POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2021

SSI 2021/350

The above instrument was made in exercise of the powers conferred by sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008 ("the 2008 Act"). Section 122(5) of the 2008 Act states that regulations under section 94(1) are subject to the affirmative procedure. However, section 122(6) provides that the affirmative procedure will not apply if the Scottish Ministers consider that the regulations need to be made urgently. In such situations, section 122(7) applies.

Section 122(7) of the 2008 Act sets out that emergency regulations must be laid before the Scottish Parliament and cease to have effect on the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the emergency regulations have been approved by a resolution of the Parliament.

This instrument amends the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 to revise the travel system by removing green and amber lists. The level of restriction that applies to non-red arrivals will be determined by the individual's vaccination status.

The instrument also expands the list of countries from where a person vaccinated with an authorised vaccine may be an eligible vaccinated arrival and how they may provide proof of this. Changes are made to the passenger information requirements to fit with these changes and also to the associated operator liability provisions including information they need to provide to passengers. Changes are also made to the testing and isolation requirements. Amendments are made in relation to passengers on cruise ships to ensure the system works operationally.

Further, this instrument amends the sectoral exemptions, introduces new exemptions and updates the list of specified competitions relating to elite sports events.

Background

1. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (S.S.I. 2021/322) ("the International Travel Regulations") were made on 16 September 2021. They were laid in the Scottish Parliament on 16 September and came into force on 20 September 2021.

2. The International Travel Regulations revoked and replaced the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169), the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170) and Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20).

3. The International Travel Regulations were amended by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/328)) and the Health Protetction (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (S.S.I. 2021/343). Those amending regulations and the International Travel Regulations were made urgently in order to reduce the likelihood that an increase in coronavirus infections in Scotland would arise as a result of imported cases.

4. The amendments made by these Regulations come into force at 4 a.m. on 4 October 2021.

Policy Objectives

Amendments to country status

5. The aim of the instrument is to update Scotland's approach to international travel by removing the green and amber lists and instead operating a system for non-red list arrivals based on the individual's vaccination status. Requirements for travellers from red list countries are not amended by this instrument. The policy intention is to reduce changes in the system with countries moving between green and amber lists and instead to shift the system to vaccine status rather than country risk assessment as what defines the requirements on arrival into Scotland. The instrument makes these changes and consequential amendments as required.

6. Unvaccinated travellers or travellers vaccinated through a programme not recognised in the International Travel Regulations, who are not travelling from a red list country, will follow the level of restrictions that was previously applied to arrivals from Amber-list countries: that is a pre-departure test, 10 days self-isolation and mandatory PCR tests on days 2 and 8. This represents a significant increase in restrictions imposed on unvaccinated travellers from previously defined Green-list countries, and on travellers from Green-list countries who are vaccinated under an unrecognised vaccination programme. There is no change for unvaccinated travellers from Amber-list countries.

7. Eligible vaccinated travellers will not be required to take a pre-departure test, but will be required to take a day 2 PCR test, but not isolate or take a day 8 test.

Vaccines

8. In relation to COVID-19 vaccination policy, the aim of this instrument is to make a number of amendments to recognise the use of mixed dose vaccinations,. The meaning of eligible vaccinated arrivals is now extended to include people who have received doses of different vaccines in the UK or a relevant country or in the UK vaccine roll-out overseas. The policy aim of this is to further open up the international travel sector to a larger number of people.

9. The list of countries falling within the definition of relevant country has also been expanded by way of this instrument. Vaccines received in Australia and Canada and

approved by relevant regulators in those countries are added, as are vaccines authorised for use in the UK which have been received in Antigua and Barbuda, Bahrain, Barbados, Brunei, Dominica, Israel, Japan, Kuwait, Malaysia, New Zealand, Qatar, Saudi Arabia, Singapore, South Korea, Taiwan and the UAE.

Passenger information

10. In recognition of the changes made with regard to the removal of green and amber country designations, the requirement for passengers to update the Passenger Locator Form (PLF) has been amended. The obligation is now applicable to those subject to self-isolation requirements. This is aligned to the position in other parts of the United Kingdom and will provide consistency for passengers.

