
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 20

PUBLIC HEALTH

**The Health Protection (Coronavirus) (Pre-Departure Testing
and Operator Liability) (Scotland) Regulations 2021**

Approved by the Scottish Parliament

*Made - - - - 14th January 2021
Laid before the Scottish
Parliament - - - - 15th January 2021
Coming into force in accordance with regulation 1(2)
and (3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 94(1)(b) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 122(6) of that Act, the Scottish Ministers consider that these Regulations need to be made urgently, without a draft having been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021.

(2) Subject to paragraph (3) these Regulations come into force at 4.00 a.m. on 15 January 2021.

(3) Regulations 6, 8(1)(a), 8(3), 8(5), come into force on 1 February 2021.

Interpretation

2. In these Regulations—

“common travel area” has the meaning given in section 1(3) of the Immigration Act 1971⁽²⁾,

“the International Travel Regulations” means the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020⁽³⁾.

(1) 2008 asp 5.

(2) 1971 c.77. That section provides that the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland are collectively referred to as “the common travel area”.

(3) S.S.I. 2020/169, amended by S.S.I. 2020/171, S.S.I. 2020/184, S.S.I. 2020/209, S.S.I. 2020/221, S.S.I. 2020/224, S.S.I. 2020/229, S.S.I. 2020/233, S.S.I. 2020/235, S.S.I. 2020/242, S.S.I. 2020/252, S.S.I. 2020/263, S.S.I. 2020/271, S.S.I. 2020/274, S.S.I. 2020/280, S.S.I. 2020/288, S.S.I. 2020/301, S.S.I. 2020/307, S.S.I. 2020/326, S.S.I. 2020/330, S.S.I.

PART 1

Pre-Departure Testing

Amendment of the International Travel Regulations

3.—(1) The International Travel Regulations are amended in accordance with paragraphs (2) to (10).

(2) In regulation 2 (interpretation)—

(a) in the definition of “child” for “16” substitute “18”,

(b) after the definition of “Passenger Locator Form”, insert—

““qualifying test” means a test that is a qualifying test for the purposes of regulation 5A,”.

(3) After regulation 5 (passenger information: offences and penalties), insert—

“PART 2A

Pre-Departure Testing

Requirement to possess notification of negative test result

5A.—(1) A person who arrives in Scotland having begun their journey outside the common travel area must possess on arrival valid notification of a negative result from a qualifying test taken by that person.

(2) A person who is travelling with a child aged 11 or over and for whom they have responsibility must, on their arrival in Scotland, possess valid notification of a negative result from a qualifying test taken by that child.

(3) A person who possesses valid notification of a negative result from a qualifying test must produce that notification, physically or digitally, if requested to do so by a constable or an immigration officer.

(4) The following are not required to comply with this regulation—

(a) a person who is a child (without prejudice to paragraph (2)),

(b) a person described in paragraph 2, 3, 4, 4B, 4C, 4D, 4E, 7, 12, or 30 of schedule 2,

(c) a person described in paragraph 4(1) of schedule 2A(4).

(5) For the purposes of this regulation—

(a) a test is a qualifying test if it complies with paragraph 1 of schedule 2A,

(b) a notification of a negative result is valid if it includes the information specified in paragraph 2 of schedule 2A.

Pre-Departure testing: offences and penalties

5B.—(1) A person who contravenes a requirement in regulation 5A commits an offence.

(2) It is a defence to a charge of committing an offence under paragraph (1) to show that the person, in the circumstances, had a reasonable excuse.

2020/343, S.S.I. 2020/354, S.S.I. 2020/358, S.S.I. 2020/378, S.S.I. 2020/404, S.S.I. 2020/431, S.S.I. 2020/444, S.S.I. 2020/474, S.S.I. 2021/5, S.S.I. 2021/6, S.S.I. 2021/7 and S.I. 2020/942.

(4) Schedule 2A is inserted by paragraph (7) of this Regulation below.

- (3) For the purposes of paragraph (2), reasonable excuses include, in particular where—
- (a) a person was medically unfit to provide a sample for a qualifying test and possessed a document, in English or accompanied by a certified English translation, signed by a medical practitioner entitled to practise in the country or territory in which that practitioner was based, to that effect,
 - (b) it was not reasonably practicable for a person to obtain a qualifying test due to a disability,
 - (c) a person required medical treatment with such urgency that obtaining a qualifying test was not reasonably practicable,
 - (d) a person contracted coronavirus and required emergency medical treatment,
 - (e) a person was accompanying, in order to provide support, whether medical or otherwise, a person described in sub-paragraph (c) or (d) where it was not reasonably practicable for the accompanying person to obtain a qualifying test,
 - (f) a person began their journey to Scotland in a country or territory in which a qualifying test was not available to the public, with or without payment, or in which it was not reasonably practicable for a person to obtain a qualifying test due to a lack of reasonable access to a qualifying test or testing facility and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure if this was different to where they began their journey,
 - (g) the time it has taken a person to travel from the country or territory where they began their journey to the country or territory of their last point of departure prior to arriving in Scotland meant that it was not reasonably practicable for them to meet the requirement in paragraph 1(c) of Schedule 2A, and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure.

