

Explanatory Memorandum to Tynwald Members

Issued by the Cabinet Office

To the President of Tynwald and the Hon Council and Keys in Tynwald assembled

1. Title of measure

Public Health Protection (Coronavirus) (Amendment) (No.16) Regulations 2021 [*SD No. 2021/0210*]

2. Changes in policy

These Regulations represent a continuation of the policy of protecting the people of the Island from COVID-19 whilst balancing the impact any restrictions have on society, the economy and the health and care systems.

3. Effects of the measure

These Regulations are made under the Public Health Act 1990 to further amend the Public Health Protection (Coronavirus) Regulations 2020 [SD2020/0551] ("the principal regulations").

The amendments made by these Regulations are as follows:

- Regulation 4 amends regulation 5 (interpretation) of the principal Regulations to amend existing, and insert new, definitions. In particular, the "2+2 vaccination exemption" is amended and definitions of "Category 1 country or territory", "Category 2 country or territory" and "Category 3 country or territory" by reference to those terms in the Health Protection (Coronavirus, International Travel and Operator Liability)(England) Regulations 2021 (S.I. 2021/582) as they have effect from time to time¹. In addition, the Council of Ministers may determine that a country or territory may be categories differently to in S.I. 2021/582. If that statutory instrument is revoked countries and territories are categorised as they were immediately prior to the revocation, and the Council of Ministers is able to maintain classifications thereafter through Directions.
- Regulation 5 amends and broadens regulation 5A ("2+2 vaccination exemption") of the principal Regulations to take account of the wider global approach to vaccinations, the full course of which may be administered other than in two doses and to cover clinical trial participants. All of which can be determined by Council of Ministers in consultation with Public Health.
- Regulation 6 amends regulation 5B (children travelling from the common travel area) of the principal Regulations to enlarge the areas of recognised embarkation from just the CTA to also include Category 1 and Category 2 countries and to exempt children under the age of 12 travelling to the Island from the testing and self-isolation regimes under principal Regulations.
- Regulations 7, 8 and 9 make minor technical amendments to regulation 9A (guidance and directions – Council of Ministers), 11 (prohibition on entry) and 12 (Category A persons) respectively of the principal Regulations. Regulation 9 also amends regulation 12 (Category A persons) of the principal Regulations to exempt

¹ Category 1 is also known as "green list", category 2 is also known as "amber list" and category 3 is also known as "red list".

children under the age of 12 who are Category A persons from the testing and self-isolation regimes under the principal Regulations.

- Regulation 10 amends regulation 13A (biological samples) of the principal Regulations to exempt Category A persons under the age of 18 from paying the £30 fee provided for in that regulation. This formalises the policy position already adopted.
- Regulation 11 amends regulation 14 (Category B persons) of the principal Regulations to provide that whilst such a person need not provide a biological sample, if they do so no fee is payable to the Chief Secretary in respect of it.
- Regulation 12 amends regulation 15 (“contract traced” Category B person) of the principal Regulations to provide that when such a person is under the age of 12 they do not have to self-isolate and also to confirm that the Director of Public Health may revoke or amend a direction notice.
- Regulation 13 amends regulation 16 (assessment) of the principal Regulations to enable the Director of Public Health to revoke or amend a direction notice.
- Regulation 14 amends regulation 18 (Category C persons) of the principal Regulations to provide that when such a person under the age of 12 they are not required to self-isolate, to provide that whilst such a person need not provide a biological sample, if they do so no fee is payable to the Chief Secretary in respect of it. Regulation 18 is also amended to confirm that the Director of Public Health can revoke or amend a direction notice.
- Regulation 15 amends Schedule 2 (self-isolation requirements and the provision of biological samples) to the principal Regulations to reflect the amendments made elsewhere by these Regulations and to provide that Category B persons who have been required to self-isolate may provide a biological sample (including when such samples may be provided and the consequences of doing so).
- Regulation 15 also amends the pathway for positive cases to remove the need for a day nine exit test, moving instead to a mandatory ten day isolation period, doubling the capacity of the testing facility for new diagnosis.
- A number of minor and consequential amendments are made to the principal regulations.

4. Reasons for the measure

The amendments by these Regulations represent a further element of the change from the policy of local elimination of COVID-19 to one of mitigation and living in a world with COVID-19.

