. 43

1. 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.

2. Purpose

2.1. The Statutory Rule amends 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) to revise the baseline border measures to facilitate the safe recovery to former levels of travel, whilst retaining the ability to monitor and respond to threats to public health in a timely manner. The requirement for 'eligible arrivals' to compete a day 2 test is removed, as well as the requirement for 'non-eligible arrivals' to complete a day 8 test and undertake a ten-day isolation period upon arrival. Rather than a legal obligation to self-isolate, the Department of Health may now issue guidance on self-isolation if the test result is positive.

2.2. The Statutory Rule expands the 'eligible arrivals' category to recognise vaccinations certified by 16 additional countries and territories internationally, including a number who have secured equivalency status with the EU Digital COVID certificate.

2.3. The Statutory Rule relaxes the requirements for those arrivals into Northern Ireland for work, who are exempt from the general testing rules for unvaccinated arrivals, and who are required to undertake workforce testing. The Statutory Rule also introduces updates to streamline and rationalise the Passenger Locator Form. It also includes a transitional provision which allows arrivals to be released from isolation early if their country of origin is now regarded as being safe in terms of vaccinations.

2.4. The Statutory Rule amends the Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) Regulations (Northern Ireland) 2021 to update and streamline the complex set of operator offences. The amendment introduces a new requirement on operators to implement and maintain systems to ensure passengers comply with various travel rules. The amendment introduces a fixed penalty notice procedure for offences under the Operator Liability Regulations. The

amendment simplifies the requirement for operators to provide informaton to passengers travelling to Northern Ireland.

2.5. The Stautory Rule came into operation at 4.00am on 11 February, 4.00am on 16 February and 4.00am on 28 February 2022.

3. 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. Currently, the requirements for an individual arriving in Northern Ireland 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.

3.3. Vaccinated arrivals certified in specific countries, those who are participants or have participated in recognised clinical trials, and those under the age of 18, known as "eligible arrivals", are subject to different requirements to unvaccinated arrivals. Provided they have not been in a red list country in the last 10 days, eligible arrivals are required to take a day 2 test which can be a PCR or Lateral Flow Device (LFD) test and has to be taken on or before Day 2. If that test is negative, there are no further restrictions upon the eligible arrival. However, if the test is positive or inconclusive, they must self-isolate for 10 days. If the LFD test is positive, they must also take a confirmatory PCR test. If the LFD test is inconclusive, they may take a further PCR test. If the further PCR test is negative, they can leave self-isolation with no further restrictions. All other arrivals ("non-eligible 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. This amendment makes changes to these requirements.

3.4. This Rule updates the Regulations to revise baseline border measures to take proportionate and necessary steps to see a safe return to former levels of travel and national recovery. Omicron is now the dominant variant domestically and widely seeded throughout the UK; as a result, community transmission significantly outstrips importation from international arrivals. Though variants of concern remain a threat to public health, the success of the UK's booster programme has provided significant protection, with vaccinated individuals being less likely to experience severe clinical outcomes from infection, and we now have a

clearer understanding, in the wake of the Omicron wave, of the role that border measures should play in future responses. It has therefore been considered that now is the right time to take proportionate steps to further reduce travel restrictions.

3.5. In this new context where we have an improved understanding of the properties of the Omicron variant and have a booster programme which is proving to be successful both in terms of roll-out and in protection against the variant, it is no longer proportionate to require eligible arrivals in Northern Ireland to undertake extensive testing, at cost, and self-isolation periods for longer than necessary. Recent evidence suggests that the economic disbenefits of testing on the arrival and limited recovery of international travel outweigh the additional public health benefits that a testing system adds to our regime for vaccinated arrivals.

3.6. In line with this, this amendment removes all self-isolation and testing requirements on eligible arrivals in Northern Ireland from non-red list countries. Eligible arrivals continue to be required to complete a simplified version of the Passenger Locator Form (PLF) to confirm their basic details, travel history and their eligibility status. This amendment accelerates the recovery of safe international travel and reduces the cost of travel for individuals whilst retaining the ability to monitor and trace inbound travel.

3.7. Updates are also made to continue to take advantage of our confidence in vaccination programmes overseas by expanding the “eligible arrivals” category to recognise vaccination certificates from 16 additional countries and territories internationally. This will proportionately reduce the costs associated with the travel system and make it less complex to navigate for a greater number of individuals internationally, further facilitating family reconnections, holidays and business travel. This includes the addition of 3 countries (Cape Verde, El Salvador and Togo) who have secured equivalency status with the EU Digital COVID Certificate (EU DCC). This takes advantage of the judgement that the EU implements a robust system for validating equivalency status to simplify certification at the border. Additionally, updates are made to accept only the EU DCC equivalent certificates for the following countries and territories , in recognition of the fact that the EU DCC constitutes a robust certification framework that aligns with multilateral standards and that the UK's intention was always to accept these certificates by default: Albania, Armenia, Georgia, Israel, Lebanon, Moldova, Montenegro, Morocco, New Zealand, North Macedonia, Panama, Serbia, Singapore, Taiwan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates and Uruguay.

