

## POLICY NOTE

### THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) AMENDMENT (NO. 12) REGULATIONS 2021

#### SSI 2021/455

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 re-introduce pre-departure testing for certain categories of passengers arriving into Scotland, reduce the period from 3 days to 2 days within which a pre-departure test can be taken before travel and expand the cover of these provisions to include children aged 12 and over. It also makes provision in relation to transiting passengers and updates the passenger notices to ensure passengers are aware of the duties incumbent on them.**

#### Background

1. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI. 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 7 December 2021.

## **Policy Objectives**

5. The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.
6. This instrument re-introduces pre-departure testing in respect of non-red list arrivals to Scotland. Pre-departure testing was introduced on 15 January 2021 by the Health Protection (Coronavirus) (Pre-departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20). It was then removed in respect of eligible vaccinated arrivals by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 3) Regulations 2021 (SSI 2021/350). The effect of this was that pre-departure testing applied only to red list arrivals, to non-eligible vaccinated and unvaccinated arrivals.
7. In light of the recognition of increased risk of imported infections this instrument re-introduces it. It also amends the timing the test sample is taken from a person.
8. Currently the provision states that the test sample must be taken no more than 3 days before:- for a person travelling to Scotland on a commercial transport service, the service's scheduled time of departure; or, in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Scotland.
9. This instrument provides for the test sample to be taken within 2 days before departure to Scotland. If the journey is a multi-leg journey it must be taken within 2 days before the start of the first leg. Timing pre-departure testing as close as possible to the time of departure increases the probability of discovering infection that would enter the travel corridor and the UK.
10. Children aged 12 and over will require to possess notification of a negative test result. This is a change from the previous position. Previously, children (defined as under 18) were exempt from the requirement to possess a negative test notification unless they were travelling with an adult. For those travelling with a responsible adult the adult had to possess valid notification of a negative test result taken by the child. There is no duty on an operator to ensure that a child who is travelling without a responsible adult possesses notification of a negative test result. In light of the current increased risk of imported infections this change places a duty on children aged 12 and over or a responsible adult to possess the notification. However, children will not be penalised for failure to possess the notification as they are exempted from the penalty provisions.
11. The instrument updates the passenger information provided by operators in line with this amendment.

## **Consultation**

12. 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.
13. 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.
14. 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**

15. Impact assessments will be published on the Legislation.gov website.

Scottish Government  
COVID Co-ordination Directorate  
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