

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL)**  
**(ENGLAND) (AMENDMENT) (NO. 11) REGULATIONS 2021**

**2021 No. 442**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care 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) (England) Regulations 2020 (“the International Travel Regulations”) to introduce a new system of: (i) mandatory testing for international arrivals who are exempt from quarantine where they are travelling with a sectoral exemption, including a duty on employers to take reasonable steps to facilitate this testing; (ii) to amend the minimum standards for providers of international travel testing.
- 2.2 The measures are designed to reduce the public health risks posed by the spread from international travellers of acute severe respiratory syndrome coronavirus 2 (“SARS-CoV-2”) which causes the disease COVID-19, in particular with respect to the possibility of a variant of concern being imported to the UK.

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

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

- 3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the latest assessments of public health risk, the Government considers these measures as urgently necessary to protect public health and is acting accordingly to prevent the ingress from overseas of a variant of concern. Delaying the implementation of these measures could allow a variant of concern to spread.
- 3.2 This instrument was laid on 1<sup>st</sup> April and was published on [www.legislation.gov.uk](http://www.legislation.gov.uk) later that day. This instrument will come into force on 6 April 2021.
- 3.3 This instrument also amends the Health Protection (Notification) Regulations 2010.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**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 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

## **6. Legislative Context**

6.1 The legislative context is set out in paragraphs 6.2-6.21 of the Explanatory Memorandum to the International Travel Regulations (No. 9) published on [www.legislation.gov.uk](http://www.legislation.gov.uk).

6.2 Regulation 4 inserts a new application provision regulation 3AA. It sets out the application of the day 2 and day 8 testing regime outlined in regulation 3B and the bespoke workforce testing regime in regulation 3C. It also sets out the application of the offshore installation testing regime in regulation 3D.

6.3 Regulation 5 amends regulation 3B so that it allows for booking of a flexible testing package for the day 2 and day 8 tests depending on length of stay in England, so international arrivals not required to quarantine are required to book only the tests they are required to take for the length of their stay.

6.4 Regulation 6 inserts a new regulation 3C which applies to those required to take tests according to a bespoke regime, described in the Regulations as workforce tests. Individuals must take a test on or before day 2, between days 3 and 5 and between day 5 and 8 on the date specified in consecutive order. If any of the tests generate a positive result, they are required to take a confirmatory test and self-isolate for 10 days if the confirmatory test is positive, but not to complete the remaining tests in the regime. Additionally, where international arrivals are travelling continuously they will be required to take a test within each successive period of three days, or as soon as reasonably practicable during the time they are next in England. Those who cannot take the test because they have a reasonable excuse are required to take a replacement test as soon as reasonably practicable making sure they comply with requirements that apply to the workforce test that was missed. Where the traveller cannot or chooses not take a workplace test, they are required to self-isolate for 14 days or until they obtain a negative test result test.

6.5 Regulation 6 also inserts a new regulation 3D which applies to those working in offshore oil installations. An individual to which this provision applies, must take a test on or before day 2 of their arrival in England but before they depart of the offshore oil installation. They must then take a workforce test every 3 days whilst on the oil installation, with this requirement ceasing after the 10<sup>th</sup> day after the individual arrived in England. If a workforce test taken on the offshore installation generates a positive result, the individual is required to take a confirmatory test and isolate for 10 days if the confirmatory test is positive.

6.6 Regulation 7 amends regulation 4 of the International Travel Regulations to set out the places in which a road haulage worker may self-isolate. This will not apply to UK-based hauliers when not at work to ensure that cross-Channel freight is not deterred by quarantine requirements.

6.7 Regulations 8 and 9 introduce new offences and penalties and set out the list of reasonable excuses for non-compliance with the workforce testing requirement in regulation 3D of the International Travel Regulations.

