

Final Business and Regulatory Impact Assessment

Title of Legislation: **The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2021**

Introduction

1. The Scottish Government, along with the UK Government and the other Devolved Administrations, 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. [The Coronavirus \(Covid-19\): Framework for Decision-Making](#) 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.
3. We have made much progress tackling the COVID-19 pandemic in Scotland. The success of the vaccination programme has allowed us to reduce the direct harm of the virus and has also enabled us to re-open large parts of the economy and society.
4. Now that the direct health harms caused by the virus are reducing, the broader harms of the crisis grow relatively more important in our decision-making. Consequently, reflecting the success of the vaccination programme, we believe we are now at a stage of the pandemic where we can adjust our strategic intent from suppressing the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible to one where we work to suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future.

Purpose and intended effect:

Legislative background

5. The Regulations amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (the “International Travel Regulations”).
6. Since the introduction of the International Travel Regulations, the Passenger Information Regulations there have been various amendments to these measures. Prior to the No. 17 amendment Regulations being made, the Regulations have the following provisions (subject to certain exemptions) in place:

Passengers - All international travellers arriving at the UK border in Scotland from outside the Common Travel Area (or within it if they have been outside of it in the previous 10 days prior to arrival) are required to:

Passenger Locator Form	provide journey details, contact details and details of their intended onward travel, in order to support “contact tracing”.
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Pre-Departure Testing (PDT)	possess a negative Coronavirus (Covid-19) Pre-Departure Test (PDT).
Passengers - The application of the requirements noted below depend on where an arrival into Scotland has travelled from or transited through within the previous 10 days prior to arrival.	
Red List Arrivals¹	book into a managed self-isolation facility. Passengers, to whom this requirement applies, may only enter Scotland at one of Aberdeen, Edinburgh or Glasgow Airport, or a military airfield or port and, on arrival into Scotland, 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. They are also required to book and undertake two tests for the detection of Coronavirus (Covid-19) within 2 days and no earlier than day 8 of the self-isolation period.
Vaccinated Amber List Arrivals²	Book and undertake a Coronavirus (Covid-19) test within 2 days of arriving in Scotland. Travellers from the Amber list countries who are 'eligible vaccinated arrivals' ³ (meaning they have had their final dose of a COVID-19 vaccine through approved sources , at least 14 days before they arrive in Scotland are not required to self-isolate if they have been vaccinated in the UK (including as part of UK vaccine rollout overseas), EU member states, European Free Trade Association (EFTA) countries (Iceland, Liechtenstein, Norway and Switzerland), Andorra, Monaco, San Marino and Vatican City and the USA.
Amber List Arrivals	isolate at home or in the place they are staying for 10 days and they are also required to book and undertake two tests for the detection of Coronavirus (Covid-19) within 2 days and no earlier than day 8 of the self-isolation period if they are not fully vaccinated.
Green List Arrivals⁴	to book and undertake a Coronavirus (Covid-19) test to take within 2 days of arriving in Scotland. On arrival in Scotland, travellers do not need to isolate.
Carriers - Operators of commercial transport services for passengers travelling to Scotland from outside the Common Travel Area are required to ensure that passengers who arrive in Scotland:	
Public Health Information	have been provided with certain public health information.
Passenger Locator Form (PLF)	have completed a Passenger Locator Form (PLF).

¹ A red list arrival refers to a person who arrives in Scotland from, or having travelled through within the previous 10 days, an acute risk country or territory specified in schedule A2 of the International Travel Regulations.

² An amber list arrival refers to a person who arrivals in Scotland from, or having travelled through within the previous 10 days, a country or territory which is not in the common travel area and which is not a red list country or (only) a green list country.

³ The reference to an 'eligible vaccinated arrival' also captures certain persons who have participated in, or are participating in, a clinical trial for an authorised vaccine; a child who is ordinarily resident in the UK or a relevant country and a dependent of someone who has completed a course of vaccine under the UK overseas vaccine roll-out programme.