(4) A person does not commit an offence where they contravene a requirement in regulation 5A if they reasonably believed at the time of the contravention that the notification of a negative result was valid and from a qualifying test.

(5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”.

(4) In regulation 6 (requirement for travellers or others to stay in specified premises), after paragraph (1) insert—

“(1ZA) Paragraph (2) also applies to a person who—

- (a) is not otherwise required to comply with that requirement (by virtue of regulation 6(1) or regulation 7), and
- (b) either—
 - (i) contravenes a requirement in regulation 5A(1), or
 - (ii) is a child in respect of whom the person responsible contravenes a requirement in regulation 5A(2).”.

(5) In regulation 7(1) (persons not required to comply with regulation 6), for “Subject to paragraph (2)” substitute “Subject to regulation 6(1ZA) and paragraph (2) of this regulation”.

(6) After regulation 10 (penalties for offences under regulation 9) insert the heading—
“PART 4A

Fixed Penalty Notices”

(7) In regulation 11(2) (fixed penalty notices), for sub-paragraph (a) substitute—

“(a) has committed—

- (i) an information offence,
 - (ii) an offence under regulation 5B(1) or
 - (iii) an offence under regulation 9(4), and”.
- (8) In regulation 12(4) (fixed penalty notices – penalty amounts)—
- (a) before sub-paragraph (a) insert—
 - “(za) regulation 5B(1),”
 - (b) in paragraph (d) before “Part 4” insert “Part 2A or”.
- (9) In paragraph 4C of schedule 2 (person not required to comply with regulations 3 or 6), omit “in accordance with the Maritime Labour Convention, 2006 or the Work in Fishing Convention 2007”.
- (10) After schedule 2, insert—

“SCHEDULE 2A

Regulation 5A

Testing before arrival in Scotland

1. A test complies with this paragraph if—
 - (a) it is a test for the detection of coronavirus undertaken using a device which the manufacturer states has—
 - (i) a sensitivity of at least 80%,
 - (ii) a specificity of at least 97%, and
 - (iii) a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,
 - (b) it is not a test provided or administered under the National Health Service (Scotland) Act 1978⁽⁵⁾, the National Health Service Act 2006⁽⁶⁾, the National Health Services (Wales) Act 2006⁽⁷⁾, or the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁸⁾, and
 - (c) the test sample is taken from the person no more than 3 days before—
 - (i) in the case of that person travelling to Scotland on a commercial transport service, the service’s scheduled time of departure, or
 - (ii) in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Scotland.
2. Notification of a negative test result must include, in English, French or Spanish, the following information—
 - (a) the name of the person from whom the sample was taken,
 - (b) that person’s date of birth or age,
 - (c) the negative result of the 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.
3. In this schedule,

⁽⁵⁾ 1978 c.29.

⁽⁶⁾ 2006 c.41.

⁽⁷⁾ 2006 c.42.

⁽⁸⁾ 1972 No. 1265 (N.I. 14).

“device” means an in vitro diagnostic medical device within the meaning given in regulation 2(1) of the Medical Devices Regulations 2002⁽⁹⁾,

“sensitivity”, in relation to a device, means how often the device correctly generates a positive result, and

“specificity”, in relation to a device, means how often the device correctly generates a negative result.

4.—(1) The persons referred to in regulation 5A(4)(c) (and not required to comply with that regulation) are—

(a) a person (“P”) described in—

(i) paragraph 14(1)(b) of schedule 2 where, prior to P’s departure to the United Kingdom, the relevant Department or the Scottish Ministers have certified that they meet this description and are not required to comply with regulation 5A, or

(ii) paragraph 14A of schedule 2 where, prior to P’s departure to the United Kingdom, the relevant Department or the Scottish Ministers have also certified that they are not required to comply with regulation 5A,

(b) a Crown servant or government contractor (“C”) who is required to undertake essential policing or essential government work in the United Kingdom or is returning from conducting such work outside the United Kingdom where, prior to C’s departure to the United Kingdom, the relevant Department or the Scottish Ministers have certified that they meet this description and are not required to comply with regulation 5A,

(c) a representative (“R”) of a foreign country or territory, or of the government of a British overseas territory, travelling to the United Kingdom to conduct official business with the United Kingdom where, prior to R’s departure to the United Kingdom—

