EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 3) Regulations (Northern Ireland) 2022

S.R. 2022 No. 046

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 deal with the regime for exempting arrivals in Northern Ireland from the various coronavirus travel rules. The exemption regime for specific occupational groups has been streamlined through the removal of exemptions now deemed unnecessary, and by merging some of the existing exemptions into broader categories. A new exemption category for "seasonal temporary horticultural and food processing workers" was also identified and added to the list of exemptions.

2.2 This Rule also corrects an error made in an earlier commencement provision regarding the coming into force date of an extension to the time a person had to complete their passenger locator form; and makes some minor updates to both the principal Regulations and the Operator Liability Regulations including correcting typographical and cross-referencing errors, and updating web links. The Regulations also revoke one provision of The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 2) Regulations (Northern Ireland) 2022.

2.3 The Statutory Rule came into operation at 4.00am on 13 February 2022, except for Regulation 4(2), regarding the coming into force date of the extension to the time a person has to complete their passenger locator form, this came into operation from 4.00 am on 28 February 2022.

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. More robust health protection measures, including hotel quarantine, were put 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". Under the current arrangements they are required to complete a Passenger Locator Form prior to their arrival in Northern Ireland. They are not required to take a pre-departure test, are not subject to post-arrival testing, and are not subject to self-isolation requirements.

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; and are required to book, pay for, and undertake a day 2 post arrival PCR test.

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 self-isolation upon arrival in Northern Ireland where they will also be required to undertake day 2 and day 8 testing.

3.7 The Statutory Rule replaces the existing exemptions regime for specific occupational groups with a revised, and simplified version. A review was carried out in GB into the existing exemptions structure for the various specific occupational groups that were considered necessary to carry out essential work in the UK. The review was held to assess what appeared to be an unnecessarily complex set of exemptions, which has evolved over time, with a view to reduction and simplification. The review found that, as a result of the decision to remove mandatory self-isolation measures at the border for non-eligible travellers, exemptions from self-isolation were no longer required and can be removed. As a result some exemptions were deemed no longer necessary, and there was scope to combine other exemptions to form broader groups. The need for a new exemption for "seasonal temporary horticultural and food processing workers" was also identified and introduced. In line with current policy on maintaining alignment with GB, a similar review of the existing exemptions structure was conducted in Northern Ireland. Similar to the GB review, it was found that in Northern Ireland some exemptions were deemed no longer required, some could be merged, and a need for a

new exemption for “seasonal temporary horticultural and food processing workers” was identified. Therefore, changes were made to streamline and rationalise the remaining exemptions into the following nine new exemption categories:

• Seasonal and Temporary Horticultural and Food Processing Workers: The purpose of this exemption is to help support the food and non-edible horticulture supply chain and maintain animal welfare. The poultry workers element of this exemption will be removed from regulations as this work is no longer in season. Individuals must: take a PDT, complete a PLF, and complete testing as part of a bespoke testing regime. They are not exempt from MQS.

• Transporting Human Cells or Blood: This exemption is intended to allow individuals transporting urgent substances of human origin who can only transport these substances by hand luggage. Individuals must: complete a PLF, follow a bespoke testing regime. Individuals are exempt from: taking a PDT, and MQS.

• Cross-Border Transport workers: This exemption covers transport workers (including drivers of goods vehicles, aircraft pilots and crew (the definition of aircraft pilots and crew has been amended to include non-flight safety engineers following the removal of the aerospace engineers exemption to ensure that work related to maintaining the safety of aircraft is retained within scope), civil aviation inspectors, Seamen and masters, pilots and inspectors and seamen and masters who work on fishing vessels and surveyors of ships, port workers,) who are crossing the UK border. Individuals must follow a bespoke testing regime (except civil aviation inspectors who will remain in general travel testing). Individuals are exempt from: taking a PDT, completing a PLF, MQS (for aircraft crew and pilots, Seamen and masters, pilots and inspectors and surveyors of ships (except those working on cruise ships) and hauliers.

• Essential government work, operations and state business: This exemption covers (1) crown servants and government contractors who are undertaking essential government work in the UK, or returning from conducting such work outside of the UK; (2) a person required to undertake essential state business in the UK or returning from conducting such business outside of the UK; (3) a person returning to the UK where necessary to facilitate the functioning of a diplomatic or consular mission; and (4) a person required to undertake essential or emergency work in the UK or returning from undertaking such work outside of the UK. Individuals must: complete a PLF. Individuals can be exempt on a case-by-case basis from all other health border measures if the relevant government department confirms that they have met certain criteria.

• Members of Diplomatic Missions and Consular Posts: This exemption covers members of missions and consular posts in the UK as well as diplomatic/consular couriers and heads of state (as well as families forming part of a household). These individuals must: take a PDT. Individuals are exempt from: All other border health measures.

• Persons on official business: This exemption covers (1) persons with relevant privileges and immunities in the UK; (2) officers of an international organisation on official business; (3) representatives of a foreign country or territory or British Overseas Territories on official business with the UK; (4) foreign policy interlocutors; (5) persons conducting essential maintenance or repairs to IT or security systems at diplomatic or consular missions in the UK; and (6) foreign election monitors.

Individuals can be exempt on a case-by-case basis from all border health measures subject to approval by FCDO.

• Border Security Duties: This exemption will mainly be used by Border Force or French Border staff/contractors who travel daily to operate and maintain overseas control. The individuals must: Follow a bespoke testing regime if they are UK based, overseas personnel must follow general traveller testing except those working on the juxtaposed controls who are not required to test. Individuals are exempt from taking a PDT, completing a PLF and MQS.

• Law Enforcement: This exemption allows for the UK to meet its law enforcement obligations. Individuals must take a PDT, complete a PLF, and undertake general travel post arrival tests. Individuals are exempt from MQS. This group will no longer remain within the bespoke testing regime however, this exemption will be retained within the Regulations as this cohort continue to require an MQS exemption should a country be added to the Red list.

• Defence Personnel, Visiting Forces and Government Contractors: Defence personnel are subject to both frequent and short notice travel in support of HMG business. This exemption allows this essential activity to continue in instances when it is not compatible with the COVID-19 border health measures. Individuals must follow a bespoke testing regime. Individuals are exempt from: taking a PDT, completing a PLF and MQS.

3.8 This Regulation also corrects an error made in an earlier commencement provision. Regulation 4 of Statutory Rule 2022 No. 43 extended the time a person had to complete their passenger locator form from two to three days prior to their arrival in Northern Ireland. That provision was erroneously brought into operation on 11 February 2022 whereas it should have been brought into operation on 28 February 2022. Regulation 4 of these Regulations corrects this error. Firstly, it provides that, as from 13 February 2022, the requirement is that a person has two days to complete the passenger locator form. Secondly, it provides that, as from 28 February 2022, a person will have three days to complete the form. Thirdly, it then revokes the provision which was erroneously brought into force too soon.

3.9 Minor updates are also made to both the principal Regulations and the Operator Liability Regulations including correcting typographical or cross-referencing errors and updating web links.

3.10 The overall policy intent behind these changes is to slim down and simplify the exemptions framework by removing exemptions deemed no longer required, and by merging others into broader groups. A key aim of this amendment is to provide stability for travellers and the travel industry throughout 2022 whilst still ensuring that overall measures remain proportionate to the threat posed by Covid-19 to the community in Northern Ireland.

3.11 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.