⁴ A green list arrival refers to a person who arrives in Scotland from outside the travel area, having only travelled from or through within the previous 10 days, an exempt country or territory specified in schedule A1 of the International Travel Regulations.

Pre-Departure Testing (PDT)	possess notification of a negative PDT result.
Vaccination Status	Have evidence of double vaccination status where this is required

7. 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 28 days with Ministers assessing that there remains a requirement for these requirements to remain in place.

8. All measures contained in the principal Regulations are also time limited and are due to each expire on 20 September 2021.

Purpose and intended effect:

Amendments to the Legislation

9. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2021 amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 by

- the International Travel Regulations provide that Covid-19 2 day and 8 day tests must be carried out by public providers i.e. by the NHS in Scotland, England and Wales, and Northern Ireland. These amendments (regulations 3 and 4) open up those tests to private sector test providers, provided they are on a UK Government published list of 2 day and 8 day test providers for persons arriving in England. To get on the list the providers must self-declare compliance with relevant regulations and DHSC guidance. The listed providers are also monitored by DHSC for compliance and if in default removed from the list.
- The International Travel Regulations also provide that travellers to Scotland must stay in specified premises. These amendments (regulations 5 to 7) amend an exception for seasonal agricultural workers in paragraph 37 of schedule 2 of the International Travel Regulations. The Regulations make clear that those to whom the exemption applies must self-isolate at the named farm where they will be working after arrival in Scotland. The exemption allows such people to work straight away although they must isolate on the named farm for 10 days. The testing regime for these workers includes day 2 and 8 testing which is done by tests being provided directly to farmers at no cost to the workers.
- A small but significant number of these workers are not isolating on the 'named farm' where they have the offer of employment for seasonal work. This is due to insufficient accommodation for the workers on the farm and accordingly the employers of these seasonal agricultural workers are organising and supervising accommodation for the workers which is separate to the farm. In this accommodation the employer ensures that the workers are provided with food, isolate and complete their required Covid-19 tests in line with current regulations. In such circumstances, the workers are not self-isolating on the named farm throughout their 10-day period of isolation but are effectively isolating to the same standards as any amber list arrival who does not have a sectorial exemption. The amendments allow for this practice.

10. This Impact Assessment looks at the impact of these regulations from a Business and Regulatory perspective

Consultation:

The changes are across 2 different policies so shall be dealt with separately below.

Private Test Providers

The travel and aviation sector is clear that Scottish travel businesses are operating at a significant disadvantage compared to English counterparts due to the wider range of testing providers available south of the border. Many of them offering testing kits at lower prices (obviously the price difference will narrow with the UK Government's reduction in the cost of NHS tests, although there will still be cheaper tests available). The disadvantage is seeing airlines move flights from Scottish airports to English ones and they are warning that, if this continues, redundancies will need to be made. They are also making clear that it will take several years to reverse the move of flights and planes from Scottish airports.

The sector has advised that customers normally rely on airlines and travel agents for advice on testing, due to the confusion around different requirements across the UK. Airlines are clear that, to protect their own brand, they only advise customers to use a short list of reliable testing providers rather than go through the long list of available providers on gov.uk.

Seasonal Agricultural Workers

Within Government

In order to progress this work at the speed necessary, connections have been made, and discussions had, with colleagues across government, including: communications, business analysts, procurement, Border Force, COVID Testing and Contact Tracing Policy Division, IT, RESAS, Statisticians, the GIS team, NHS Scotland and Public Health Scotland (PHS).

Using the expertise from these departments allowed us to progress quickly and deliver the project to implement a testing regime for seasonal farm workers. Monitoring is taking place throughout the farming season to determine whether this approach can be defined as successful.

Most of the stakeholders above also been involved in the programme board which has met remotely, twice a week since the 16th of March 2021.

