EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 6) Regulations (Northern Ireland) 2021

S.R. 2021 No. 262

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before the Northern Ireland Assembly to accompany the Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) (Amendment No. 6) Regulations (Northern Ireland) 2021.

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

2. Purpose of the Regulations

2.1 The Statutory Rule amends the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021 (S.R. 2021 No.99) ("the principal Regulations") to include a definition of "cruise ship" in the interpretation regulation. The provision on passenger information is amended to allow cruise ship passengers to submit their Passenger Locator Form up to 21 days before arrival. A reasonable excuse is included in the principal Regulations for a person who undertook a qualifying pre-departure test on board a cruise ship on which that person arrived in Northern Ireland, the result of that test was positive, and it was not reasonably practicable for that person to disembark in a country or territory other than Northern Ireland. Bangladesh, Egypt, Kenya, Oman, Pakistan, Sri Lanka, The Maldives and Turkey are removed from Schedule 1 of the principal regulations (Red List countries). The criteria to be a fully vaccinated arrival, in Schedule 2B of the principal Regulations, is updated to include people who receive a course of doses comprising two different authorised vaccines. New exemptions are introduced at Schedule 4 for non dis-embarking cruise passengers and short stay cruise passengers. An amendment is made to the principal Regulations as a consequence of the dissolution of Public Health England, an executive agency of the Department for Health and Social Care, and the establishment of the United Kingdom Health Security Agency, also an executive agency of the Department for Health and Social Care. Turkey is removed from the lists in Schedule 8 as Turkey is omitted from Schedule 1, the red list countries. The Rule also corrects two drafting errors in the principal Regulations.

2.2 The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) Regulations (Northern Ireland) 2021 (S.R. 2021 No. 102) ("the Operator Liability Regulations") are amended to include a defence for an operator where the relevant passenger undertook a qualifying test on board the vessel on which the relevant passenger arrived in Northern Ireland, the result of

that test was positive, and it was not reasonably practicable for the relevant passenger to disembark in a country or territory other than Northern Ireland.

3. Matters of special interest to the Northern Ireland Assembly

3.1 The Statutory Rule is made under the 1967 Act, in breach of the 21 day rule. This has been necessary to protect public health whilst ensuring that restrictions in place remain proportionate. The principal Regulations and Operator Liability Regulations provide that the Department of Health must review the need for the measures imposed by them at least once every 28 days.

3.2 The principal Regulations cease to have effect from 24 March 2022 and the Operator Liability Regulations cease to have effect from 23 March 2022.

4. Legislative Context

4.1 The 1967 Act and regulations made under it provide a legislative framework for health protection in Northern Ireland.

4.2 Part 1A of the 1967 Act, as inserted by the Coronavirus Act 2020 ("the 2020 Act"), provides a legal basis to protect the public from threats arising from infectious disease or contamination with coronavirus, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, Part 1A of the 1967 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

4.3 Section 25C of the 1967 Act provides a power for the Department of Health to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination with coronavirus in Northern Ireland. The threat can come from outside Northern Ireland.

4.4 These Regulations are made under section 25B to enable a number of public health measures to be taken for the purpose of preventing danger to public health from arrivals into Northern Ireland.

5. Policy background

5.1 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.

5.2 This Statutory Rule updates the list of countries and territories in Schedule 1 (Red list countries) of the principal Regulations to reflect the latest epidemiological data following the recent three-weekly RAG status review. Arising out of changes to the Red List is the need to remove Turkey from the list of countries from which there is a direct flight and vessel ban into Northern Ireland.

5.3 The Rule updates the definition of 'fully vaccinated' to allow international arrivals who have received 'mixed' vaccine doses to qualify for relaxed inbound travel measures if they are arriving from an amber list country. An individual has received a set of 'mixed' doses if they have had two vaccine doses where the vaccines administered are not all manufactured by the same brand and/or authorised by the same regulator. These individuals are deemed to have sufficient

protection from COVID-19 to qualify for the same relaxation of travel measures available to other fully vaccinated international amber list arrivals.

5.4 The Rule updates the principal Regulations to ensure that passengers and crew who are on board cruise ships in a Northern Irish port, but at no point disembark into Northern Ireland, are not required to complete the Passenger Locator Form, take a Pre-Departure Test or self-isolate.

5.5 It introduces a reasonable excuse to allow a cruise passenger who has tested positive after taking a Pre-Departure Test on board prior to arrival, in line with UK approved protocols. At present, passengers who arrive in Northern Ireland without proof of a negative PDT commit an offence. This amending Rule will resolve this conflict in order to allow outbreaks to be handled appropriately and to ensure the best possible public health outcome.

5.6 This Rule exempts cruise passengers, who enter Northern Ireland only for a short excursion of less than 48 hours, from Day 2 testing. This is because these passengers will not be in the country to take a Day 2 test and will leave after their excursion. In addition, cruise operators have put in place regular testing as part of their wider Covid-19 protocols to enable cruise restart offering a further level of assurance that cases will be identified.

5.7 It allows cruise passengers to submit their passenger locator form (PLF) up to 21 days before arrival. This will enable the majority of cruise passengers to submit the PLF before boarding the vessel. Without this change, operators would not be able to check PLFs before boarding and there would be significant technical challenges completing the PLF on board which would make it challenging for passengers to comply with the current PLF requirements.

5.8 The Rule makes amendments as a consequence of the dissolution of Public Health England, an executive agency of the Department for Health and Social Care, and the establishment of the United Kingdom Health Security Agency, also an executive agency of the Department for Health and Social Care.

5.9 The Health Protection (Coronavirus, International Travel, Operator Liability and Information to Passengers) Regulations (Northern Ireland) 2021 are amended to enable a cruise passenger to be transported to Northern Ireland without criminal liability for the operator. At present, carriers (including cruise operators) commit a criminal offence if they transport passengers without a negative Pre-Departure Test to Northern Ireland, incentivising them to deny such passengers boarding. However, this conflicts with the cruise industry's COVID-19 Framework, which covers the safe return of UK residents who test positive for COVID-19 on board.

6. Equality impact

6.1 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.

6.2 A human rights impact assessment was conducted for the principal Regulations to ensure compliance with the European Convention on Human Rights. This

assessed the proportionality of the measures being taken and mitigations which could be considered to reduce the impact on human rights that the assessment identified.

7. Regulatory impact

7.1 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.

8. Financial implications

8.1 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.

9. Section 24 of the Northern Ireland Act 1998

9.1 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.

10. EU implications

10.1 There are unlikely to be any EU implications.

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

11. Parity or Replicatory Measure

11.1 The amendments in relation to the update of red list countries, the update of the definition of ‘fully vaccinated’ will also be made in England, Scotland and Wales at the same time.

12. Additional information

12.1 Not applicable