3.8. A “non-eligible arrival” is one who is above 18 years of age on arrival in Northern Ireland, is not a red-list arrival, does not meet the conditions for an eligible arrival such as vaccination by a relevant country or participation in a qualifying clinical trial.

3.9. There continues to be a benefit from differentiating requirements by vaccination status at the border given that vaccinated arrivals benefit from a reduced risk of spreading infection, as well as a reduced risk of experiencing severe disease and hospitalisation. Evidence shows that COVID-19 positivity rates for unvaccinated arrivals are higher than that of

vaccinated arrivals. However, whilst the scale of these benefits is still being quantified and understood in the context of the Omicron COVID-19 variant, it is now deemed disproportionate to continue to require unvaccinated arrivals to follow the current much stricter regime. Accordingly, this amendment removes the requirement for non-eligible arrivals to self-isolate and book and pay for a Day 8 test upon arrival in Northern Ireland from a non-red list country. However, non eligible arrivals continue to be required to undertake a pre-departure and post-arrival PCR test in order to protect individuals during transit, maintain variant detection rates and detect positive cases. This ensures that the principal Regulations are effective and proportionate in reflecting the public health benefits of vaccination uptake.

3.10. In line with the removal of self-isolation requirements for non-eligible arrivals, it is also deemed disproportionate to require non-eligible arrivals who have arrived in Northern Ireland before 4am on 11th February 2022 to continue to self-isolate beyond the point at which they receive a negative post-arrival PCR test result. A transitional provision allows non-eligible arrivals who have arrived in Northern Ireland before the coming into operation date of this amendment (4am on 11th February 2022) to leave self isolation from 4am on 11th February 2022 onwards, subject to a negative post-arrival PCR test result. Individuals who have not yet taken their post-arrival test or received their result must complete the test and await that result. That result must be negative in order to be permitted to leave self-isolation. Individuals receiving an inconclusive test result must self-isolate for ten full days from the day after the test was taken or take a confirmatory test and if that test result is negative they can stop self-isolation. Individuals who fail to take their post arrival test must self-isolate for fourteen days from the day after arrival in Northern Ireland, unless they take a replacement test which, if negative, ends isolation. for all arrivals after 4am on 11th February 2022, the Department of Health may now issue guidance on self-isolation if a test result is positive.

3.11. Following the introduction of post-arrival testing for international arrivals from 16 February 2021, it was agreed that certain workers would be exempt on the grounds of proportionality and practicality, and certain cohorts have been subject to the workforce/bespoke testing regime accordingly. The regimes were designed to ensure that they did not deter or disrupt critical activity such as essential freight and transport by being more stringent than normal passenger requirements, whilst still mitigating risks to public health.

3.12. This amedment relaxes the requirements for those arrivals into Northern Ireland for work, who are exempt from the general testing rules for unvaccinated arrivals, and who are required to undertake workforce testing. The new policy is that a LFD test must only be taken on day 2 now instead of on days 2, 5 and 8.

3.13. In line with the intention to streamline border measures, this amendment simplifies the Passenger Locator Form (PLF) to become a shorter document. This will make the process easier for the public to follow and comply with. To achieve this, the amendment removes certain information

requirements to reflect provisions which are no longer relevant following the reduction of testing and self-isolation requirements for both eligible and non-eligible arrivals. Separately, document type and nationality fields are introduced to support work Home Office are undertaking to allow passengers' PLF status to be digitally checked prior to departure, as part of a wider programme of work on electronic travel authorisations and pre-clearance.

3.14. Updates are also made to extend the window for PLF completion to three days from the previously specified window of 48 hours. The window had previously been shorter to prevent the submission of incorrect forms should the requirements for completion of the PLF be changed at short notice. This reduced the number of arrivals who would potentially have completed a form incorrectly following a change in the information they would have been required to provide. As there will now be increased stability to borders policy, and changes to PLF requirements will become less regular, it is now appropriate to extend the period to make the process easier for international arrivals who now have more time to complete the form.

3.15. In order to further streamline the Regulations in relation to operator liability, the lengthy and complex requirements on operators are replaced with a more general requirement to maintain sufficient processes and systems. It replaces individual per passenger offences, which can result in a very high total liability for an operator (e.g. airlines), with offences for failing to keep required records, and failure to provide records to the regulator. This amendment also introduces a fixed penalty notice procedure for offences under the Operator Liaility Regulations.

3.16. This amendment also updates the information operators are obliged to provide passengers both in advance of and during travel (the latter through an onboard announcement). The changes also simplify requirements on operators by reducing the current requirement to provide specified information at three distinct times prior to departure to a single pre-departure information requirement. A requirement is also introduced on operators to keep records of how they have complied with their obligation to give information to passengers.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. EU Implications

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

10. 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.

11. Additional Information

11.1. Not applicable.