

Regulations made by the Scottish Ministers and laid before the Scottish Parliament under paragraph 6(3) of schedule 19 of the Coronavirus Act 2020 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Regulations were made, not taking into account any period of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2021 No.

PUBLIC HEALTH

**The Health Protection (Coronavirus) (Requirements) (Scotland)
Amendment (No. 2) Regulations 2021**

Made - - - - 2021

Laid before the Scottish Parliament 2021

Coming into force - - at 0500 hours on 1st October 2021

The Scottish Ministers make the following Regulations in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(a) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by, a resolution of the Scottish Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 and come into force at 0500 hours on 1 October 2021.

(2) Notwithstanding the commencement of regulations 2(3) and 5(c) by paragraph (1), Part 4 (enforcement) of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021(b) does not apply for the purposes of regulations 7A and 7C of those Regulations(c) until 0500 hours on 18 October 2021.

(a) 2020 c. 7.
(b) S.S.I. 2021/277, amended by S.S.I. 2021/299.
(c) Regulations 7A to 7E are inserted by regulation 2(3).

Amendment of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021

2.—(1) The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2 (interpretation), omit the definition of “live event”.

(3) After regulation 7 (requirement to wear face coverings on public transport), insert—

“Requirement to ensure that persons are fully vaccinated, or exempt, when in certain places

7A.—(1) The person responsible for premises to which paragraph (2) applies must ensure that there is in operation a reasonable system for—

- (a) checking that persons on, or seeking to enter, the premises to which paragraph (2) applies are permitted to be on the premises by paragraph (3), and
- (b) removing from, or refusing access to, those premises anyone found by those checks not to be permitted to be on the premises by paragraph (3).

(2) This paragraph applies to—

- (a) late night premises between 0000 hours and 0500 hours each day, unless they are being used for a funeral, marriage ceremony, civil partnership registration, or a reception or gathering which relates to a marriage ceremony, civil partnership registration or funeral, and
- (b) any premises while a relevant event is taking place at them.

(3) A person is permitted to be on premises for the purposes of paragraph (1) if the person—

- (a) is fully vaccinated against coronavirus,
- (b) is under 18 years of age,
- (c) cannot be fully vaccinated against coronavirus for medical reasons,
- (d) is participating in, or has participated in, a trial of a vaccine against coronavirus,
- (e) is the person responsible for the premises,
- (f) is on the premises to provide a service or activity on behalf of the person responsible for the premises (whether as an employee, volunteer, or otherwise),
- (g) is on the premises in the course of the person’s functions as an emergency responder,
- (h) is on the premises acting on behalf of a public authority (as construed in accordance with section 6 of the Human Rights Act 1998^(a)).

(4) In considering what is a reasonable system for the purposes of paragraph (1), a person must have regard to any guidance issued by the Scottish Ministers.

(5) Guidance issued by the Scottish Ministers for the purpose of paragraph (4) may—

- (a) make different provision for different cases or descriptions of case,
- (b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).

(6) The requirement to have a system in place for the purposes of paragraph (1) includes the requirement to process any data that it is necessary to process for the system to operate.

(a) 1998 c. 42. Section 6 is relevantly amended by paragraph 1 of schedule 18 of the Constitutional Reform Act 2005 (c. 4).

Requirement to treat information as confidential

7B.—(1) A person to whom relevant information has been supplied in the course of operating a system required by regulation 7A(1) must treat that information as confidential.

(2) In this regulation—

- (a) treating information as “confidential” means not using it for any purpose except to determine if a person is permitted to be on premises by regulation 7A(3),
- (b) “relevant information” means information that can be used to determine if a person—
 - (i) is fully vaccinated against coronavirus,
 - (ii) cannot be fully vaccinated against coronavirus for medical reasons, or
 - (iii) is participating in, or has participated in, the trial of a vaccine against coronavirus.

Requirement to have a compliance plan

7C.—(1) Where regulation 7A(2) applies to premises, the person responsible for them must, from 0500 hours on 18 October 2021, prepare and maintain a compliance plan describing—

- (a) the system required by regulation 7A(1) that will operate in relation to the premises, and
- (b) any other measures that are, or will be, in place to prevent, or minimise, the risk of coronavirus being spread on the premises.

(2) A person who has prepared a compliance plan must—

- (a) keep each plan prepared for a period of 6 months, beginning with the date that version of it was created, and
- (b) show to a relevant person on request any plan that has been kept which the relevant person asks to be shown.

(3) Where a compliance plan is required by virtue of regulation 7A(2)(b) because a relevant event is to take place at premises, paragraph (1) requires that a separate compliance plan be prepared and maintained for each event at the premises held after 0500 hours on 18 October 2021.

