EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Advice) (Amendment) Regulations (Northern Ireland) 2021

S.R. 2021 No. 17

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 Public Health Advice) (Amendment) Regulations (Northern Ireland) 2021.

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 negative resolution.

2. Purpose of the Regulations

2.1 The Statutory Rule amends the Health Protection (Coronavirus, Public Health Advice for Persons Travelling to Northern Ireland) (No. 2) Regulations (Northern Ireland) 2020 so that operators of commercial transport services from outside the common travel area to Northern Ireland are required to provide information to passengers about the requirement to possess notification of a negative coronavirus test result.

2.2 The Statutory Rule also amends the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020 to:

- reduce the amount of passenger information that people travelling to Northern Ireland are required to provide on the Passenger Locator Form in order to comply with the requirement in regulation 3 of the International Travel Regulations and to increase fixed penalty notices for non-completion of the Passenger Locator Form
- update the air crew exemption from the requirement to possess notification of a negative coronavirus test result to ensure that crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters, are exempt;
- include Burundi, Rwanda and United Arab Emirates in the list of countries and territories in Schedule 5 to the International Travel Regulations subject to additional measures.

2.3 Further, the Statutory Rule amends the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Amendment) Regulations (Northern Ireland) 2021 so that operators are not required to ensure that a notification of a negative coronavirus test result is from a "qualifying test", i.e. a test which meets the standards specified in paragraph 1 of Schedule 2A to the International Travel Regulations. Operators are required to check that passengers possess a notification of a coronavirus test which includes specified information, while liability for ensuring the result was from a qualifying test falls on the passenger.

2.4 The Statutory Rule came into operation at 4.00 am on 30 January 2021.

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 introduce the requirement at the same time as the other UK regions in order to have consistency of approach.

3.2 Further, the principle Regulations provide that the Department of Health must review the need for the measures imposed by them at least once every 28 days.

3.3 The principle Regulations cease to have effect at the end of the period of one year beginning on the day on which they came into operation, i.e. the 8 June 2020.

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. They will also be made under 25F(2) which allows for enforcement provisions to be included.

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 During the first review of the Regulations, a process was developed to assess the risk travellers posed from various countries. It was agreed that Northern Ireland would exempt travellers from countries where the risk was assessed as lower than the UK average.

5.3 Following concerns about the emergence of new variants of the virus, additional measures have been put in place in relation to certain countries.

5.4 Following new evidence, it was determined the risk for travellers from Burundi, Rwanda and United Arab Emirates had increased and that they should be included in the list of countries and territories subject to additional measures.

5.5 To help support completion of a UK Passenger Locator Form additional measures were agreed to increase fixed penalty notices to passengers for non-completion of the form and also amended the form to streamline the process and improve user experience.

5.6 Finally the amendment to include the air crew exemption from the requirement to possess notification of a negative coronavirus test result was to align with English regulations as they addressed a gap within sectoral exemptions.

6. Consultation

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

7. Equality impact

7.1 Due to the rapidity of change, an Equality Impact Assessment screening was not conducted. The EQIA screening for the principal Regulations 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.

7.2 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.

8. Regulatory impact

8.1 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.

9. Financial implications

9.1 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.

9.2 However it is likely there will be a financial impact on travel operators as there is potential for a reduction in demand as travellers may choose not to travel given the requirements in place.

10. Section 24 of the Northern Ireland Act 1998

10.1 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.

11. EU implications

11.1 There are unlikely to be any EU implications.

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

12. Parity or Replicatory Measure

12.1 England, Scotland and Wales are expected to make broadly similar regulations coming into force at the same time.

13. Additional information

13.1 Not applicable