(i) the relevant head of the mission, consular post, or office representing a foreign territory in the United Kingdom, or a Governor of a British overseas territory (as the case may be), or a person acting on their authority, confirms in writing to the Foreign, Commonwealth and Development Office that R is required to undertake work which is essential to the foreign country represented by the mission or consular post, the foreign territory represented by the office or the British overseas territory, and

(ii) the Foreign, Commonwealth and Development Office has then confirmed in writing to the person giving the notification in sub-head (i) that—

(aa) it has received that confirmation, and

(bb) R is travelling to the United Kingdom to conduct official business with the United Kingdom and is not required to comply with the requirements of regulation 5A,

(d) a worker with specialist technical skills, where those specialist technical skills are required for emergency works or services (including commissioning, maintenance, and repairs and safety checks) to ensure the continued production, supply, movement, manufacture, storage or preservation of goods or services, where they have travelled to the United Kingdom in the course of their work or otherwise to commence or resume their work.

(2) In sub-paragraph (1)—

“consular post” has the meaning given in paragraph 1(3) of schedule 2, and

“Crown servant”, “essential government work”, “essential policing” and “government contractor” have the meanings given in paragraph 14(2) of schedule 2.”.

(9) S.I. 2002/618, to which there are amendments not relevant to these Regulations.

Saving provision

4. The International Travel Regulations apply as if the amendments made by regulation 3, except for the amendment made by regulation 3(9), had not been made in relation to any person who arrives in Scotland before 4.00 a.m. on 18 January 2021.

PART 2**Operator liability in respect of arrivals****Interpretation**

5. In this Part—

“child” means a person under the age of 18,

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971⁽¹⁰⁾,

“operator” means operator of a commercial transport service,

“passenger” means a person travelling on a conveyance who is not a member of the conveyance’s crew,

“Passenger Locator Form” has the meaning given in regulation 2(1) (interpretation) of the International Travel Regulations,

“port” means any port (including a seaport, airport or heliport),

“qualifying test” means a test that is a qualifying test for the purposes of regulation 5A of the International Travel Regulations,

“relevant passenger” means a passenger who fails, without reasonable excuse—

- (a) to provide evidence of having provided passenger information when requested to do so by an immigration officer pursuant to regulation 3(5) (requirement to provide information) of the International Travel Regulations, or
- (b) to produce a required notification when requested to do so by a constable or an immigration officer pursuant to regulation 5A(3) of the International Travel Regulations,

“relevant service” means a commercial transport service carrying passengers travelling to Scotland from outside the common travel area,

“required notification” means a valid notification of a negative test result from a qualifying test for the purposes of regulation 5A of the International Travel Regulations taken by—

- (a) the person in possession of that notification, or
- (b) a child and treated as being in their possession by virtue of paragraph (2) of regulation 7, and

“responsible individual” means an individual who has—

- (a) charge or care of the child for the time being, or
- (b) parental responsibilities or parental rights in relation to the child (see sections 1(3) and 2(4) of the Children (Scotland) Act 1995⁽¹¹⁾).

⁽¹⁰⁾ 1971 c.77. Paragraph 1 was amended by paragraph 3 of schedule 3 of the Health Protection Agency Act 2004 (c.17), and by S.I. 1993/1813.

⁽¹¹⁾ 1995 c.36.

Requirement to ensure passengers have completed a Passenger Locator Form

6.—(1) An operator must ensure that a passenger who arrives at a port in Scotland on a relevant service has completed a Passenger Locator Form.

- (2) Paragraph (1) does not apply in relation to a passenger—
- (a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to provide information under regulation 3(2) of the International Travel Regulations,
 - (b) who informs the operator, or a person acting on behalf of the operator, that they have a disability which prevents them from completing the Passenger Locator Form, or
 - (c) who is a child, travelling without a responsible individual.

Requirement to ensure passengers possess notification of negative test result

7.—(1) An operator must ensure that a passenger who arrives at a port in Scotland on a relevant service is in possession of a required notification.

(2) A child is to be treated as possessing a required notification of a negative result from a qualifying test taken by that child if that notification is possessed by a person who is travelling with, and has responsibility for, that child.

- (3) Paragraph (1) does not apply in relation to a passenger—
- (a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to possess notification of a negative test result or has a reasonable excuse for failing to comply with that requirement,
 - (b) who is a child, travelling without a responsible individual, or
 - (c) who is a transit passenger, who does not have the right to enter the country or territory from which the relevant service departs.

(4) In this regulation, “transit passenger” means a person who has arrived in the country or territory from which the relevant service departs with the intention of passing through to Scotland without entering that country or territory.

Offences

8.—(1) An operator who fails to comply with the requirement in—

- (a) regulation 6(1), or
- (b) regulation 7(1),

commits an offence.

- (2) An offence under paragraph (1) is punishable—
- (a) on summary conviction, by a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment by a fine.