Technical amendments. There are a number of minor amendments following on from comments during the debate at the June 2021 sitting of Tynwald including the formal removal of charges for all children under the age of 18 (Regulation 10) and the provision of an isolation only option for any children who choose not to be tested (Regulation 11);

Children Travellers. Regulations 7 – 10 deal with various aspects to ensure that Children under the age of 12 are exempt from testing and isolation when travelling. This is in line with the general consensus from the workshop with Tynwald Members. Although there were mixed views on the treatment of those aged 12-17, on balance for now, the Council of Ministers has determined that they should continue to be treated in line with the adult pathways for travel.

Vaccine Exemptions. Again in line with the general consensus from the Members' workshop, the Council of Ministers proposes (Regulation 5) changes to redefine "2+2" into a broader exemption which allows for the Council of Ministers, in consultation with the Director of Public Health, to produce a separate Direction defining a range of qualifying vaccines and vaccine trials. The number of doses and time intervals can also be varied in line with developments. Whilst the Council of Ministers considered whether to introduce additional exemptions for those unable to receive a full course, given the complexity surrounding this, it has been left unchanged for the present.

International Travel – UK Green List. The general consensus from the Members' workshop was to support UK Green List countries being made equivalent to the Common Travel Area for the purposes of travel into the Island and regulation 4 introduces for the first time a broader categorisation list – categories 1,2 and 3. This is based upon England's list and references the underlying England Regulations that publish the different classification of countries.

International Travel – UK Amber List– Although there were mixed views during the Members' workshop, the Council of Ministers determined that on balance those eligible to travel from UK Amber List countries should also be able to access the vaccine exemption route, akin to the UK policy. The Regulations will also importantly allow for the Council of Ministers to vary from time to time any country or territory, and move it from one category to another through a Direction, should the UK position be of concern.

Combined with a general provision under the vaccine exemption to remove countries from the list, this will give sufficient flexibility to the Council of Ministers to react if there is an area of concern. For example, the latest news that fully vaccinated travellers from France into the UK will still be required to isolate (due to the prevalence of the beta variant in France) could be a case to consider removing France from the Island's equivalent vaccine exemption route.

Contact Tracing, Testing & Isolation for Children – Although all close contacts are currently no longer required to isolate, this has been achieved by a change in policy from Public Health on the treatment of close contacts. To cater for the foreseeable future, the Regulations propose amendments to remove formally children under the age of 12 from isolation and testing when identified as close contacts, should the position for contact tracing and isolation be subsequently returned for the adult population.

Positive Case Testing – As cases have been growing, the burden on the end to end testing system is likely to be such that priority needs to be protected for symptomatic cases at the diagnostic stage. Council therefore determined that on balance, the day nine test could be removed from the face of the Regulations, provided the individual is no longer symptomatic. Removal of the day nine doubles the capacity for the testing service to diagnose positive cases and a voluntary programme including lateral flow devices is put in place as a proportionate alternative.

All other aspects on borders broadly remain unchanged, such as charges (in line with the consensus from the workshop) and the position on visitors (non-vaccinated remain excluded other than by exception). There is also flexibility built in for Council of Ministers, through Direction, to amend key aspects should the need arise.

5. Legal Powers or Legal Advice obtained

The Regulations are made by the Council of Ministers pursuant to powers to make Regulations under sections 51B, 51C and 51F of the Public Health Act 1990 for the following health protection purposes:

- a. preventing danger to public health from vessels or aircraft or any other mode of transport arriving at any place;
- b. preventing the spread of infection or contamination by means of any vessel, aircraft or other mode of transport leaving any place;
- c. for giving effect to any international agreement or arrangement relating to the spread of infection or contamination; and
- d. preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in the Island;

Prior to making the Regulations the Council of Ministers has consulted with the Department of Health and Social Care pursuant to section 51PA of the Public Health Act 1990.

6. Resource implications

Existing resources established as part of Government's response to COVID-19 will be maintained whilst these Regulations are in force to ensure the policy intent is delivered.

7. Tynwald procedure

Where Regulations are made in accordance with section 51Q(2)(a) of the Public Health Act 1990 they must not come into operation unless they are approved by Tynwald.