POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL) (MANAGED ACCOMMODATION AND TESTING) (SCOTLAND) REGULATIONS 2021

SSI 2021/74

The above instrument is made in exercise of the powers conferred by sections 94(1)(b) and 122(2) of the Public Health etc. (Scotland) Act 2008 ("the 2008 Act") and paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 ("the 2020 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. Similarly, paragpah 6(1) of schedule 19 of the 2020 Act provides that regulations under paragraph 1(1) of schedule 19 are subject to the affirmative procedure. However, paragraph 6(1) provides that the affirmative procedure will not apply if the Scottish Ministers consider that the regulations need to be made urgently. In such situations, paragraph 6(3) of schedule 19 applies.

In accordance with the conditions in paragraph 2 of Schedule 19, these Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland. The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve.

Summary Box

This instrument makes further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 which impose requirements on international travellers, to reduce the public health risks posed by the spread of coronavirus (severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2) in Scotland which causes the coronavirus disease (COVID-19).

This instrument amends those Regulations to impose new requirements of:-

(i) Managed self-isolation – for all travellers, subject to exemptions, who arrive directly into Scotland from outside the Common Travel Area or from the Republic of Ireland having departed from or transited through an acute risk country. They require such travellers to enter Scotland at one of Aberdeen, Edinburgh or Glasgow Airports, or a military airfield or port and travel directly to managed accommodation using designated transport and to remain in that accommodation for a minimum 10 day period

(ii) Mandatory testing – for travellers, subject to exemptions, who have been outside the Common Travel Area in the 10 days prior to arrival in Scotland (requiring such persons to book, pay for and undertake two tests for the detection of coronavirus).

The amendments provide that it is an offence to contravene the requirement to stay in managed accommodation and undertake the prescribed tests, subject to certain defences.

Regulation 6(2) of the principal Regulations requires certain travellers to stay in specified premises (e.g. their home) on arrival into Scotland. The instrument makes amendments to provide that the requirements in regulation 6(2) will now apply to a person who arrives in Scotland from (i) the common travel area having departed from or transited through a non-exempt country and (ii) a non-exempt country (excluding an acute risk country) where the person has a specified exemption.

This instrument also amend regulation 7 and schedule 2 of the principal Regulations, to amend some of the categories of persons who are not required to comply with regulation 6(2). It amends regulation 7(2) so certain listed persons are exempt from the requirement in regulation 6(2) when the person is outside the specified premises where the person is staying in accordance with that regulation, in order to travel directly to or from any place where the person's presence is required for the purposes of their work or activity, and when the person is at that place.

This instrument also amends schedule 2 of the principal Regulations to remove exemptions pertaining to pharmacovigilance, multinational ancillary sportspersons, some other categories relating to elite sportspersons, and journalists. This instrument adds UEFA Youth League fixtures to schedule 3A (specified competitions) of the principal Regulations.

The instrument amends the Health Protection (Coronavirus) (Public Health Information for Passengers Travelling to Scotland) Regulations 2020 to update the information that operators are required to provide to passengers who arrive in Scotland.

The instrument also makes various amendments to the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 in consequence of the amendments made to the principal Regulations. These amendments require operators for passengers to Scotland from outside the common travel area to take reasonable steps to ensure that passengers to whom the new managed isolation requirement applies, arrives in Scotland only in accordance with those requirements.

Background

1. The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169) ("the principal Regulations") were made on 7 June and came into force on 8 June, 2020, and were laid in the Scottish Parliament on 8 June 2020.

2. This instrument makes further amendments to the principal Regulations to take into account periodic review of data on point prevalence and other data on coronavirus in other countries and territories. Owing to the risk posed to public health through importation of coronavirus variants, it introduces a regime of managed self-isolation for direct arrivals from outwith the common area or from the Republic of Ireland having departed or transited through an acute risk country within the last 10 days, including provision for testing (for all international travellers, subject to limited exemptions).

