POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (REQUIREMENTS) (SCOTLAND) AMENDMENT (NO. 4) REGULATIONS 2021

SSI 2021/453

The above instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 ("the Act"). The instrument is subject to the affirmative procedure by virtue of paragraph 6(1) of schedule 19 of the Act.

These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the 'Principal Regulations') to provide that a negative test for Covid-19 is an alternative to vaccination for the purposes of permitted attendance at certain premises.

Legislative background

1. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March 2020) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. From 14 September 2020 they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 ("the Local Levels Regulations") came into force and revoked the previous regulations. On 9 August 2021 the Principal Regulations came into force which revoked the Local Levels Regulations and introduced a new approach to tackling coronavirus. The requirement to ensure that persons are fully vaccinated, or exempt, when in certain places was introduced by the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) (Scotland) Regulations 2021, which came into force on 1st October 2021.

Policy Objectives - Implement a system of mandatory COVID-19 certification

2. In line with our strategic intent to 'suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future', the policy objectives of Covid-19 StatusCertification are to:

- **Reduce the risk of transmission of Coronavirus**
  The scheme contributes to this aim by ensuring that specified indoor public spaces where transmission risks are higher are used only by those who are vaccinated, or have a negative test within the previous 24 hours (or are exempt). Vaccination or a negative test within the previous 24 hours reduces the risk of being infected, the risk of serious illness and death if infected, and the risk of infecting others;

- **Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service**
  The scheme contributes to this aim by reducing transmission in specified settings where transmission risks are higher;

- **Reduce the risk of settings specified in the scheme being required to operate under more restrictive protections, or to close**
  The scheme contributes to this aim by ensuring that the risk of transmission in these settings is reduced

- **Increase the protection enjoyed by those using settings covered by the scheme and their contacts.**
  The scheme contributes to this aim by incentivising those using the settings to get vaccinated and/or to test regularly and self-isolate if positive. This reduces the risk of community transmission in all settings frequented by these people, and protects those that they come into contact with in all settings.

3. These Regulations amend the COVID-19 status certification scheme ("the scheme"). These Regulations amend the scheme's requirements for late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement. The Regulations amend those requirements to provide that a negative test for coronavirus within the previous 24 hours is an alternative to being fully vaccinated against coronavirus or exempt from that requirement. The Regulations also make a number of consequential amendments to the provisions for medical exemptions and data protection. In addition, the Regulations provide additional clarity that protests and demonstrations are exempt from the scheme and clarify powers in relation to the inspection of compliance plans.

4. One of the scheme's objectives when it was first introduced was to increase vaccine uptake. Scottish Ministers' judgement at the time the scheme was introduced was that it was not appropriate at that time to include a negative test as an alternative to vaccination, but that this would be kept under review. Vaccine uptake has since increased and Scotland's vaccination rates, including for boosters, are currently the highest in the UK.. Scottish Ministers now consider it proportionate to amend the scheme to include negative test results. The inclusion of negative tests for coronavirus as an alternative to vaccination will help support our strategic objective by incentivising those using the settings covered by the scheme to test regularly and to get a PCR test and self isolate if this is positive. The inclusion of testing will enable those not vaccinated or exempt to use premises covered by the scheme without compromising safely. This reduces the risk of community transmission in all settings frequented by these people, and protects those that they come into contact with in all settings.

5. The inclusion of negative tests will also provide those who are not able to show that they are fully vaccinated with an alternative means of gaining entry. The means that people currently excluded from the scheme – such as those who have been vaccinated in other countries with a vaccine that is not recognised by the scheme or people who have received a second dose within the last 14 days – can now gain entry if they provide a record of a negative test.

Parliamentary Consideration

7. Scottish Government published Coronavirus (Covid-19) Proposals for a mandatory vaccination scheme on 9 September 2021. The paper was lodged in the Scottish Parliament Information Centre , on 8 September. On 9 September, Parliament debated and approved motion S6M-01123, the text of which is set out below:

That the Parliament commends the extraordinary effort of vaccination teams throughout Scotland, which means that, as of 6 September 2021, 84% of eligible over 18-year-olds were double-vaccinated against COVID-19; recognises that case numbers remain stubbornly high and that action is needed from all sectors to ensure that baseline COVID measures are rigorously implemented; acknowledges that a number of other countries have introduced COVID certification schemes and that the UK Government has plans to introduce a vaccine certification scheme in England; believes that, in line with the Scottish Government's strategic intent, a COVID Vaccine Certification scheme can provide a targeted means to maximise Scotland's ability to keep certain higher risk settings open, while reducing the impact of transmission and encouraging the remaining sections of the population to get vaccinated; supports the implementation of a COVID Vaccine Certification scheme; agrees that the scheme will apply to nightclubs, sexual entertainment venues, indoor unseated live events with 500 or more attendees, outdoor unseated live events with 4,000 or more attendees and all events with 10,000 or more attendees; notes that measures are being taken to ensure digital inclusivity and to ensure that disabled people are not disproportionately impacted, and agrees that this scheme will be kept under regular review.

8. On 23 September 2021, Scottish Government published Coronavirus (Covid-19) Vaccine certification update, which set out more details about the scheme. On 29 September 2021, Scottish Government published Coronavirus (COVID-19) Vaccine certification: evidence paper which summarised the range of evidence available on vaccination certification schemes; drawn from clinical and scientific literature, public opinion and international experience. On 19 November 2021, Scottish Government published Coronavirus (COVID-19) vaccine certification: evidence paper update,

Consultation and impact assessment

10. Scottish Government Ministers and officials have undertaken engagement with equality, human rights and children's rights stakeholders and a wide range of business sector representatives from a range of specialisms, including events, music, sport, and the night-time economy, as well as trade unions and the legal profession in developing this scheme.

11. The diverse feedback received has informed the development of the scheme and the Equality Impact Assessment, Childrens' Rights and Wellbeing Impact Assessment and Business and Regulatory Impact Assessment that are published alongside these Regulations. A Data and Privacy Impact Assessment ("DPIA") has been prepared for these Regulations and will be published on the Scottish Government website.

Implementation

14. Detailed operational guidance is being developed in consultation with business sector representatives and will be published in draft week beginning 29 November 2021. The

Regulations will come into force at 5.00 a.m. on 6 December 2021, so they will first apply to late night venues on the evening of that day.

Review

17. The Principal Regulations require Scottish Ministers to review the requirements imposed by those regulations at least once every 21 days. Scottish Ministers will also continue to assess whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned.

Requirements in the regulations

18. The Principal Regulations provide that persons responsible for late night premises or premises where a relevant event is taking place are required to operate a reasonable system for checking that persons on, or seeking to enter, their premises. These Regulations provide, in respect of that requirement, that a person wishing to enter the premises can demonstrate a negative test for coronavirus as an alternative to being fully vaccinated against coronavirus or otherwise exempt. The Regulations make consequential amendments to ensure that information about testing is treated as confidential

19. These Regulations also make amendments to the Principal Regulations to provide additional clarification in the following areas: to clarify that a gathering of individuals engaged in a protest or demonstration is an exempt event, that the 'relevant person' for the purposes of the certification scheme is a person designated by a local authority and that the relevant person may inspect and copy a compliance plan.

Scottish Government
Directorate for Covid Coordination
November 2021