POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL, PUBLIC HEALTH INFORMATION AND PRE-DEPARTURE TESTING) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/34

The above instrument was made in exercise of the powers conferred by sections 94(1)(b)(i) and 122(2)(b) 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.

Summary Box

This instrument makes a further amendment to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169, "the principal Regulations"), 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). It also amends the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170, "the Passenger Information Regulations") and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20, "the Pre-Departure Testing Regulations").

This instrument amends the principal Regulations to add Democratic Republic of the Congo and Tanzania to the "acute risk countries or territories" contained in schedule A2. Persons who have departed from or transited through the countries and territories or parts thereof within schedule A2 and members of their household are required to stay in specified premises and no exemptions to the quarantine requirement or the requirement to complete the Passenger Locator Form are available.

This instrument also reduces the amount of passenger information that people travelling to Scotland are required to provide on the Passenger Locator Form as required by regulation 3 of the principal Regulations and it amends the definition of aircraft crew in schedule 2 of the principal Regulations.

The Passenger Information Regulations are amended by this instrument so that the information operators are required to provide to passengers includes information about the requirement, under regulation 5A of the principal Regulations, to possess notification of a negative coronavirus test result. The Passenger Information Regulations are also amended so that the offences contained in those regulations may be triable either summarily or on indictment, for consistency with similar provisions in the Pre-Departure Testing Regulations.

Regulation 4 of this instrument amends Part 2 of the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test

result is from a "qualifying test", but are instead required only to check that passengers possess a notification of a coronavirus test which includes specified information.

Background

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

2. This instrument makes a further amendment 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.

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 their arrival ("the quarantine requirement"). However, this requirement is being kept under constant review with a view to ensuring that constraints can be minimised wherever appropriate and proportionate.

Policy Objectives

4. The amendments made to the principal Regulations by this instrument add Democratic Republic of the Congo and Tanzania to the "acute risk countries and territories" in schedule A2. Persons and members of the household of a person who have departed from or transited through countries and territories or parts thereof which are an "acute risk country or territory" in schedule A2 are required to stay in specified premises, and sector-specific exemptions to that requirement, as well as exemptions to the requirement to complete the Passenger Locator Form, do not apply. These countries have been identified as being at risk of community transmission of the South African variant (VOC202012/02). Both countries share a land border with Zambia where the epidemiological position has significantly worsened and the South African variant is present. Tanzania borders with Malawi and Mozambique which are already included in schedule A2.

5. Studies of the South African variant, have found that it poses a significant re-infection risk owing to a mutation which is largely resistant to neutralising antibodies elicited by infection with previously circulating lineages. This also presents a risk to vaccine efficacy.

6. The list in schedule A2 of the principal regulations will be subject to on-going review and further countries will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.

7. This instrument amends the principal Regulations to reduce the amount of passenger information that people travelling to Scotland are required to provide on the Passenger Locator Form as required by regulation 3 of the principal Regulations. It removes the requirement to enter: the name of the organised travel group with whom they are travelling; whether they are providing passenger information on behalf of another person; and details of an emergency contact.

8. This instrument amends the principal Regulations to substitute a more detailed definition for aircraft crew at paragraph 4E of schedule 2, replacing the definition from paragraph 1 of schedule 1 of the Air Navigation Order 2016. It makes it clear that technical crew who carry out critical functions on flights, and crew who are positioning or commuting for the purposes of their work or attending work-related training in or outside the United Kingdom are explicitly exempt from the requirement to comply with regulations 3 and 6 of the principal Regulations.

9. The Passenger Information Regulations are amended by this instrument so that the information operators are required to provide to passengers includes information about the requirement, under regulation 5A of the principal Regulations, to possess notification of a negative coronavirus test result. The Passenger Information Regulations are also amended so that the offences contained in those regulations may be triable either summarily or on indictment, for consistency with similar provisions in the Pre-Departure Testing Regulations.

10. Regulation 4 amends Part 2 of the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test result is from a "qualifying test", but are instead required only to check that passengers possess a notification of a coronavirus test which includes specified information. This information is: (a) the name of the person from whom the test sample was taken, (b) the person's date of birth or age, (c) the negative result of that test, (d) the date the test sample was collected or received by the test provider, (e) the name of the test provider and information sufficient to contact that provider, (f) the name of the device that was used for the test. It removes the requirement on operators to ensure that the test meets the sensitivity and specificity requirements in schedule 2A of the principal Regulations.

11. This instrument also makes a make a minor clarification to the requirement to provide a negative coronavirus test result as it applies to the responsible adult travelling with a child aged over 11 under regulation 5A of the principal Regulations, and a minor amendment to regulation 7 of the principal Regulations in consequence of the deletion of paragraphs 39, 40 and 42 of schedule 2 by S.S.I. 2021/21.

Consultation

12. This instrument is being made urgently in Scotland to make a further amendment 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 and the spread of the Brazilian variant. 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. Such policy divergence may include the Scottish Government, or any of the other three administrations in the UK, reaching a different view on exempt countries and territories or parts thereof under the Regulations, reflecting differences in the prevalence of COVID-19 in that particular nation at any review point.

13. This instrument makes a further amendment to the principal Regulations to take into account the outcome of a review of those regulations. 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 on implementation of the policy in Scotland has continued to be shaped.

Impact Assessments

14. No further impact assessments have been undertaken.

Scottish Government
COVID-19 Public Health Directorate
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