3. The principal Regulations were urgently implemented in order to reduce the likelihood that an increase in coronavirus infections in Scotland would arise as a result of imported cases. The Scottish Government amended the principal Regulations on 10 July to allow for territorial exemptions from the requirement to remain at specified premises for 10 days after the day of a person's arrival ("the quarantine requirement"). This requirement is being kept under constant

review with a view to ensuring that constraints can be minimised wherever appropriate and proportionate. There are currently no territorial exemptions in place.

Policy Objectives

Requirement to Stay in Specified Premises

4. The amendments made to the principal Regulations by this instrument amend regulation 6, the requirement for travellers to stay in specified premises (e.g. at home). Regulation 6(1)(b) is amended so that any person arriving in Scotland from elsewhere within the common travel area and who has within the preceding 10 days departed from or transited through a non-exempt country or territory is required to stay in specified premises in accordance with regulation 6(2), unless exempt.

5. The requirement in Scotland to stay in managed accommodation (below) is broader than elsewhere in the United Kingdom where the requirement applies to persons travelling from designated acute risk countries and territories only. This means that in most cases travellers from outside the common travel area who arrive in Scotland indirectly, having transited through the common travel area en route to Scotland, must isolate in specified premises and further limits the risk of importation of coronavirus cases.

6. This instrument adds a requirement for passengers arriving in Scotland directly from outside the common travel area, or from the Republic of Ireland having departed from or transited through an acute risk country, to possess managed self-isolation packages. The ports of entry to Scotland are restricted to Aberdeen Airport, Edinburgh Airport and Glasgow Airport or a military airfield or port including in emergencies. This is where the self-isolation packages are available and, as such, these are the only locations where entry is permitted. A person can satisfy this requirement by obtaining the self-isolation package before, or immediately upon, arrival in Scotland.

7. This managed self-isolation package is a booking for a place in accommodation designated by the Scottish Ministers for the purposes of these Regulations, for travel to that designated accommodation and a booking for the tests required by regulation 5D of the principal Regulations.

8. This amendment places a duty on persons responsible for children aged 11 or over travelling into Scotland to ensure that the child complies with the requirement to possess a managed self-isolation package.

9. Scottish Ministers, or a person designated by Scottish Ministers, may impose a charge for this managed self-isolation package, as published by the Scottish Ministers and may recover any sum owed as a debt. Applying a cost assists public health aims as a disincentive to international travel, reducing the risk of importation of coronavirus cases.

10. The requirement to stay in managed isolation reduces the risk of importation of new variants of the coronavirus and ensures arrivals into Scotland fulfil the requirement to isolate upon arrival.

11. A person arriving in Scotland must immediately, or after obtaining the managed self-isolation package, travel directly to the accommodation designated in the package using the

means of transport designated in the packaged, subject to certain defences. The place the person must stay is their designated room in their designated accommodation, or the connected room of their travelling companion. Persons are not allowed to use communal areas except to move to the place where they are staying.

12. If the person is a child, then the person with responsibility for that child must ensure that the child complies with this requirement so far as is reasonably practicable. A person may also reside with another person residing in the designated accommodation to provide that person with assistance if required owing to that person being a child or due to a disability. The requirements of this regulation apply to the person providing assistance.

13. The instrument provides that a person may appeal to the sheriff or summary sheriff against the requirement to possess a managed self-isolation package or to remain in the accommodation specified in their managed self-isolation package. The instrument also provides scope to modify the application of regulations 6A and 6B for relevant persons as defined in regulation 6D.

14. The instrument also provides for enforcement of regulation 6B, the requirement for certain travellers to stay in managed accommodation. A constable may direct a person to return to the managed accommodation, remove a person to the managed accommodation or remove them to a hotel or other accommodation facilitated by the Secretary of State. Where a child is outside of the managed accommodation accompanied by an individual with responsibility for the child, the constable may direct that person to take the child to the managed accommodation and the responsible individual must ensure, so far as reasonably practicable, that the child complies with the direction given by the constable.

15. A person authorised by the Scottish Ministers, may give direction to a person to whom regulation 6B(2) applies ensure that they comply with that regulation. The authorised person may give direction that they remain in a particular area of a port to await transport to the designated accommodation; moves to a place to board the transport; boards the transport; and remains in or returns to the designated accommodation.

