POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2022

SSI 2022/53

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.

It removes provisions which were introduced for persons attending or facilitating the international climate summit known as "COP26" and the COP26 World Leaders Summit.

It expands and amends the lists of "relevant countries" and "approved third countries or territories" for the purposes of the eligible vaccinated arrival policy.

It updates the categories of arrivals who benefit from sectoral exemption status. It removes schedule 6 (specified competitions) in line with the removal of the exemptions for elite sportspersons.

It removes all testing requirements for eligible vaccinated arrivals and removes the requirement for arrivals that are not eligible vaccinated to take a day 8 test and self-isolate.

It amends the passenger information requirements so that operators need only provide information pre-departure and on-board the relevant service. It also updates the information which must be provided. Minor amendments are made to the operator liability offences. Minor changes are also made to the information to be provided by passengers on their Passenger Locator Form ("PLF").

Background

1. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI. 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. Since coming into force, the International Travel Regulations have been updated by various amending regulations. Both the International Travel Regulations and the amending 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. They also sought to ease restrictions at the earliest opportunity as appropriate.

4. The regulations will come into force from 0400 on Friday 11 February 2022 with the exception of changes to the information passengers are required to provide in the PLF, which will come into force at 0400 on 16 February 2022. Certain of the changes to the lists of "relevant countries" and "approved third countries or territories" for the purposes of the eligible vaccinated arrivals policy will come into force at 0400 on 28 February 2022.

Policy Objectives

5. The overarching policy aim of this instrument is to update Scotland's approach to international travel, removing or lessening restrictions where that approach is consistent with clinical evidence and advice, while balancing the need for continued public health measures to be applied where needed.

Removal of COP26 Arrangements and Exemptions

6. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2021 provided for specific arrangement for persons attending or facilitating the international climate summit known as "COP26" and the COP26 World Leaders Summit. These provisions are now being removed as they are no longer required.

Eligible Vaccinated Arrival Programme

7. This instrument adds to the list of approved third countries or territories as regards the proof of vaccination required for eligible vaccinated arrivals. In particular, it adds Cape Verde, El Salvador and Togo to the list of approved third countries or territories. This means that they are approved to provide proof of vaccination by a certificate of COVID-19 records. These changes come into force at 0400 on 11 February 2022. Further additions to the list of approved third countries or territories are: Georgia, Lebanon, Moldova, Montenegro, New Zealand, Serbia, Singapore, Taiwan, Thailand, Tunisia, United Arab Emirates and Uruguay. These countries are simultaneously removed from the list of relevant countries in Schedule 1A. Albania, Armenia and Israel are also being removed from the list in Schedule 1A as they are already on the list of approved third countries or territories. These changes come into force at 0400 on 28 February 2022.

8. This instrument also expands the list of "relevant countries" within Schedule 1A. This means that the competent health authorities of these countries may issue a vaccine certificate as proof of vaccination. The countries being added are: Algeria, China, Guatemala, Iran, Kazakhstan, Kyrgyzstan, Macau SAR, Mexico, Sao Tome and Principe, South Sudan, Timor-Leste, Tonga and Turkmenistan. These changes come into force at 0400 on 11 February 2022.

Sectoral Exemptions

9. Sectoral exemptions have been in place for a number of occupations since the international travel regime was introduced. This has enabled emergency or essential work to take place, and has exempted relevant individuals from certain measures in the international travel regulations, such as the requirement to complete the PLF, take tests, self-isolate or stay in Managed Quarantine upon arrival in the UK.

10. With the ongoing expansion of the eligible vaccinated arrival policy, the underlying principle and expectation has been that travellers should, in the vast majority of instances, now be eligible under the eligible vaccinated arrival definition and therefore benefit from fewer restrictions without needing to claim a sectoral exemption. Additionally, this instrument removes self-isolation requirements for both vaccinated and unvaccinated arrivals meaning that many redundant sectoral exemptions relating to isolation can now be removed.

