

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 23) REGULATIONS 2021

2021 No. 1371

#### 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 amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to update pre-departure test (PDT) requirements. All individuals aged twelve and over, regardless of whether they qualify as an ‘eligible traveller’, are now required to possess a notification of a negative coronavirus test upon arrival in England from outside the common travel area (or, if travelling on a shuttle service through the Channel Tunnel, upon presenting at immigration control at the Channel Tunnel shuttle terminal area in France). The time frame in which a traveller must provide proof of a negative coronavirus test is reduced from a test taken within three days of departure to England, to a test taken within two days of departure to England and applies to all travellers required to provide proof of a negative coronavirus test. Minor changes are also made to update the wording to be used by operators to inform passengers of their PDT requirements, to update the enforcement provisions to correctly include the self-isolation requirement for eligible travellers introduced in Amendment 21 of the Regulations, and to correct a minor error arising from Amendment 13 of the Regulations.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 DHSC regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid 21 days before the instrument comes into force (“the 21- day rule”). Having reviewed the latest assessments of public health risk and the newly identified COVID-19 variant, the Government considers these measures are urgently necessary to protect public health.

#### 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 only.

## 5. European Convention on Human Rights

- 5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 provides a legislative framework for health protection in England and Wales. Section 45B(1) enables the appropriate Minister (defined in section 45T as, for England, the Secretary of State) to make regulations for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place and preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place. Section 45P(2) provides that the power to make regulations includes the power to make different provision for different cases or areas.
- 6.2 The Secretary of State made the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 on 12 February, which came into force on 15 February. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They have now been replaced by the Regulations which came into force on 17 May. The Regulations are currently subject to a formal review at least once every 28 days.

## 7. Policy background

### *What is being done and why?*

- 7.1 This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 to bring the following provisions into force at 4am on 7<sup>th</sup> December:
- Amend the requirements for PDTs as follows:
    - Extend the requirement to possess a notification of negative coronavirus test result so that it applies to all individuals aged twelve and over travelling to England, including eligible travellers.
    - The age from which red-list arrivals are required to possess notification of a negative coronavirus test upon arrival in England will also increase to twelve and over, in line with those PDT provisions applying to non-red list arrivals.
    - Update the definition of a compliant test for the purposes of the PDT to a test taken no more than two days before travelling. The two-day period will run backwards from the scheduled time of departure of the first part of the service on the individual's journey on commercial transport services to England.
  - Update the wording under Part 1 of Section 12 which operators must include in the pre-booking information for passengers to clarify that a day 2 test may be taken on or before day 2.
  - Update regulation 11 to correctly include the self-isolation requirement for eligible travellers introduced in Amendment 21 of the Regulations.
  - Correct an error arising from Amendment 13 so as to ensure that operators, in discharging the requirement under reg. 17A of the Regulations to ensure that

passengers claiming to be “eligible travellers” have the “required evidence”, are able to accept evidence of having a clinical reason not to be vaccinated.

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

- 7.2 The Regulations came into force on 17 May 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) in England. 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. The Regulations were updated on 4 October 2021 to center around the red list and to provide a new set of rules for non-red list arrivals which are determined by a traveller’s vaccination status. Robust health protection measures, including hotel quarantine, remain in place for red list arrivals. Vaccinated arrivals certified in specific countries, those who are participants or have participated in recognised clinical trials, people who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by the NHS, and those under the age of 18, known as “Eligible travellers”, are subject to different requirements.
- 7.3 Following the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 21) Regulations 2021 (S.I. 2021/1339), provided they have not been in a red list country in the last 10 days, eligible travellers are required to take a day 2 PCR test and self-isolate until they receive a negative result, or remain in self-isolation for a longer period if the result is positive or inconclusive. All other 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. All individuals are required to fill in the Passenger Locator Form before arriving in the UK irrespective of vaccination status unless an exemption applies.
- 7.4 The Regulations also include a number of exemptions from self-isolation and/or testing requirements for a small proportion of people, this includes people travelling to the UK to maintain essential supply and business chains, critical national infrastructure or to contribute to crisis response or other key sectors, known as “sector exemptions”. Specific exemptions are also in place to successfully deliver a select number of events of cultural and national importance in the UK. All exemptions have been implemented alongside robust public health requirements in order to minimise any risk to public health.

Why is it being changed?

- 7.5 This instrument will amend the regulations to require all individuals aged twelve and over travelling to England, including eligible travellers, to take a pre-departure test. Individuals will need to provide proof of a negative COVID-19 test taken within two days of departure to England. In addition to the existing border measures currently in place, an extension of the pre-departure test requirements is deemed necessary to further strengthen defence at the borders, and delay the import of the newly identified COVID-19 variant “Omicron” into England as much as possible. Pre-departure tests are an effective barrier to stopping infected individuals from travelling into England and reducing the risk of transmission between passengers during travel. The reduction of the time frame in which a traveller must take and provide proof of a negative COVID-19 PDT, from three days to two, reduces the likelihood of transmission during travel by ensuring that the test is performed as close to point of travel, and arrival in England, as possible. The period of time is amended to start running from

the scheduled time of departure of the first part of the commercial transport service, which includes transiting in another country so long as it is for the sole purpose of continuing the journey to England. The intention of this policy is to delay the import of the newly identified COVID-19 variant “Omicron” into England as much as possible and prevent its onward transmission in England. This variant is potentially vaccine or immune escaping making it a high risk to public health and the domestic vaccination programme.

- 7.6 Further, changes are required to update the wording which operators must include in the pre-booking information for passengers to clarify that a day 2 test may be taken on or before day 2. This is to ensure that the wording remains consistent with the wider changes in this amendment. The existing wording states “Book a test for day 2 – this must be a PCR test”. The replacement wording makes it clearer that the PCR test can be taken at any time on or before day 2, as required in paragraph 10 (2) (a) and (b) of Schedule 8.
- 7.7 The instrument updates the enforcement provisions in regulation 11 to correctly include the self-isolation requirement under regulation 3K for eligible travellers introduced in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 21) Regulations 2021 (S.I. 2021/1107).
- 7.8 This instrument amends an error identified in the Regulations so as to ensure that operators, in discharging the requirement under reg. 17A of the Regulations to ensure that passengers claiming to be “eligible travellers” have the “required evidence”, are able to accept evidence of having a clinical reason not to be vaccinated.

## **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 2018.

## **9. Consolidation**

- 9.1 This instrument does not consolidate any legislation and there are no plans to do so at this time.

## **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 <http://www.gov.uk/coronavirus> and this guidance will include any updated information in relation to these 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 the Regulations, which this instrument amends, will cease to have effect on 16 May 2022 a Regulatory Impact Assessment is not required and would be disproportionate.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.

**14. Monitoring & review**

- 14.1 The Secretary of State must review the need for the requirements imposed by the Regulations, which this instrument amends, at least every 28 days as a result of a statutory review clause.

**15. Contact**

- 15.1 Jessica Sterling at the Department of Health and Social Care, Email: Jessica.Sterling@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ronnie Haynes, Deputy Director for MQS, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Edward Argar, The Minister of State for Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.