Testing and isolation – pre departure testing and post arrival testing

11. As stated above, changes have been made in terms of the testing requirements for vaccinated and unvaccinated passengers arriving into Scotland. For eligible vaccinated arrivals from non-red list countries they will no longer need to undertake a pre-departure test and provide a negative result. The policy objective of this is to reduce the cost for travellers and to facilitate international travel in a way which is consistent across the whole of the UK as far as possible.

12. This instrument also updates the requirements relating to the need to possess a testing package for the detection of coronavirus on arrival in Scotland and sets out which people are required to self-isolate should they fail to take a test, or as a consequence of a test result.

13. For those who are not eligible vaccinated arrivals, they must possess a testing package which includes a day 2 and a day 8 test. The testing package for eligible vaccinated arrivals is to be for a day 2 test. However there is an exemption from testing package requirements for short stay cruise ship passengers.

14. Similarly, the requirement for self-isolation at specified premises on arrival in Scotland will now apply to all arrivals (other than red list arrivals subject to managed isolation) unless they are eligible vaccinated arrivals or are exempt in another way. This previously did not apply to green list arrivals.

Cruises

15. In recognition of the unique operational requirements, including potentially long periods at sea, the regulations have been amended further to allow cruises to operate. This specifically means that passengers who don't disembark are not required to complete either the Passenger Locator Form (PLF) or a pre-departure test; for any passenger that does test positive, they can be returned to land; the requirement for day 2 testing for short-stay cruise passengers has been removed.

16. This allows for a defence, in certain circumstances, to the offence of failing to possess a notification of a negative coronavirus test upon arrival in Scotland, and to the offence on an operator of failing to ensure that a passenger is in possession of one, where a positive test was taken on a cruise ship or vessel. The policy intention

is to allow passengers to be landed into Scotland where there is no other reasonably practicable alternative.

17. For the purposes of these change a cruise ship has been defined as "a vessel, certified to carry more than 200 passengers, engaged on a voyage primarily for leisure or recreation during which passengers stay overnight on board for at least two nights".

Operator obligations and liabilities

18. Previously in Scotland, carriers have been required to ensure that passengers claiming to be eligible vaccinated arrivals were in possession of the evidence to support this. The changes made in this instrument now remove that obligation on carriers where a person has indicated on a Passenger Locator Form that they are an eligible vaccinated arrival and proof has been provided and verified on the Passenger Locator Form. The policy intention of this change is to reduce the burden on carriers while enabling passengers to provide the necessary information in a secure way.

19. Operators of international passenger services will also now be required to provide updated information to passengers before and during their journey. The updated information is specified within the changes made. The purpose of this is to ensure that passengers receive the most current and appropriate information ahead of their arrival into Scotland in relation to the public health measures they will need to abide by.

Sectoral exemptions

20. Sectoral exemptions for representatives at international events and conferences and Crown Servants and visiting forces have been amended. New exemptions have been introduced for foreign police officials, performing arts professionals and those engaged in film and TV production. The purpose of these exemptions is to allow professionals to undertake their work in the required way.

Sporting events

21. Additions are made to the list of specified competitions to include international boxing events overseen by the British Board of Boxing Control. This allows for elite sportspersons (as defined in the International Travel Regulations) to be exempted from requirements for managed isolation or self-isolation to participate in the specified events.

Consultation

22. This instrument is being made urgently in Scotland to make further amendments to the public health measures in respect of international arrivals to the UK.

23. Each of the four nations in the UK is required under their own relevant regulations to conduct regular reviews, and as those reviews are conducted there is the possibility of divergence from that initial four nations aligned approach, either on

the need for the International Travel Regulations themselves or for any of the measures imposed by those Regulations. Such policy divergence may include the Scottish Government, or any of the other three administrations in the UK, reaching a different view on any aspect of the regulations, reflecting differences in the prevalence of COVID-19 in that particular nation at any review point.

24. The continued pace of the work on this and changing circumstances both in Scotland and other countries has meant limited consultation with external stakeholders in Scotland, but there has been ongoing discussion and dialogue by Scottish Government with Police Scotland, Crown Office and Procurator Fiscal Service, Border Force in Scotland, Public Health Scotland and key airports in Scotland as the policy has continued to be shaped.

Impact Assessments

25. Impact assessments have been prepared and will be published on legislation.gov.uk in due course.

Scottish Government
COVID Co-ordination Directorate
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