16. This instrument amends the offences and penalties in regulation 9 of the principal Regulations. It is made an offence to contravene the requirement to travel to and not leave the designated managed accommodation, and the requirement placed on a person who has responsibility for a child required to comply with 6B(2) to ensure that the child complies with the requirement so far as is reasonably practicable. This offence is punishable by fixed penalty notice of £480 or by summary prosecution where maximum fine of level 5 on summary scale can be imposed.

17. It is a defence for a person to show that they are outside of the place where they are staying in accordance with regulation 6B(2) if they are outside: to travel in order to leave the common travel area provided that they do so directly; to fulfil a legal obligation; in other exceptional circumstances including to seek urgent medical assistance, to access critical public services, to avoid injury or illness or to access urgently required veterinary services. Additionally, if a person is granted the relevant permission, it is a defence for the person to show they are outside of the place where they are staying: on compassionate grounds to attend a funeral or for reasons relating to the end of a person's life; for exercise; with permission from a person authorised by the Scottish Ministers to grant permission.

18. This instrument amends the passenger information required as contained in schedule 1 of the principal Regulations. It requires that persons required to comply with regulation 6B(2) enter the address where they intend to stay in accordance with regulation 6B(2), the booking reference number for the managed self-isolation package and the name of the provider and reference number for the tests provided to them, in accordance with regulation 5C.

Exemptions to the Requirement to Stay in Specified Premises

19. Regulation 7(2) is amended so that certain persons may leave their specified premises to travel directly to and from a place where their presence is required for the purposes of their work or activity (as the case may be). This condition already applies for some persons who are exempted from the requirements of regulation 6(2), and this amendment extends this to some further persons. Those persons include civil aviation inspectors and specialist workers engaged in certain essential or emergency works, workers from specified industries including offshore workers, certain persons travelling for healthcare, and certain medical and clinical roles.

20. This instrument adds exemptions to the requirements to possess a managed self-isolation package and to stay in managed accommodation. Those persons who are required to comply with regulation 6(2) by virtue of regulation 6(1) are exempt. Those travelling on sectoral exemptions from non-exempt countries but not acute risk countries are therefore exempt. These persons may be required to carry out essential activities anywhere in Scotland and the requirement to stay in designated managed accommodation, near Aberdeen Airport, Edinburgh Airport or Glasgow Airport, would not be reasonable and would unduly hinder these activities. As described above, persons arriving in Scotland from within the common travel area are also exempt.

21. Persons on diplomatic, defence and government business, including members of diplomatic missions; members of consular posts; officers, servants, and employees of international organisations; and representatives of a foreign country are exempted from the requirements of regulation 6A and 6B where they have departed from, or transited through, an acute risk country or territory at any time in the period beginning with the 10th day before their arrival in Scotland. The exemption also applies to persons including Crown servants and government contractors carrying out essential work, and those undertaking work necessary for delivery of essential defence activities. This formalises the status of diplomats as exempt from the requirements of the principal Regulations, and allows for the carrying out of overseas missions by defence personnel and other limited essential governmental activities.

22. The instrument provides some further exemptions from regulation 7(2), for some persons who are engaged in some other types of government business, policing, prisoner transfer or extradition activities.

23. This instrument amends schedule 2 of the principal Regulations to remove the exemption for appropriately qualified persons who are responsible for pharmacovigilance. This work can be conducted remotely in many instances, and removal of this exemption reinforces that travel should be for essential purposes only. This aligns with the UK Government position.

24. This instrument removes the exemption for journalists who have travelled to the UK in the course of their work. The prevalence of new variants of SARS-CoV-2, such as the South African variant, pose an increased risk to public health and the work journalists undertake may include travel within and between communities at a level above that of other professions within

the schedule 2 exemptions. Therefore, owing to the risk to public health that this travel involves, the exemption is removed.

25. This instrument removes the exemption which relates to "multinational ancillary sportspersons", certain persons who provide medical or technical support to sportspersons or bodies. This aligns with changes made by UK Government.

