

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) REGULATIONS 2021

SSI 2021/322

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”) 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, paragraph 6(1) of schedule 19 of the 2020 Act provides that regulations under paragraph 1(1) of schedule 19 are subject to affirmative procedure. 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.

Section 122(7) of the 2008 Act and paragraph 6(3) of schedule 19 set 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.

These Regulations consolidate, with amendments, the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020, and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021.

Background

1. The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169) (“the International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170) (“the Information Regulations”) were made on 7 June 2020. They were laid in the Scottish Parliament and came into force on 8 June 2020.
2. The Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20) (“the Operator Liability Regulations”) were made on 14 January 2021. They were laid in the Scottish Parliament on 15 January with provisions coming into force on that date and also on 1 February 2021.
3. Since coming into force, all of these sets of regulations (“the existing International Travel Regulations”) have been amended extensively. They expire on 20 September 2021.

4. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (“the Consolidation Regulations”) revoke and replace the existing regulations from 20 September 2021.
5. The existing 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.
6. These measures remain necessary for public health protection. As required under existing International Travel Regulations, the Scottish Ministers must review the need for the requirements imposed by the Consolidation Regulations at least once every 28 days to ensure that they remain necessary and proportionate. For continuity their coming into force date is the same as the expiry of the previous regulations. In this case it is necessary to use the made affirmative procedure to ensure the continuation of these measures, which Scottish Ministers consider to be needed and are proportionate to what they seek to achieve.
7. A number of structural and drafting changes have been made to the current three sets of Regulations. The intention behind these changes is to improve the readability and intelligibility of the regulations. Given the regularly with which the existing International Travel Regulations have required to be amended to react to the need to impose restrictions, or to lift restrictions as soon as practicable, the Scottish Ministers consider that these Regulations need to be made urgently, taking into account the need for the regulations and the unavoidable logistical difficulties and risk of laying Regulations in draft form which will require further amendment before they have been made.

Policy Objectives

8. The policy intention behind this instrument is primarily to consolidate the existing International Travel Regulations contained within several instruments, as well as their various corresponding amendment regulations, into one and to do so upon the expiry of the existing regulations. The Scottish Ministers are required to review the need for the requirements imposed by these Regulations at least once every 28 days. The first review is to be carried out by 18 October 2021. The Regulations will expire at the end of 16 May 2022 (at the same time as the current regulations for England).
9. The consolidation also makes some policy amendments to the regulations.
10. A change has been made to the list of specified competitions as it relates to the exemption for elite sports people to add European Tour Golf, the Alfred Dunhill Links Championship. While provision previously existed for an exemption for eligible arrivals from amber list countries to take part in this event, this will be extended to cover eligible travellers from red list counties under the conditions that apply to that exemption in recognition of the fact the event is open to competitors from both categories.
11. In relation to COP26, provision is made in light of the planned COP26 arrangements to clarify there is no requirement under the Scottish regulations for red list arrivals to

complete managed isolation when they have completed a period of managed isolation in England.

12. A further change has been made to allow for an exemption from managed isolation for in-flight security officers . While they will be exempt , they will continue to be required to comply with other requirements appropriate to thir country of departure and/or any countries transited through in the preceeding 10 days. Travellers who fall within this exemption will be required to remain in self-isolation when not working or travelling for work, regardless of whether they have travelled from an amber or red country. This ensures alignment with the equivalent in regulations in England.

Consultation

13. 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

14. No Impact Assessments have been prepared in relation to this instrument.

Scottish Government
COVID Co-ordination Directorate
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