

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 26) REGULATIONS 2021

2021 No. 1463

#### 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 make a number of technical and operational amendments to the Regulations:
  - The pre-departure test (PDT) minimum standards requirements will be updated to recognise certificates issued by approved EU third countries that meet EU Digital Covid Certificate (EUDCC) minimum standards.
  - Children under the age of 5 and individuals unable to take a day 2 PCR test by reason of a disability will no longer be required by default to self-isolate for 14 days.
  - A corresponding offence and associated penalties already present in the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045) will be introduced in the Regulations for travellers required to self-isolate who knowingly provide false information in relation to the duty in Schedule 8 to provide details of each person living in their household.
  - A correction is made to the Regulations to ensure that the exemption for individuals transiting directly through England to a place outside the Common Travel Area from the requirement to book and take a post arrival test also applies to eligible travellers.
  - Updates are also made to the list of sporting events set out in Schedule 5 to allow specific 'elite sportspeople' to participate, whilst effectively protecting UK public health.
  - Additionally, this instrument also makes several small corrections to the Regulations to ensure they remain effective.

#### 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"). The Government considers these measures are urgently necessary to ensure that the public health restrictions in place remain

proportionate, in the context of the evolving epidemiological and immunological picture.

#### **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. 2021/150) 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 2021. 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 updates the minimum standards requirements for notification of a negative pre-departure test (PDT) to recognise a notification issued by an approved third country or territory which contains the name of the country or territory in which the test was carried out instead of the name and contact details of the test provider. Notifications issued by approved third countries and territories are considered by the European Commission to be equivalent to the EU Digital Covid Certificate (EUDCC) minimum standards. Following a recent amendment to accept PDT certification from EU countries via the EUDCC, alongside the recognition of vaccine certification issued by certain countries and territories that have secured equivalency status with the EU DCC, this amendment ensures a more consistent approach in PDT and vaccine certificate recognition across EU countries and EU third party countries. Moreover, with the recent introduction of PDTs for all travellers, this change has become more urgent to ensure that people with PDT certificates that are deemed appropriate can be used for travel.
- 7.2 This instrument also corrects an anomaly that arose from amendment 21 of the International Travel and Operator Liability Regulations (ITOLRs). Specific groups of

eligible travellers who are unable to take a day 2 PCR test will no longer be automatically required to self-isolate for 14 days, provided that they are travelling with another person who is required to take a day 2 PCR test. Where this applies, the eligible traveller will be able to cease self-isolating when the person who has taken the day 2 PCR test receives their test result. This applies to children under the age of five who are not required to take a day 2 PCR test under the Regulations, and travellers unable to take a day two test by reason of a disability. The purpose of this correction is to ensure that the original policy intent is appropriately reflected due to interactions between self-isolation requirements and testing exemptions. If more than one person who is required to take a day 2 PCR test has travelled with an individual in either of these two groups, the child or person unable to take the test will be able to cease their period of self-isolation upon receipt of the first of the results. Where a child under the age of 5 has not travelled with a person who is required to undertake a day 2 PCR test, the child may take an optional day 2 PCR test and cease self-isolating in accordance with the results of that test.

- 7.3 This instrument will also introduce an offence and associated penalties for non-eligible travellers who have tested positive for coronavirus who knowingly providing false information in relation the duty in Schedule 8 of the Regulations to provide the details of each person living in their household. A similar offence is already present in the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, and applies to eligible travellers and the purpose of this change is to introduce a corresponding offence in the ITOLRs.
- 7.4 This instrument amends the Regulations for specific cohorts of eligible travellers who are subject to workforce testing regimes to ensure that they are able to benefit from the modified self-isolation requirements that they would be eligible for if arriving as a non-eligible traveller. This change is being made to ensure that the bespoke testing regime and modifications to the self-isolation requirements which existed prior to the insertion of regulation 3K in the Regulations apply to this cohort in the way that was intended.
- 7.5 This instrument makes a correction to the Regulations to ensure that the exemption for individuals transiting directly through England to a place outside the Common Travel Area from the requirement to book and take a post arrival test also applies to eligible travellers. This brings it in line with the original policy intent of the Regulations and the exemptions already in place for non-eligible travellers arriving from non-Red List countries, and individuals arriving from Red List countries.
- 7.6 This instrument also updates the list of sporting events set out in Schedule 5 to allow specific 'elite sportspeople' to attend a number of events commencing in January 2022. This will continue to allow a limited cohort of domestic and international elite sportspersons and their ancillaries (such as medical or technical support staff and trainers), who would otherwise be required to isolate, to facilitate and participate in these specified competitions. Compliance obligations on the exempt individuals which sit outside the Regulations will balance this opportunity for advancing sport and culture with effectively protecting public health.
- 7.7 The free issue procedure applies to this instrument. This takes into account the correction of oversight and errors identified in paragraphs 7.4 and 7.5 above. The instrument also corrects some minor drafting errors made in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 21) Regulations 2021.

***What will it do now?***

7.8 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 18th December 2021:

- Update the minimum standards requirement for notification of a negative pre-departure test (PDT) to accept a notification issued by an approved third country or territory which contains the name of the country or territory in which the test was carried out instead of the name and contact details of the test provider.
- Amend the requirement to self-isolate for all eligible travellers who are children under the age of 5, so that where they have travelled with a person who is required to take a day 2 PCR test, their period of self-isolation will end when that person receives the result of their day 2 PCR test. If more than one person who is required to take a day 2 PCR test has travelled with the child, the requirement for the child under the age of 5 to self-isolate will cease upon receipt of the first of the results. Where a child under the age of 5 has not travelled with a person who is required to undertake a day 2 PCR test, the child may take an optional day 2 PCR test and cease self-isolating in accordance with the result of that test.
- Amend the requirement to self-isolate for all eligible travellers who are unable to take a day 2 test by reason of disability, so that where they have travelled with a person who is required to take a day 2 PCR test, their period of self-isolation will end when that person receives the result of their day 2 PCR test. If more than one person who is required to take a day 2 PCR test has travelled with the individual unable to take the test, their requirement to self-isolate will cease upon receipt of the first of the results.
- Introduce an offence and associated penalties for knowingly providing false information in relation to the duty in paragraph 3(2A) of Schedule 8 to provide details of each person living in their household.
- Amend regulation 3K(1) so that eligible travellers who are subject to the workforce testing regime are exempt from the requirement to self-isolate under regulation 3K.
- Further amend regulation 3K, to enable those eligible travellers who would, if they were non-eligible travellers, benefit from modified self-isolation requirements in regulation 9, to benefit from those modifications to the requirement in regulation 3K.
- Update the exemption for individuals transiting directly through England to a place outside the Common Travel Area from the requirement to book and take a post-arrival test, so that it also applies to eligible travellers.
- Amend Schedule 5 of the Regulations to add sporting events which will take place from January 2022.
- Update the cross reference in paragraph 3 of Schedule 8 to include a cross reference to paragraph 3(2A).
- Remove obsolete cross-references to regulation 4B in the Health Protection (Notification) Regulations 2010.

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

7.9 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 MQS hotel package. The Regulations were updated on 4 October 2021 to centre 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.

- 7.10 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. Additionally, in line with the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 23) Regulations 2021 (S.I. 2021/1371), all individuals aged twelve and over are required to demonstrate evidence of a negative pre-departure test taken within two days of departure to England.
- 7.11 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.

## **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 Francesco Browne at the Department of Health and Social Care, Email: Francesco.browne@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 Lord Kamall, The Parliamentary Under-Secretary of State for Technology, Innovation and Life Sciences at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.