- 6.8 Regulation 10 amends Schedule 2A to require providers of optional tests to take pre-payment for tests sold before issuing a test reference number. The amendments also prescribe the format for a test reference number to ensure this can be consistently checked.
- 6.9 Regulation 11 amends Schedule 2C, including to set out the consequences of failing to take a test for those who are exempt from the self-isolation provisions in the International Travel Regulations. Additionally, this instrument updates the minimum testing standards for privately provided tests set out at Schedule 2C to require that providers take pre-payment for tests sold before issuing the test reference number for the Passenger Locator Form to reduce the risk that international arrivals cancel test bookings.
- 6.10 Regulation 12 inserts a new Schedule 2D which makes further provision for workplace tests conducted in accordance with regulation 3D including the consequences of test results. Schedule 2D also imposes a duty on employers to take reasonable steps to facilitate the taking of workforce tests where they employ more than 50 employees (including agency workers they are responsible for), and their employees are required to complete testing after international travel following a bespoke testing regime.
- 6.11 This instrument amends the Health Protection (Notification) Regulations 2010 by imposing a new duty on diagnostic laboratories which are genomically sequencing test samples in regulation 4ZA. The new duty relates to the specimen numbers allocated to test samples.

## **7. Policy background**

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

- 7.1 Under the existing Managed Quarantine Scheme, some international arrivals have an exemption from quarantine where they are travelling for work deemed critical sectoral activity. These exempt individuals are still expected to comply with domestic COVID-19 restrictions after arrival.
- 7.2 As Variants of Concern continue to be identified in different countries, testing of these formerly exempt sectors is needed to minimise the public health risks posed by international arrivals. Testing is designed to identify cases of COVID-19 and limit onward transmission through critical exempt activity.
- 7.3 This instrument introduces a requirement for these critical sector workers to be tested. Some of these sectors are required to take as part in the general mandatory testing regime contained in the International Travel Regulations whilst other sectors are subject to bespoke workforce testing requirements. The introduction of the bespoke testing requirements also establishes a duty on their employers to take reasonable steps to facilitate testing.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 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 currently.

## **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](http://www.gov.uk) and this guidance will include information in relation to the new requirements for managed quarantine and mandatory testing.

## **12. Impact**

12.1 The impact of coronavirus on businesses, charities or voluntary bodies has been significant. The purpose of these Regulations is to manage the import of variants of concern, to protect the UK's vaccination programme and therefore reduce the ongoing impact of the virus on businesses, charities or voluntary bodies.

12.2 Bespoke testing regimes have been designed to be proportionate to the public health risk and the nature of critical exempt activity, using rapid lateral flow tests which can be accessed through a range of test delivery options, in the workplace, at testing sites and at home. However, they establish a duty on those travelling regularly for work with exemptions from quarantine to undertake testing, placing additional requirements on businesses and their employees.

12.3 These measures will be reviewed every 28 days and maintained only for as long as judged necessary in responding to the threat of coronavirus and overseas variants. Extensive support has already been introduced for industries affected by coronavirus.

12.4 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 International Travel Regulations, which this instrument amends, will cease to have effect on 8 June 2021 a Regulatory Impact Assessment is not required and would be disproportionate.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the managed quarantine requirement, there are exemptions for certain people and categories of person to maintain essential supply chains, critical national infrastructure or to contribute to essential government work. These Regulations establish a duty on employers with more than 50 employees where an employee is required to follow a bespoke testing regime to take reasonable steps to facilitate testing, limiting the effect of this duty on small businesses.

## **14. Monitoring & review**

14.1 A statutory review clause is included in the Regulations. The Secretary of State must review the need for the requirements imposed by the International Travel Regulations, which this instrument amends, at least every 28 days.

## **15. Contact**

- 15.1 Georgina Stockley at the Department of Health and Social Care Telephone: 07761328305 or email: [georgina.stockley@dhsc.gov.uk](mailto:georgina.stockley@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Vereker, Deputy Director at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Jo Churchill MP, Parliamentary Under Secretary of State (Minister for Prevention, Public Health and Primary Care) can confirm that this explanatory memorandum meets the required standard.