

Final Business and Regulatory Impact Assessment

Title of Legislation: The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 7) Regulations 2021

Introduction:

1. The Scottish Government, along with the UK Government and the other Devolved Administrations, have introduced emergency public health measures at the UK border, designed to reduce the public health risks posed by Coronavirus (Covid-19), by limiting the further spread of the disease.
2. It has been necessary to take these extraordinary measures to respond to the pandemic, in order to protect the right to life and the right to health for Scotland's population. However, the unequal impact of the pandemic and the need to advance equality, eliminate discrimination and foster good relations (as per our Public Sector Equality Duty), and take an integrated and balanced approach to ensuring the proportionality of the measures taken, have also been at the forefront of consideration of these actions during this emergency situation.
3. The Coronavirus (Covid-19): Framework for Decision-Making¹ published in 2020 made clear that Covid-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The Framework identified four main categories of harm: **direct health impacts, non-Covid-19 health harms, societal impacts and economic impacts**. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing.
4. The measures contained within these regulations have been introduced by emergency public health legislation to reduce the public health risks posed by the spread in Scotland of severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) ("Coronavirus"), which causes the disease Covid-19, by limiting the further spread of the disease.

Purpose and intended effect:

Legislative background

5. The Principal Regulations are the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, which came into force on 8 June 2020, containing provisions:
 - requiring international travellers arriving from outside the Common Travel Area (or within it if outside it in the previous 14 days prior to arrival) at the UK border in Scotland to provide journey details, contact details and details of their intended onward travel, in order to support "contact tracing", subject to certain exceptions; and
 - requiring international travellers arriving from outside the Common Travel Area (or within it if outside in the previous 14 days prior to arrival) to self-isolate for 14 days upon their arrival in Scotland at home or in other suitable accommodation, subject to certain exceptions, in order to limit risks of transmission (subsequently changed to 10 days on 14 December 2020).

¹ [Coronavirus \(COVID-19\): framework for decision making - assessing the four harms - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-framework-for-decision-making-2020/pages/assessing-the-four-harms/)

6. Other relevant regulations include:

- The Health Protection (Coronavirus) (Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (“the Passenger Information Regulations”) which came into force on 8 June 2020 and introduced requirements on operators of commercial services for international passengers travelling to Scotland to ensure passengers on such services who arrive in Scotland have been provided with certain public health information.
- The Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (“the Pre-Departure Testing Regulations”) which generally came into force on 15 January 2021 (with some specified provisions being commenced on 1 February 2021), which introduced:
 - a requirement within the principal regulations for persons travelling to Scotland from outside the Common Travel Area to possess a negative coronavirus test upon arrival in Scotland, and
 - standalone provision requiring operators of commercial transport services 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 and possess notification of a negative test result.

7. Since the introduction of the principal Regulations there have been amendments to these measures which have been made by Statutory Instrument and laid before the Scottish Parliament. The amendments have related to the addition and removal of country specific exemptions in terms of the requirement to self-isolate and sectoral exemptions from the same measure (Annex A). Additional amendments are as follows:

- The Health Protection (Coronavirus) (International Travel and Public Health Information) (Scotland) Regulations 2020 reduced the period within which a person must self-isolate at home or in other suitable accommodation from 14 days to 10 days. This provision came into force on 14 December 2020.
- The Health Protection (Coronavirus) (International Travel, Public Health Information and Pre-Departure Testing) (Scotland) Amendment Regulations 2021 came into force on 22 January 2021 and amended the Passenger Information Regulations to place a requirement on operators to provide information to passengers on the requirement for a negative test notification. Those Regulations also amended the Pre-Departure Testing Regulations so operators are not required to check a test is of a qualifying standard.
- The Health Protection (Coronavirus) (International Travel) (Managed Accommodation and Testing) (Scotland) Regulations 2021 came into force on 15 February 2021. The Regulations contain the requirement to check into managed self-isolation for all international travellers (subject to exemptions) from outside the Common Travel Area or from the Republic of Ireland who have departed from or transited through an acute risk country within the preceding 10 days. This was extended to cover those international travellers arriving into Scotland from elsewhere within the Common Travel Area where they have departed from or transited through an acute risk country within the preceding 10 days. Passengers, to whom this requirement applies, may only enter Scotland at one of Aberdeen, Edinburgh or Glasgow Airport, or a military airfield or port. All such

travellers are required to travel directly to managed self-isolation accommodation using designated transport and to remain in that accommodation for a minimum 10 day period. The Regulations also contain provisions requiring all travellers (subject to exemptions), who have been outside the Common Travel Area in the 10 days prior to arrival in Scotland, to book, pay for and undertake two tests for the detection of Coronavirus (Covid-19) on days 2 and 8 of the self-isolation period.

