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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 20**

**The Health Protection (Coronavirus) (Pre-Departure Testing  
and Operator Liability) (Scotland) Regulations 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(1),

“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

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(1) 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.

- (b) parental responsibilities or parental rights in relation to the child (see sections 1(3) and 2(4) of the Children (Scotland) Act 1995(2).

#### **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(3).

### **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.