Public Consultation/ Business:

This project has been created and progressed as an emergency response to a rapidly changing situation. Due to the speed in which this has happened it has not been appropriate to carry out a public consultation. However the aforementioned programme board also included representatives from NHS, PHS and the industry itself. This includes:

Aberdeenshire Council
Angus Growers
Cosla

Easter Grangemuir
NHS Scotland
NHS Tayside
Ringlink
South Ayrshire Council
Stewarts of Tayside

Options:

Private Test Providers

Option 1

The Scottish Government to allow private providers to be used in Scotland, using the full list of providers on the gov.uk website.

- Strict procedures are now in place to ensure appropriate standards are met including KPIs and procedures re UKAS accreditation. Procedures re removal of those not meeting standards are in place.
- This option would provide reassurance to the sector and address their concerns that business continues to be lost to English airports, thus distorting the market and making it more difficult for Scotland to recover international connectivity well beyond this year. It may also allow airlines to salvage some business left of the Summer season.
- Travellers coming to Scotland would not be at a financial disadvantage to the rest of the UK by paying higher costs for testing.
- Reduced pressure on the NHS capacity of tests.
- The CMA review and commitment from Secretary of State for Health may help to remove poor-performing providers and to improve the reliability of those on the gov.uk list.

Option 2

The Scottish Government explores the potential of having a different list of providers on the Scottish government website.

- There were over 400 private testing providers listed on gov.uk until recently, with no way of differentiating on their performance, quality, reliability of data flow, etc. so it may be preferable to have a narrower list of providers, for example those who have achieved full UKAS accreditation.
- An option would be to limit to those who have achieved full accreditation. To achieve full accreditation is a lengthy process, but a number of providers have been working to achieve this and UKAS has advised they expect this number to increase significantly.
- Having a separate list would potentially confuse customers and many would likely still use the fuller gov.uk list (either deliberately to get a cheaper test or because of lack of understanding)
- Further investigation would be needed to determine the capacity of those providers with full accreditation to meet the likely demand.
- Implementing this option would likely take more time and it is unlikely to happen before the end of the Summer.

Option 3

The Scottish Government continues to not allow private providers for international travellers and continues with use of only public tests in terms of the regulations.

- This would be perceived negatively by the aviation sector in Scotland and detrimental to our collective efforts to restore Scotland's international connectivity. Airports regard it as essential that they operate on an equal footing with the rest of the UK in economic recovery.
- This would also have a negative impact on Scottish travellers who potentially face a higher cost for testing currently imposed in Scotland.

Clinical advice

Senior clinicians have advised that any private sector tests should be of the same quality as the non-private sector, that the results are reported in a timely way, that the results are communicated to Public Health Scotland when appropriate, and that a high level of compliance with the KPIs is met. All of these are being progressed with DHSC, which is enhancing its monitoring of private providers.

Conclusion and recommendation

In light of the increased activity taking place to improve the performance of private test providers, and the increasing number which have achieved full UKAS accreditation, it is recommended that option 1 should be implemented and align with the UK Government's list of providers. This provides simplicity for travellers in an increasingly complex landscape for consumers and provides some equivalence in markets etc for the aviation industry.

Seasonal Agricultural Workers

Option 1 – do nothing

The option to do nothing, while possible, was considered on balance from a policy perspective as undesirable. To not test seasonal agricultural workers could increase the risk of spreading Covid-19 within the agricultural community and the wider population, increase the risk to the farm businesses and the risk to public health generally. This goes against the objectives of Scottish Ministers in suppressing and ultimately eradicating the virus. Only allowing workers to stay on farm when accommodation may not be available limits the number of workers the farmers can employ.

Option 2 – Testing and off Farm Accommodation

The other option is to carry out testing on these workers. This would enable early identification of a positive case and trigger the necessary track and trace and isolation protocols to limit spread both within the farm and the wider community. It also enables appropriate support to be put in place for the worker including access to medical professionals if needed. This should also mitigate against wider impacts of the Covid-19 virus on the farm as a business for a prolonged period of time.

Methodology: Using a self PCR test the workers will have to provide a swab which is then sent directly to a lab. We have identified distribution centres throughout the country to ensure the distance for collection of new tests / dropping off of used tests is kept to a minimum. For those

employers with smaller numbers of workers on site then they can make use of priority post-boxes which are located throughout the country. Tests will be provided free of charge by the Scottish Government.