26. The instrument amends the definition of a "domestic elite sportsperson" in schedule 2 to remove the exemption in respect of travel to or through a non-exempt country or territory in order to train for an elite sporting event, unless that training is for qualification for the Tokyo or Beijing Olympic or Paralympic Games. This ensures that Olympic and Paralympic prospects can continue to access overseas training, but limits the exemption in relation to other sportspersons and teams not involved in international competition.

27. The instrument removes from schedule 2 the exemption at paragraph 38A, pertaining to elite sportspersons and persons accompanying them who travel to the UK to help a business determine whether to enter into a contract with that person, or elite sportspersons who have entered into a contract with a business in Scotland to compete in elite sports events on behalf of that business. This provision was added to facilitate January transfer windows in sports, and is no longer required.

Testing Following Arrival in Scotland

28. This instrument introduces a requirement for testing following arrival in Scotland. The requirements apply to persons to whom regulation 6(2) (requirement to stay in specified premises) or 6B(2) (requirement to stay in managed accommodation) apply. Certain persons are exempt for the requirements including diplomatic personnel and some persons carrying out essential works. Mandatory testing further increases surveillance of travellers and reduces the risk posed to public health through importation of coronavirus cases as positive persons will be required to isolate for 10 days from their positive test result.

29. A person to whom this requirement applies must possess, on their arrival in Scotland, a testing package for themselves and for any child aged 11 or over with whom they are travelling and for whom they have responsibility. A testing package is a booking for a day 2 and a day 8 test which complies with the requirements at regulation 5F(7) which will be inserted into the principal Regulations. When a person or a child for whom they have responsibility for arrives in Scotland without possessing a testing package as required, they must obtain such a package as soon as is practicable. If requested by an immigration officer, a person who possesses a testing package must provide evidence of it.

30. A person booking the testing package is obliged to provide the testing provider with certain information, including that the person is required to undertake the test under the principal Regulations. The required information includes their full name, sex and other information relating to their travel. The required information also includes the person's home address and the address at which they intend to stay in accordance with regulation 6, if different from their home address, or the address of their designated accommodation for the purposes of regulation 6A.

31. Where the person to whom this information requirement applies is a child or a person with a disability who is unable for that reason to provide the notification and information,

another person is to provide the information on their behalf. This person may provide their own telephone number and email address to the test provider.

32. The provider is required to give a test reference number to a person booking the test at the time of booking, and to provide it to a person making a booking on a child or person with a disability's behalf.

33. This instrument adds a requirement to undertake tests to the principal Regulations. A person required to undertake tests, by virtue of regulation 5C(1), is required to undertake tests no later than the end of the second day after which they arrived in Scotland and a second test no earlier than the end of the seventh day after the day on which they arrived in Scotland. This specified testing regime provides that any persons incubating the coronavirus are likely to test positive in this timeframe. Where the person required to undertake testing is a child, a person with responsibility for them must, so far as is reasonably practicable, ensure they undertake the tests. If a person's day 2 test generates a positive result, they are not required to undertake a day 8 test.

34. Where a person does not undertake a test by reason of a reasonable excuse, they must undertake a replacement test as soon as practicable. Reasonable excuses include a requirement for urgent medical treatment meaning that taking a test was not reasonably practicable, it was not practicable to provide a test owing to disability, a person's test was cancelled for reasons beyond their control or the person left Scotland or the common travel area.

35. The tests undertaken must be provided by a public provider and must be a semi-quantitative test for the detection of coronavirus which targets a minimum of two distinguishable SARS-CoV-2 genes other than the S gene and performance reference controls.

36. This instrument provides that where a person fails to undertake a test in accordance with regulation 5F, there is a requirement for that person to continue to self-isolate (either in specified premises or designated accommodation as the case may be) until the end of the 14th day after the day on which they arrived in Scotland. This extends the default minimum 10 day isolation period. This provision reduces the risk to public health, owing to the incubation period of the SARS-CoV-2 virus.