- The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 came into force on the 17 May 2021. As well as the requirement for all international passengers to complete a passenger locator form (PLF) and Pre-Departure Testing (PDT), there are additional requirements of travellers depending on what country or area they have been in at any point in the 10 days before arriving in Scotland. Passengers travelling from—
 - Red List countries are also required, before travelling to Scotland, to book and pay for a managed self-isolation package in quarantine accommodation for 10 days, including two Coronavirus (Covid-19) tests to take on or before day two and on or after day eight. On arrival in Scotland, travellers must quarantine in the accommodation booked for 10 nights.
 - On arrival in Scotland, travellers from Amber list countries must isolate at home or in the place they are staying for a period of ten days and take a Coronavirus (Covid-19) test on or before day two and on or after day eight.
 - Green list are required to book and pay for a Coronavirus (Covid-19) test to take on day two after arrival into Scotland. On arrival in Scotland, travellers do not need to isolate unless the test they have taken on day two after arriving back in Scotland is positive.

8. The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 5) Regulations 2021 came into force at 0400 on Monday 19 July 2021 and make amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 ('the International Travel Regulations'). These regulations provide that persons arriving in Scotland from a country or territory which is neither an exempt country or territory, or an acute risk country or territory ("red" list country), and who have not within the preceding 10 days departed from or transited through a red list country or territory, are no longer required to stay and self-isolate in specified premises if they are fully vaccinated through the UK vaccination programme. At the same time The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 6) Regulations 2021 came into force to exclude passengers who have departed from, or transited through mainland France (including Corsica), from being "eligible vaccinated arrivals". They also remove the duty on an operator of a relevant service which commences in France to check such a passenger possesses the required evidence.

9. A subsequent amendment was made in The Health Protection (Coronavirus) (International Travel etc.) (Scotland) Amendment (No. 15) Regulations 2021 and came into force from 4 am on Monday 2 August. This amendment provides that fully-vaccinated passengers arriving from amber list countries in EU member states (excluding arrivals from France who must self-isolate and take the required PCR tests on day 2 and day 8), the European Free Trade Association (EFTA) countries, microstates of Andorra, Monaco, San Marino and Vatican City,

and the USA do not have to quarantine or take a day 8 test upon arrival in Scotland. Arrivals will have to carry with them a form of certification to provide details of their vaccine status. For US arrivals, this proof is a CDC card showing that they are fully vaccinated, along with proof of residence in the US. All arrivals from Europe must show a record of vaccination through the European Digital COVID Certificate.

Purpose and intended effect:

Amendments to the legislation relating to

10. The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 7) Regulations 2021 amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 to
- remove a provision which excludes passengers who have departed from, or transited through Metropolitan France, from status as “eligible vaccinated arrivals”
 - make clear that a passenger purporting to meet the criteria to qualify as an eligible vaccinated arrival must hold the relevant proof of this and, if requested to do so by an immigration officer or the operator of the service on which they travel to Scotland, must provide it to them
 - make provision for certain oil and gas workers to be exempt from the requirements to purchase day 2 or day 8 tests
 - permit students coming from an acute risk country or territory to attend boarding school anywhere in United Kingdom who arrive in Scotland to avoid entering managed self-isolation and instead self-isolate upon arrival at their boarding school, provided that they travel to their boarding school without undue delay as required
 - add Austria, Germany, Slovenia, Slovakia, Latvia, Romania and Norway to the green list
 - add Georgia, Réunion, Mayotte and Mexico to the red list
 - remove India, Bahrain, Qatar and United Arab Emirates from the Red list (becoming Amber)
 - remove from the scope of the sectoral exemption for certain oil and gas workers, those workers returning from an installation in the North Sea who have transited via a non-acute risk country
 - amend the list of specified competitions to: amend the name of the Guinness PRO14 and Challenge Cup Rugby Union to reflect its new name – United Rugby Championship, to include the AIG Women’s Open Final Qualifying (Golf), the Professional GB Speedway Championship, two British Curling Team events, the Cycling – Tour of Britain and UEFA international football fixtures for under 21s involving Turkey, which is an acute risk country or territory.
11. The impacts of adding countries to the list of acute risk (red list) countries, territories and part of countries or territories was assessed at the introduction of The Health Protection (Coronavirus) (International Travel) (Managed Accommodation and Testing) (Scotland) Regulations 2021 and can be found [here](#). The impact assessments of adding countries to the amber list will be published [here](#).
12. We have reviewed the amendment to these Regulations in relation to red list arrivals coming to the UK in order to attend a boarding school for education purposes to allow them to transit across the UK without the need to enter managed isolation at their point of arrival and consider

there to be no further amendments to the characteristics discussed in the Impact Assessments previously published [here](#).