Benefits: Health colleagues have advised that these tests are very accurate and sensitive. If a positive case is found this will allow research into sequencing and identification of variants of concern in Covid-19. There is plenty of capacity at the moment to process these. Clear clinical advice is that PCR is preferable. There is no requirement for a second confirmatory test for a positive result so positive cases would be identified quickly.

The picking of soft fruit is essential to the country and farmers have been unable to fill the labour shortages with workers from Scotland, resulting in them relying on labour from abroad. Having this testing in place allows farmers to recruit workers from abroad and ensures they are able to begin work as soon as they arrive on farm. By having this testing in place workers will benefit from being paid during this period and farms will benefit from their labour, with less soft fruit likely to go to waste and farms being more likely to fulfil their supply contracts.

Costs: The worker does require an email or a phone number to receive their test result, they will need to be provided with access by the farmer if they don't have their own. Tests need to be returned to a lab promptly after a sample is taken so this will result in extra work for the farm.

The Regulations already make clear that those to whom the exemption applies must self-isolate at the named farm where they will be working after arrival in Scotland. The exemption allows such people to work straight away although they must isolate on the named farm for 10 days.

All of the above is now a well-recognised practice and is working well across the Seasonal agricultural worker cohort. The testing regime for these workers includes day 2 and 8 testing which is done by tests being provided directly to farmers at no cost to the workers. This has been working effectively and policy officials are part of a working group to ensure its continued efficacy.

It has come to our notice that a small but significant number of these workers are not isolating on the 'named farm' where they have the offer of employment for seasonal work. This is due to insufficient accommodation for the workers on the farm and the employers of these seasonal agricultural workers are organising and supervising accommodation for the workers which is separate to the farm. In this accommodation the employer ensures that the workers are provided with food, isolate and complete their required Covid-19 tests in line with current regulations. In such circumstances, we understand and are satisfied that the workers are not working on the named farm throughout their 10-day period of isolation. These workers are effectively isolating to the same standards as any amber list arrival who does not have a sectorial exemption. Health colleagues recognised that there is minimal risk to public health Scotland and are satisfied with the procedures that these farms employ regarding isolation and testing of these workers. The only reason that they are isolating off farm is owing to the accommodation restraints on certain farms.

Conclusion and recommendation

In order to bring this practice into line with the regulations, minor amendments are required to the International Travel Regulations. It is recommended that these amendments to bring the Regulations into line with practice on the ground at farms:-

- public health concerns have been noted and colleagues are satisfied there is minimal risks to public health with currently 98.5 % of seasonal workers having tested negative for Covid-19 on arrival and during their isolation period.

Scottish Firms Impact Test:

Private Test Providers

The pandemic has had a significant impact on the Scottish travel and tourism industries.

ONS data for Scotland for Q1 2020 showed that there was a 17% decrease in overseas tourism visits to Scotland compared to Q1 2019, while ONS data for Q2 2020 indicated that international visits to the UK from overseas were 96% lower than Quarter 2 2019 as travel reduced because of Coronavirus (Covid-19) and the subsequent travel restrictions.

In addition Visit Britain's forecasts [published December 2020] have suggested inbound tourism to the UK in 2020 declined by 76% in terms of visits to 9.7 million and by 80% in terms of spending to £5.7 billion. The total number of passengers per month to Scottish airports has decreased between 58% to 98% since the start of the Coronavirus (Covid-19) pandemic.

The easing of some international travel restrictions since July/August may begin to address the issues the industry face.

Much of the possible impacts of either allowing or not allowing private sector testing to be introduced are referred in the 'Consultation' section above. To summarise:

The Scottish travel industry concern is the fact that testing is being offered at a lower cost in other parts of the UK is placing the Scottish travel industry at an competitive disadvantage with airlines moving flights to other parts of the UK raising the possibility of redundancies.

