

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/2

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 expand 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. Additionally it amends the definition of “WHO List vaccine” in regulation 3(1) to include additional vaccines (Covovax and Novovax).

It removes the requirement for eligible vaccinated travellers and under 18s to take a pre-departure test. These passengers will still be required to undertake a day 2 test, but are no longer required to isolate pending receipt of a negative test result.

This instrument also introduces a further option for eligible travellers, arriving from non-red list countries and territories, to allow them to complete their 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 (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 at the earliest opportunity as appropriate.
4. The amendments made by these Regulations come into force at:- 0400 on 07 January 2022 save as regards those on introduction of LFD for day 2 (and provisions associated to that) which come into force at 0400 on 9 January 2022 and those for expansion to list of countries and amendment of definition of “WHO List Vaccine” which come into force on 0400 on 10 January 2022.

Policy Objectives

5. The overarching policy aim of this instrument is to update Scotland’s approach to international travel by, in this case, removing and lessening the emergency restrictions introduced as a direct result of the emergence of the Omicron variant of COVID-19. These changes are made in recognition of the fact that maintaining them would no longer be a proportionate response.

Vaccines

6. This instrument expands the list of countries within schedule 1A to add the following countries to it:- Bhutan, Cameroon, Cyprus, northern, Cote d’Ivoire, Fiji, Iraq, Liberia, Mali, Mauritania, Niger, Palau, Papua New Guinea, Paraguay, Solomon Islands, The Gambia, Uzbekistan. This means that travellers who receive vaccines in these countries count as eligible vaccinated arrivals. Additionally, it amends the definition of “WHO List vaccine” in regulation 3(1) to include additional vaccines (Covovax and Novavax).

Pre-departure testing

7. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 re-introduced pre-departure testing for non-red list arrivals to Scotland in recognition of the increased risk of imported Omicron infections.
8. This instrument provides that eligible vaccinated arrivals and those under 18 will no longer be required to undertake a pre-departure test and provide a negative result.

Testing – post arrival testing and isolation

9. The Health Protection (Coronavirus) (International Travel and Operator Liability)(Scotland) (Amendment No 6) Regulations 2021 allowed travellers to complete the mandatory day 2 test using a Lateral Flow Device (“LFD”) test, as an alternative to a Polymerase Chain Reaction (“PCR”) test. This was removed by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 with effect from 0400 on 30 November in light of the increased risk arising from imported Omicron infections.

10. This instrument reinstates the option for eligible travellers, arriving from non-red list countries and territories, to complete their mandatory day 2 test using an LFD test with associated photographic verification as opposed to a PCR test. If a traveller receives a positive result from an LFD test they require to take a confirmatory PCR test. The confirmatory PCR test will be provided free of charge. Provision is made for the notification of results from said LFD tests.
11. The traveller is not required to self-isolate before completing their mandatory day 2 test. If the traveller receives a positive result from the PCR test then they are required to self-isolate in terms of guidance. If the traveller receives a negative result then, again in terms of guidance, they are not required to self-isolate. If the traveller receives an inconclusive result, they are required to take a further PCR test.
12. For non-eligible travellers returning from non-red list countries stringent testing measures, including a pre-departure test, day 2 and 8 PCR tests are retained.

Consultation

13. 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.
14. 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.
15. 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

16. The impacts of expanding the list of countries whose vaccination programmes meet the necessary criteria, removing the requirement of pre-departure testing, the removal of the requirement to self-isolate until the day 2 test result is received and changing from post arrival PCR to LFD tests have previously been assessed. These impact assessments have been published on the [Legislation.gov.uk](https://www.legislation.gov.uk) website.

Scottish Government
COVID Co-ordination Directorate
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