

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 25) REGULATIONS 2021

2021 No. 1449

#### 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 allow individuals currently in Managed Quarantine Services (MQS), who have not tested positive for Covid-19, to leave their quarantine location before the end of the ten day quarantine period. Instead, these individuals will be required to follow the requirements for arrivals from a non-red list country or territory, in accordance with their vaccination status. Individuals who have tested positive for Covid-19 will be required to remain in MQS to complete their quarantine period.

#### 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 the newly identified COVID-19 variant "Omicron" and its domestic prevalence, the Government considers these measures urgently necessary in order to rapidly respond to data which indicates that there is no longer a sufficient public health rationale for requiring individuals already in MQS who have not tested positive for Covid-19 to remain there.
- 3.2 Further, this instrument comes into force before being laid. Unfortunately, it was not possible to complete this process in time to lay the document before these measures we required to come into force to ensure that the Regulations are proportionate on public health grounds. The instrument will be laid on the 15th December.
- 3.3 DHSC will write to the two Speakers on 16th December day to explain the circumstances and has sought to mitigate the impact of late laying through Communications and Guidance to the public.

#### 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) Regulations 2020 (S.I. 2020/568) which were last amended by the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 (S.I. 2021/1371) on 12 February 2021, which came into force on 15 February 2021. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They were 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 Regulations to allow individuals currently in MQS, who have not tested positive for Covid-19, to leave their quarantine location before the end of the ten day quarantine period. Instead, these individuals will be required to follow the requirements for arrivals from a non-red list country or territory, completing these testing and self-isolation requirements in accordance with their vaccination status. Individuals who have tested positive for Covid-19 will be required to remain in MQS to complete their quarantine period.

### *Why is it being changed?*

- 7.2 This amendment changes the position for people who are required to quarantine having arrived in England before the coming into force of Regulations that removed the remaining 11 countries from the red list at 4am on 15 December. The initial addition of these countries to the red list was successful as a temporary measure to delay the ingress of the new variant Omicron to the UK to allow time for the Government and scientists to learn more about the properties of this variant and prepare for its potential impact ahead of the critical winter period. However, in the new context where increased transmission of Omicron from the rest of the world and heightened domestic prevalence outstrip the transmission risk of arrivals from these 11 countries, it was deemed disproportionate to retain these countries on the red list. In line with this rationale and the proportionately reduced risk, it is also deemed disproportionate, in these very specific circumstances, to continue to require individuals already in MQS, who have not tested positive for Covid-19, to remain there. Therefore, this amendment updates the Regulations to ensure that the restrictions imposed on these individuals are proportionate, necessary, and justifiable

in line with public health considerations. Individuals who have tested positive for Covid-19 will be required to remain in MQS to complete their quarantine period to minimise transmission risk into the community.

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

- 7.3 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. However, it is important to note that there are currently no countries or territories on the red list.
- 7.4 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.

## **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 Sarah Nelson for MQS, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Sajid Javid MP, The Secretary of State for Health at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.