Airports

There has been engagement with Edinburgh airport and AGS airports through the Aviation Working Group comprising of representatives from the sector and government officials. The sector welcomes the introduction of private sector testing for international travel and has previously expressed frustration that this had not been introduced in Scotland whilst it was introduced in other parts of the UK previously. Feedback from Airlines UK and individual airlines reflects a clear willingness to help make these arrangements work.

Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?

The introduction of private sector testing in Scotland often at lower cost will balance out any competitive imbalances there may have been between Scottish airports and those in other parts of the UK.

Seasonal Agricultural Workers

In order to identify the best process we have discussed this with the businesses and industry representatives involved in the programme board. The group have considered the types of tests

available, how these would be returned from workers once tests have been carried out, access to the internet and other support as well as the financial impact involved.

Businesses were in agreement that they'd be happy to travel to the nearest distribution hub to them to collect / drop off large numbers of tests as the Scottish Government would be providing these free of charge. Additionally, they were happy to support workers to carry out the tests and where needed, provide food, necessities etc., in the event of a positive test.

If a positive case is detected then only the worker and any close contacts (which should be minimal as they should be working and living in bubbles) will require to self-isolate. This should mean that the farms are able to continue operating as normal which minimises potential impact on shops, the supply of food etc. The fact that workers are being kept in bubbles should limit the number of people required to quarantine if a positive case is found and therefore allow the business to continue to operate with limited disruptions.

In off farm accommodation the employer ensures that the workers are provided with food, isolate and complete their required Covid-19 tests in line with current regulations. In such circumstances, we understand and are satisfied that the workers are not working on the named farm throughout their 10-day period of isolation. These workers are effectively isolating to the same standards as any amber list arrival who does not have a sectorial exemption

Competition Assessment:

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

No

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

No

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No.

The UK Government has established KPIs for private providers to meet and monitors the level of customer complaints

Consumer Assessment:

Seasonal Agricultural Workers

If this project is not carried out then there could potentially be knock-on effects on consumers as the lack of seasonal workers could create a reduction in fruit / vegetables for supermarkets and other vendors. This could result in farmers being unable to fulfil their contracts.

Test run of business forms:

N/A

Digital Impact Test:

Seasonal Agricultural Workers

Due to the speed in which this project is working, and after consultation with the industry, the forms will be in digital format only. This will ensure up to date information is fed to the Scottish Government, Test and Protect and Border Force quickly. We did consider other measures, such as telephone input, but it was felt that this could lead to errors particularly on the farms with a large volume of workers.

Information will be multi-lingual to help ensure understanding from the workers. We are incorporating the use of pictures and diagrams so that the process is easy to follow.

We are expecting the farms / employers to assist the workers with the provision of wi-fi/digital access and completion of these forms, which should also help to reduce any issues with understanding / language barriers. A number of businesses within the industry have confirmed that they have identified an employee to specifically carry out this role.

Legal Aid Impact Test:

Seasonal Agricultural Workers

Legal Aid is available and assistance may also be available from Royal Scottish Agricultural Benevolent Institution (RSABI).

Enforcement, sanctions and monitoring:

Private Test Providers

Carriers will check that all passengers have the appropriate records which include Passenger Locator Form, Pre-Departure Testing, managed isolation booking and testing packages if required. Border Force may request sight of these documents

Seasonal Agricultural Workers

This will be a system whereby farms will complete a form indicating how many workers they are expecting at any one time. This will generate an order to their local distribution hub, a system alert will then be sent when these kits are collected. Another alert will be generated when the information from the test kits has been inputted into the designated form – this information will go to the Scottish Government, NHS and Border Force.

Border Force – As part of continuous monitoring, a process is being developed which will check the number of completed tests against numbers of workers stating on their Passenger Locator Forms that they are isolating on specific farms. This will give information on compliance. Any breaches will be dealt with through normal immigration / Covid channels.

Implementation and delivery plan and post-implementation review:

These Regulations will come into force at 04.00 a.m. on 6 September 2021. Relevant associated guidance will be 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: George Adam

Date: 29th September 2021

**George Adam
Minister for Parliamentary Business**