EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (SELF-ISOLATION) (ENGLAND) (AMENDMENT) (NO. 6) REGULATIONS 2021

2021 No. 1415

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ("DHSC") and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 **This instrument makes provision to take public health measures to ensure a proportionate and appropriate response to the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease COVID-19.** This instrument makes provision to remove the requirement on all contacts of suspected or confirmed Omicron cases to self-isolate by amending the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045) (the "Self-Isolation Regulations").

2.2 The amendments ensure that all close contacts of positive cases, regardless of the variant, will be exempt from self-isolation if they fall within scope of the exemptions under Regulation 2B(2)(a) and (b), or 2B(6).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c.22) ("the 1984 Act"). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS CoV-2) and the Omicron variant of concern (B.1.1.529).

3.2 The instrument was made on 13 December, laid on 13 December 2021 and published on www.legislation.gov.uk later that day. Subject to approval in both Houses, this instrument comes into force 06:00 on 14 December 2021.

3.3 The Self-Isolation Regulations which this instrument amends will expire at the end of 24 March 2022.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State for Vaccines and Public Health, Maggie Throup MP has made the following statement regarding Human Rights:

"In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 6) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

Background

6.1 The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales.

6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious diseases, or contamination from chemicals or radiation. Part 2A includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the amended 1984 Act sets out a framework for health protections which requires much of the detailed provisions to be delivered through regulations.

6.3 Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in England and Wales. The threat of infection or contamination can come from outside England and Wales.

6.4 A number of regulations under section 45C of the 1984 Act have been made, including regulations relating to severe acute respiratory syndrome Coronavirus 2 (SARSCoV-2) ("COVID-19").

6.5 In particular, the Self-Isolation Regulations impose requirements on people who are notified of a legal obligation to self-isolate. This plays a key role in slowing or preventing a rise in the rate of reproduction (R) of COVID-19. The instrument required persons who have been notified, other than through the NHS COVID-19 app, that they have tested positive for coronavirus or have been identified as a close contact of someone who has tested positive, to self-isolate for a specified period.

6.6 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021, which came into force on 19 July 2021, made amendments to the legal duty to self-isolate including:

- From 16 August 2021, a person is not required to self-isolate if they are notified that they have been in close contact with a person who has tested positive, if the person:
    - has completed a course of an authorised vaccine administered in the UK; or,
    - has participated or is participating in an authorised clinical trial of a coronavirus vaccine; or,
    - can evidence that they are unable to be vaccinated for clinical reasons.

- A removal of the duty on a child under the age of 18 to self-isolate where they are notified that they have been in close contact with a person who has tested positive.

6.7 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (No. 3) Regulations 2021, which came into force on 27 September 2021 extended the Self-Isolation Regulations until 24 March 2022.

6.8 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No.4) Regulations 2021, which came into force on 30 November 2021, included the following amendments in response to the emergence of the Omicron variant:

- To make specific provision in relation to self-isolation where a relevant person is able to notify an individual that they are a close contact of a case suspected or confirmed as having the Omicron (B.1.1.529) variant of COVID-19;
- In the case of a person being notified that they are a close contact of a suspected or confirmed case of the Omicron variant, the existing provisions exempting close contacts from self-isolation providing they have completed a full course of an authorised vaccine, have participated in a clinical vaccine trial, are medically unable to be vaccinated or are under the age of 18, will not apply;
- The affected individuals will not be able to benefit from the exemption from the requirement to self-isolate which applies to participants in a Daily Contact Testing Scheme.

6.9 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 5) Regulations 2021, which came into force on 9 December included amendments to align the existing exemptions to self-isolation with those in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Regulations) 2021 (S.I. 2021/582).

6.10 In accordance with section 45R of the 1984 Act, the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.

7. Policy background

What is being done and why?

7.1 These changes are intended to revoke the amendments which came into force on 30 November 2021 so that all close contacts will be exempt from self-isolation providing they are fully vaccinated, under 18 years of age, have taken part or are taking part, in a clinical trial for a COVID-19 vaccine or are medically unable to receive a vaccination.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Amendments, which came into force on 30 November 2021, required all close contacts of suspected or confirmed cases of the Omicron variant of Covid-19 to self-isolate for 10 days regardless of their age or vaccination status. The age and vaccination-related exemption described above otherwise remained in place for close contacts of all other cases.

Why is it being changed?

7.3 The measures that were brought in on 30 November 2021 were intended as a temporary measure to slow the spread of the Omicron variant, to be reviewed in three weeks. This resulted in a twin-track approach which is becoming increasingly unsustainable in terms of the operational demand it places on health protection teams and the NHS Test and Trace service. Also, as Omicron cases grow, a 10-day self-isolation rule would, without these amendments, soon become the default for all contacts, including children and those who are fully vaccinated. To manage the risk of transmission, contacts who are exempt from self-isolation will instead be strongly advised to take a daily Lateral Flow Test for 7 days. They will also be given advice on steps they should take to reduce the risk to others.

7.4 Moving to a single approach will reduce complexity in the system at a time when effective delivery of a self-isolation regime is essential to protect public health and to enable more effective communication of public health advice to contacts. As Omicron is likely to be the dominant variant in England soon these changes underpin a balanced and proportionate approach, supporting public health efforts to reduce the impact of COVID-19 whilst minimising the impact on individuals and the economy.

What will it now do?

7.5 The amendments in regulations 2 to 7 remove the legal duty to self-isolate for fully vaccinated close contacts of suspected or confirmed cases of the Omicron variant of Covid-19 and allow for the exemptions from the duty to self-isolate under Regulation 2B(2)(a) and (b) or 2B(6) to apply to all close contacts.

7.6 Close contacts of positive cases will be advised (but not required by the regulations as amended) to take daily tests for up to 7 days and, if the results are negative, to remain cautious with advice such as to reduce social contact and to avoid large gatherings and contact with more vulnerable people.

7.7 Regulation 8 makes amendments to the transitional provision in regulation 19 of the Self-Isolation Regulations to insert a new paragraph which enables an individual who is a close contact of a known or suspected Omicron case and is currently self-isolating at 06:00 on 14th December 2021 to cease self-isolating if they come within scope of the exemptions in regulation 2B(6)(a), (b) or (c) or are taking part in coronavirus related research. They will be advised to take daily tests for the remainder of what would have been their self-isolation period.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument.

11. Guidance

11.1 The Government has published guidance in relation to Covid-19 at **www.gov.uk/coronavirus** and this guidance will include updated information in relation to the amendments.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to COVID-19. As this instrument will cease to have effect after 6 months, an Impact Assessment is not required and would be disproportionate. This extension falls under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency COVID-19 legislation in advance of the wider reform of the Better Regulation Framework.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021 that this instrument establishes will expire and cease to have effect on 24 March 2022.

15. Contact

15.1 Sophie George (Sophie.George@DHSC.gov.uk), Head of COVID-19 Self-Isolation Policy Team at the UK Health Security Agency, can be contacted with any queries regarding the instrument.

15.2 Ben Dyson (Ben.Dyson@DHSC.gov.uk), Director of Cross Cutting Policy and Parliamentary & Public Accountability at the UK Health Security Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Maggie Throup MP, the Parliamentary Under-Secretary of State for Vaccines and Public Health at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.