13. An Impact Assessment has not been prepared for the amendments to the list of Specified Competitions because these are temporary measures, specifically concerned with events taking place within the next six weeks meaning an Impact Assessment is not required and would be disproportionate.
14. The amendment to move certain checks of exemption from Border Force to the carrier will not have an Impact on the protected characteristics so no Equality Impact Assessment is required for this change.
15. There are safeguards built into the International Travel Regulations and, in accordance with the approach taken to the wider Covid-19 measures, a review of the need for the requirements imposed by the Regulations must take place at least once every 21 days with Ministers assessing that there remains a requirement for these regulations to remain in place. The Health Protection (Coronavirus) (International Travel and Public Health Information) (Scotland) (No. 2) Regulations 2020 amended the review period for the International Travel Regulations and the Passenger Information Regulations to 28 days.
16. All measures contained in the International Travel and Pre-Departure Testing Regulations are also time limited and were due to expire at the end of the period of 12 months from 8 June 2020, the day on which they came into force. The Health Protection (Coronavirus) (International Travel etc.) (Scotland) Amendment Regulations 2021 amended the expiry provisions of the Principal Regulations, the Passenger Information Regulations and the Pre-Departure Testing Regulations so they each expire on 20 September 2021.
17. It is critical for the Scottish Government to take all reasonable steps to prevent the community transmission of the disease, where possible. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) has been declared by World Health Organisation a Public Health Emergency of International Concern. These measures are deemed necessary to limit the further spread of the disease.
18. The Scottish Government, along with the UK Government and the other Devolved Administrations, have therefore introduced emergency public health measures at the UK border, designed to reduce the public health risks posed by coronavirus, by limiting the further spread of the disease.

Consultation:

The pace of the work on this has meant limited consultation with external stakeholders in Scotland.

Given the time constraints there has been no opportunity for a formal consultation process, however, there has been engagement and discussion at an operational level and we have engaged with key stakeholders.

These measures will be subject to regular review and as part of that review process the Government will continue to explore opportunities to engage with stakeholders.

Discussion:

Offshore workers travelling to Scotland under the exemption for the oil and gas sector are currently required to purchase the mandatory day 2 and 8 testing package. However, there are a high number of arrivals who enter Scotland for a short stay and leave within two days of arrival. In line with the regulations, Border Force ask that workers present proof of having booked a testing package.

Oil and Gas Workers purchase these tests to be compliant, however this comes at their expense and the tests go to waste as the workers will have left Scotland by the time they would be expected to take the tests.

Individuals who are going offshore are unable to take day 2 and 8 tests as they have left Scotland by that point. It is anticipated that there to be around 1,000 individuals to be affected, with the majority travelling through Aberdeen airport, where it averages around 300 applicable offshore workers per week.

These alternative measures will mitigate the waste and inconvenience associated with requiring offshore workers to book day 2 and 8 tests. The regulations will be amended so that certain oil and gas workers who travel to Scotland from amber list countries in the course of their work, but leave before the requirement arises to take a day 2 or day 8 test, are not required to book these tests.

An assessment from the UK Government concluded that expanded sectoral exemptions as well as exemptions for fully vaccinated individuals from the EU and US will likely cause significant queues and issues at the Border for arrivals into the UK. Moving the checks of exemptions upstream to carriers such as airlines, rather than being checked by Border Force will mitigate the impact on Border Force at ports.

Scottish Firms Impact Test:

Currently there exists a sectoral exemption for the oil and gas sector in Scotland and the UK more broadly. This exemption applies to workers who have travelled to Scotland in the course of their work to undertake or commence activities on or in relation to an offshore installation or upstream petroleum infrastructure on the UKCS; critical safety work on an offshore installation or a well-being decommissioned or preserved pending demolition or reuse. It also includes activities for the provision of workers, goods, materials or equipment or other essential services required to support the safe operation of these activities. The offshore sector is critical national infrastructure and has been exempt in order to protect the UK's energy demands (security of supply). Companies operating in the sector will still have an ability to continue to operate in line with other public health guidance and legislation.

Competition Assessment:

Does the policy affect the essential services market, such as energy or water?

No impact on the essential service, the impact is on the individuals having to purchase testing packs that will not be used.

Does the policy involve storage or increased use of consumer data?

Individuals do need to enter personal data on the Passenger Locator Form and when booking managed isolation packages. This data is not held by the Scottish Government but by the UK Government and is required to ensure effective delivery of the policy. This data is passed to Public Health Scotland and Police Scotland as required for contact tracing and enforcement purposes.

• **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**
No

Consumer Assessment:

N/A

Test run of business forms:

N/A

Digital Impact Test:

The International Travel Regulations and the Pre-Departure Testing Regulations contain provisions to require international travellers on, or before, arrival into Scotland to provide journey details, contact details and details of their intended onward travel via a Passenger Locator Form. This form will generally be completed on-line either prior to travel or on-arrival at the port of entry into the UK.

Legal Aid Impact Test:

N/A

Enforcement, sanctions and monitoring:

Public Health Scotland contact a sample of travellers via email and through the National Contact Tracing Centre with self-isolation guidance.

Border Force check that all passengers have the appropriate records on arrival which includes Passenger Locator Form, Pre-Departure Testing, vaccine certification and testing packages if required. This is backed up by enforcement mechanisms.

In country enforcement will be undertaken by Police Scotland who will respond to any referrals or calls where an individuals has committed an offence.

Implementation and delivery plan and post-implementation review:

These Regulations came into force at 4 am on 8 August 2021 and 4 am on 12 August 2021 (operator testing). Relevant associated guidance was amended in consequence of the amendments made by these Regulations. The Scottish Government is continuing constructive engagement with those sectors most affected and will review the need for the Principal Regulations every 28 days.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Michael Matheson

Date: 5 August 2021

Minister's name: Michael Matheson

Minister's title: Cabinet Secretary for Net Zero, Energy and Transport