

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) AMENDMENT (NO. 6) REGULATIONS 2021

SSI 2021/382

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”). 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.

Section 122(7) of the 2008 Act sets 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.

This instrument amends the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 to update the countries included in the red list for the purposes of testing and isolation requirements.

This instrument also expands the list of countries from where a person vaccinated with an authorised vaccine may be an eligible vaccinated arrival and the proof needed for this.

This instrument also introduces a further option for eligible travellers, arriving from non-red list countries and territories, to allow them to complete the mandatory day 2 test using a Lateral Flow Device (“LFD”) test, as an alternative to a Polymerase Chain Reaction (“PCR”) test.

Background

1. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (S.S.I. 2021/322) (“the International Travel Regulations”) were made on 16 September 2021. They were laid in the Scottish Parliament on 16 September and came into force on 20 September 2021.
2. The International Travel Regulations revoked and replaced the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169), the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170) and Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20).
3. Since coming into force, the International Travel Regulations have been updated by various amending regulations. Both the International Travel Regulations and the amending 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. They also sought to ease restrictions as appropriate.

4. The amendments made by these Regulations come into force at 04:00 on 31 October 2021 with regards to the LFD tests and at 04:00 on 01 November 2021 for the remaining amendments.

Policy Objectives

5. The overarching policy aim of this instrument is to update Scotland's approach to international travel, removing or lessening restrictions where that approach is consistent with clinical evidence and advice while balancing the need for continued public health measures to be applied where needed.

Amendments To Country Status

6. The aim of this instrument is to update Scotland's approach to international travel system to further reduce the number of countries on the "red list". Requirements in terms of testing and managed isolation for travellers from the "red list" countries are not amended by this instrument. The policy intention is to recognise the reduced risk now presented by some countries in terms of COVID-19 and instead focus on the vaccine status of the individual traveller as what defines the requirements on arrival into Scotland.
7. This instrument removes Colombia, Dominican Republic, Ecuador, Haiti, Panama, Peru and Venezuela from the list of acute countries or territories, the "red list". This has the effect that, currently, there are no acute countries or territories on the "red list".

Eligible Vaccinated Traveller Programme

8. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021, expanded the list of countries listed under the eligible vaccinated traveller programme. This instrument expands this further to include further countries whose vaccination programmes meet the necessary criteria.

Testing - Post Arrival Testing

9. This instrument introduces a further option for eligible travellers, arriving from non-red list countries and territories, to allow them to complete their mandatory Day 2 test using an LFD test with photo verification, as an alternative to a PCR test. This will be followed up with a mandatory confirmatory PCR if an individual receives a positive test result from the LFD. The confirmatory PCR test will be provided free of charge. Provision is made for the notification of results from said LFD tests. If the individual receives a positive result from the PCR test then in terms of guidance they are required to self-isolate. If the individual receives a negative result then in terms of guidance they are not required to self-isolate. If the individual receives an inconclusive result, they are required to take a further PCR test.

10. This amendment is being implemented with a view to making travel to Scotland more accessible and affordable to eligible non-red list travellers given that fully vaccinated individuals benefit from a reduced risk of transmission. This change is expected to be beneficial for families, international students, other long-term residents and frequent travellers arriving in Scotland. Stringent testing measures, including a pre-departure test, day 2 PCR test and day 8 PCR test when arriving in Scotland, are retained for non-eligible travellers returning from non-red list countries.
11. The LFD test used must, as a minimum, allow for photographic verification of the test result where the test and result are uniquely identifiable. The provider must be able to ensure that the same test result cannot be reused through the use of a unique booking reference. Photographic evidence of the test result must be sent to the private provider within 15 minutes of the result being ready to read on the test device.
12. The provider is responsible for verifying the result and reporting it to the UK Health Security Agency (UKHSA) and the individual. Where the test is positive, the provider must share the guidance from UKHSA regarding obtaining a confirmatory PCR. Providers will have 24 hours to report the test result of the LFD to UKHSA, and the individual, from the time that they are in receipt of the test result evidence. They must also provide daily sales and results reporting to UKHSA as required. In order to be allowed to provide LFD tests to individuals, the private provider will need to meet a number of key performance indicators as set by the Department of Health and Social Care (DHSC) to align with the existing minimum standards required of PCR providers. The private provider will be subject to offences and penalties if they do not report in accordance with regulation or meet the minimum test or provider standards, without a reasonable excuse.
13. Criminal offences are created should an individual fail to give notification of their LFD test or fail to undertake a confirmatory test. These offences are punishable by fixed penalty notice of £480 or by summary prosecution where the maximum fine of level 5 on the standard scale can be imposed.

Consultation

14. This instrument is being made urgently in Scotland to make further amendments to the public health measures in respect of international arrivals to the UK.
15. Each of the four nations in the UK is required under their own relevant regulations to conduct regular reviews, and as those reviews are conducted there is the possibility of divergence from that initial four nations aligned approach, either on the need for the International Travel Regulations themselves or for any of the measures imposed by those Regulations. Such policy divergence may include the Scottish Government, or any of the other three administrations in the UK, reaching a different view on any aspect of the regulations, reflecting differences in the prevalence of COVID-19 in that particular nation at any review point.

16. 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

17. Impact assessments will be published on legislation.gov.uk in due course.

Scottish Government
COVID Co-ordination Directorate
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