(3) In relation to the offence in paragraph (1)(a), it is a defence for an operator to show that they recorded a unique passenger reference number for the relevant passenger before that passenger boarded the relevant service.

(4) In relation to the offence in paragraph (1)(b), it is a defence for an operator to show that the relevant passenger presented a document purporting to be a required notification which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not a required notification.

(5) In this regulation, “unique passenger reference number” means a reference number which has been provided by or on behalf of the relevant passenger and which includes the letters “UKVI” followed immediately by an underscore and 13 alphanumeric characters.

Extra-territorial jurisdiction

9.—(1) An offence can be committed under regulation 6(1) where the failure to ensure that a passenger who arrives at a port in Scotland on a relevant service has completed a Passenger Locator Form occurs wholly or partly outside Scotland.

(2) An offence can be committed under regulation 7(1) where the failure to ensure that a passenger who arrives at a port in Scotland on a relevant service is in possession of a required notification occurs wholly or partly outside Scotland.

(3) An operator may be prosecuted, tried and punished for an offence under regulation 6(1) or 7(1) upon the arrival of the relevant service in Scotland—

- (a) in the sheriff court district within which the port of arrival is located, or
- (b) in such other sheriff court district as the Lord Advocate may direct,

as if the offence has been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district).

Power to use and disclose information

10.—(1) This regulation applies to any person (“P”) who holds information described in paragraph (2) relating to a relevant passenger (“relevant information”).

(2) The information referred to in paragraph (1) is—

- (a) information provided by, or on behalf of, the relevant passenger by way of explanation for failing to comply with regulation 3 or 5A of the International Travel Regulations,
- (b) information about the steps taken, pursuant to the International Travel Regulations, in relation to the relevant passenger, including details of any fixed penalty notice issued under those Regulations,
- (c) personal details of the relevant passenger, including their—
 - (i) full name,
 - (ii) date of birth,
 - (iii) passport number, or travel document reference number (as appropriate), issue and expiry dates and issuing authority,
 - (iv) home address,
 - (v) telephone number,
 - (vi) email address, and
- (d) journey details of the relevant passenger, including—
 - (i) their time and date of arrival in Scotland,
 - (ii) the name of the operator of the relevant service on which they arrived or through which their booking was made,
 - (iii) their coach number,
 - (iv) the flight number,
 - (v) the departure and arrival locations of the relevant service.

(3) P may only use relevant information where it is necessary for the purpose of carrying out a function under these Regulations.

(4) P may only disclose relevant information to another person (“the recipient”) where it is necessary for the recipient to have the relevant information for the purpose of carrying out a function under these Regulations.

(5) This regulation does not limit the circumstances in which information may otherwise lawfully be disclosed under any other enactment or rule of law.

(6) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(7) For the purposes of this regulation “the data protection legislation” and “personal data” have the same meanings as in section 3 of the Data Protection Act 2018(12).

Review

11. The Scottish Ministers must review the need for the requirements imposed by regulations 6 and 7 of these Regulations at least once every 28 days, with the first review being carried out by 8 February 2021.

Expiry

12.—(1) This Part expires on 8 June 2021.

(2) The expiry of this Part does not affect the validity of anything done pursuant to these Regulations before it expires.

St Andrew’s House,
Edinburgh
14th January 2021

MICHAEL MATHESON
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations amends the Health Protection (Coronavirus, International Travel) (Scotland) Regulations 2020 (“the 2020 Regulations”) to introduce a requirement for persons travelling to Scotland from outside the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland (the “common travel area” by virtue of section 1(3) of the Immigration Act 1971) to possess a notification of a negative coronavirus test upon arrival in Scotland.

Part 2 of these Regulations introduces requirements for persons operating commercial transport services (“operators”) for passengers travelling to Scotland from outside the common travel area to ensure that passengers who arrive in Scotland on such services have completed a Passenger Locator Form (regulation 6(1)) and possess notification of a negative test result (regulation 7(1)). Breach of the requirements is an offence (regulation 8(1)).

Upon completion of the Passenger Locator Form, passengers receive a unique passenger reference number from the Home Office. An operator who has recorded a unique passenger reference number in the format used by the Home Office will have a defence to the offence in regulation 8(1)(a) (regulation 8(3)). Regulation 9 makes provision for extra-territorial jurisdiction.

Regulation 10 sets out when passenger information can be disclosed and used in Scotland.

The necessity and proportionality of the requirements imposed by these Regulations will be reviewed at least once every 28 days under regulation 14 of the International Travel Regulations and regulation 11 of these Regulations, and these Regulations will expire on 8 June 2021.

Due to the urgent nature of these Regulations and as the provisions made by these Regulations will have effect for a period of less than 12 months, a full Impact Assessment has not been prepared.