11. Given the small number of individuals who are considered not eligible vaccinated, it has been considered proportionate to remove some other sectoral exemptions. These changes may result in small numbers of people now being required take tests they were previously exempt from under the travel regulations. This has been done to reflect the current stage of the pandemic and to only retain exemptions where there is a critical need to do so. Subsequently, other changes have been made to the regulations as a result, such as the removal of Schedule 6 along with the elite sport exemption.

12. There are cases where it has been deemed necessary to exempt individuals from the remaining travel restrictions. These sectoral exemptions have been retained and simplified in the regulations, in consultation with the other nations of the UK where appropriate.

Eligible Vaccinated Arrivals

13. This instrument provides that eligible vaccinated arrivals will no longer require to undertake a test on or before day 2 and provide a negative result. In line with the removal of all testing requirements for eligible vaccinated arrivals, the requirement to follow up a positive Lateral Flow Device (LFD) test result with a mandatory confirmatory PCR test is also removed.

14. This amendment is being implemented with a view to making travel to Scotland more accessible and affordable to eligible vaccinated non-red list travellers given that fully vaccinated individuals benefit from a reduced risk of transmission.

Adults travelling with children

15. This instrument amends the provision to provide that where an adult arrives with a child aged 11 or over with whom they are travelling or have responsibility, the adult is only required to possess a testing package for the child if the child is arriving from a red list country or territory.

Arrivals who are not eligible vaccinated arrivals

16. For arrivals who are not eligible vaccinated arrivals, this instrument removes the requirement for them to do a test on or before day 8. They still require to possess notification of a negative test result pre departure to Scotland, and to do a test on or before day 2 after arrival. However, they do not need to self-isolate until they obtain a negative result following arrival into Scotland.

Self-isolation

17. This instrument amends the provisions on self-isolation to provide that they do not apply to those arriving in Scotland unless they arrive from a red list country or territory and are certain persons who are exempt from the requirement for managed isolation.

Requirement to provide passengers with information

18. This instrument simplifies the requirements on operators as regards the information provided to passengers. In particular, it consolidates the three pre-departure stages into a single requirement which can be discharged by an operator by providing the required information (which is also being updated to reflect the changes in requirements) at least 24 hours prior to the scheduled departure of the service the passenger is travelling on. If passengers book to travel within 24 hours of departure operators should ensure that the required information is provided before departure. The on-board announcement is also updated to reflect changes in the requirements on passengers. Offences remain for operators who fail to comply with these requirements and they are remain triable either way offences. This means that, if prosecuted summarily the maximum fine is £20,000, and if prosecuted on indictment the maximum fine is unlimited.

Duties on operators

19. Minor changes are made to the offences which may be committed by operators of international passenger services under the regulations. Currently operators commit an offence where a passenger arrives in Scotland and the operator has failed to ensure the passenger has completed a PLF or possesses a negative pre-departure test result if required. As amended, the offence will only be committed where the operator has failed "to take all reasonable steps" to ensure these results, allowing the reasonableness of systems and processes put in place by the operator to be considered. These reflect changes across the other nations as regards operators liability provisions

and seek to ensure that the system is coherent across the four nations. The offences remain triable either way offences. This means if prosecuted summarily the maximum fine is £20,000 and if prosecuted on indictment the maximum fine is unlimited.

Transitional Provisions

20. This instrument makes transitional provision to the effect that a non-eligible vaccinated arrival who arrives before 0400 on 11 February 2022 does not require to self-isolate beyond the point at which they have taken their day 2 test. They will still require to take a day 8 test as per the requirements in place at their point of arrival in Scotland. Individuals who have not yet taken their day 2 test must complete the test. Individuals are also asked, as a matter of guidance, to self-isolate until the results of the day 2 test are received. Those receiving a positive or inconclusive result will be asked to follow the relevant domestic Scottish Government guidance.

Consultation

21. 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.

22. 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.

23. 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

24. Impact assessments will be published on Legislation.gov.uk.

Scottish Government
COVID Co-ordination Directorate
10 February 2022