37. In general, where a test taken by a person as required by regulation 5D generates a positive result, the person must continue to self-isolate in the specified premises or designated accommodation until the end of the tenth day since they took the test. In such a case, the defences in regulation 9(6)(a) or, as the case may be, regulation 9(7)(a) of leaving specified premises or designated accommodation to travel in order to leave Scotland will not be available.

38. This instrument provides that the Scottish Ministers, or a person designated by the Scottish Ministers, may impose a charge in respect of a testing package provided in accordance with regulation 5E. There is a requirement to publish this charge and Scottish Ministers may recover any sum owed by a person pursuant to such a charge as a debt. Applying a cost disincentives international travel, thereby reducing the risk of importation of coronavirus cases.

39. This instrument provides that it is an offence to contravene, without reasonable excuse, the requirement to possess a testing package as required by regulation 5D, or to fail to produce evidence of the test package as requested by an immigration officer, subject to a fine of £480

by fixed penalty notice. Reasonable excuses include a requirement for urgent medical treatment meaning that booking a test was not reasonably practicable, it was not practicable to book or provide a test owing to disability, or a person began their journey to Scotland in a country in which they did not have access to the facilities or services to book a test.

40. It is an offence to contravene the requirements to provide certain information as required by regulation 5E(1) and (2).

41. Finally, it is an offence to contravene, without reasonable excuse, the requirement to undertake the tests in accordance with regulation 5F. Reasonable excuses include that it was not possible for a person to undertake a test due to a disability, a person required urgent medical treatment meaning undertaking a test was not reasonably practicable, that a test was cancelled for reasons beyond the person's control and that the person left Scotland or the common travel area.

Operator Liability and Public Health Information for Passengers

42. The Health Protection (Coronavirus) (Public Health Information for Passengers Travelling to Scotland) Regulations 2020 ("Passenger Information Regulations") and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 ("Operator Liability Regulations") require the operators of commercial transport services to: (a) provide information on public health measures to passengers; and (b) ensure that passengers have complied with the requirements to possess a negative test result and provide information.

43. This instrument amends the Passenger Information Regulations to introduce further information to be provided by operators to passengers regarding managed self-isolation and mandatory tesing. The Operator Liability Regulations are amended to (i) introduce an obligation on the operators of transport services to deliver passengers subject to managed self-isolation only to a port on the list of designated ports; and (ii) require the operators of commercial transport servces to included, in their Passenger Locator Form, booking information for the mandatory tests and, if relevant, managed self-isolation. It adds offences for failure to comply with these requirements. These offences are triable either on summary complaint (maximum penalty £10,000) or on indictment (unlimited fine).

Other

44. Regulation 13 of the principal Regulations is amended to allow for the disclosure of relevant information by the defined persons in relation to the managed self-isolation and testing requirements.

45. Schedule 3A is amended to include UEFA Youth League fixtures. Teams participating in the competition are required to adhere to UEFA's Return to Play protocols and will be subject to the same testing regime as sportspersons involved in the UEFA Champions League, already included in schedule 3A.

Consultation

46. This instrument is being made urgently to make further amendments to the public health measures in respect of international arrivals to the UK that were brought in on a UK-wide basis

from 8 June 2020. The purpose of the principal Regulations is, as above, to help prevent further spread of the coronavirus. Each of the four nations is required under their own Regulations to conduct regular reviews, and as those reviews are conducted there is the possibility of divergence from that initial four nation aligned approach, either on the need for the Regulations themselves or for any of the measures imposed by those Regulations.

49. This instrument makes further amendments to the principal Regulations to take into account the outcome of a review of sectoral exemptions contained within those Regulations introduces a regime of managed self-isolation for arrivals from out with the common travel area, including provision for testing. 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, COPFS, Border Force in Scotland, Public Health Scotland and key airports in Scotland as the policy has continued to be shaped.

Impact Assessments

50. Impact assessments will be made available on the Scottish Government website. The Regulations will be kept under review, which may lead to further amendments to the principal Regulations and the measures in these Regulations.

Scottish Government
COVID-19 Public Health Directorate
14 February 2021