Supplemental provision – licensing

7D.—(1) Where paragraph (2) applies, a person responsible for premises at which—

- (a) service of alcohol is ceased between 0000 hours and 0500 hours,
- (b) provision of a dancefloor, or other designated space, for dancing by customers is ceased, or
- (c) provision of live or recorded music is ceased,

does not commit a licensing offence.

(2) This paragraph applies where the reason for the cessation is to prevent the requirements in regulation 7A(1) from applying in relation to the premises.

(3) The person referred to in paragraph (1) includes a person to whom a licence or permit which relates to the premises has been granted.

Interpretation of regulations 7A to 7D

7E.—(1) In these Regulations—

“authorised vaccine” has the same meaning as in regulation 3 (interpretation: eligible vaccinated arrivals) of the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021(a),

“an exempt event” is—

- (a) a funeral, marriage ceremony, civil partnership registration, or a reception or gathering which relates to a funeral, marriage ceremony or civil partnership registration,
- (b) a mass participation event such as a marathon, triathlon, or charity walk,
- (c) an event designated by the Scottish Ministers as a flagship event according to criteria, and in a list, published by the Scottish Ministers,
- (d) a showing in a cinema,
- (e) a drive-in event,
- (f) an organised picket,
- (g) a public or street market,
- (h) an illuminated trail,
- (i) a work or business conference (not including any peripheral reception or function outside the core hours of the conference, whether or not alcohol is served),
- (j) a business or trade event which is not open to the public for leisure purposes,
- (k) communal religious worship, or
- (l) an unticketed event held at an outdoor public place with no fixed entry points.

“fully vaccinated” means that a person has completed a course of doses of an authorised vaccine with the final dose having been received before the start of the period beginning with the 14th day before the date on which they seek to enter the late night premises or relevant event,

“late night premises” means any premises at which—

- (a) alcohol is served at any time between 0000 hours and 0500 hours,
- (b) there is a dancefloor, or other designated space, provided for dancing by customers, and
- (c) live or recorded music for dancing is played,

“relevant event” is an event, except an exempt event, that is planned on the basis—

- (a) that it will be attended by more than 10,000 people simultaneously,
- (b) that—
 - (i) it will take place wholly or mainly indoors,
 - (ii) it will be attended by 500 or more people simultaneously (ignoring children under 5 years of age and people working or providing voluntary or charitable services at the event), and
 - (iii) not all of those attendees will be seated, or
- (c) that—
 - (i) it will take place wholly or mainly outdoors,
 - (ii) it will be attended by 4,000 or more people simultaneously (ignoring children under 5 years of age and people working or providing voluntary or charitable services at the event), and
 - (iii) not all of those attendees will be seated.

(a) S.S.I. 2021/322, amended by S.S.I. 2021/328

- (2) For the purposes of paragraph (1)—
- (a) a person (“P”) has completed a course of doses if P has received the complete course of doses specified—
 - (i) in the summary of product characteristics approved as part of the marketing authorisation for the authorised vaccine, or
 - (ii) in the instructions for usage approved as part of the authorisation by the licensing authority on a temporary basis under regulation 174 (supply in response to spread of pathogenic agents etc.) of the Human Medicines Regulations 2012^(a) for the authorised vaccine,
 - (c) where a person (“P”) has received a dose of one authorised vaccine and a dose of a different authorised vaccine, P is deemed to have completed a course of doses of an authorised vaccine.
- (3) For the purposes of paragraph (2), “marketing authorisation” has the same meaning as in regulation 3 (interpretation: eligible vaccinated arrivals) of the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021.”.
- (4) Omit Part 3 (stadia and live events).
- (5) In regulation 15 (enforcement of requirements)—
- (a) after paragraph (2) insert—

“(2A) A person to whom a notice is given under paragraph (2) must, so far as reasonably practicable, comply with the notice.”
 - (b) omit paragraph (9)(b),
 - (c) after paragraph (9)(a), insert—

“(c) regulations 7A to 7E”.
- (6) In regulation 16(3) (offences and penalties), after “contravene” insert “a notice or”.
- (7) After regulation 16 insert—

“Power of entry

16A.—(1) A relevant person may enter premises—

- (a) for the purpose of the performance of the relevant person’s functions under these Regulations, and
 - (b) if the condition in paragraph (3)(a) is met.
- (2) A relevant person may enter premises at any time if—
- (a) that person reasonably suspects that an offence under regulation 16 has been or is being committed on the premises,
 - (b) that person reasonably believes that it is necessary and proportionate to enter the premises for the purposes of the investigation of, or the prevention of the continuation of, such an offence, and
 - (c) the condition in paragraph (3)(b), (c) or (d) is met.
- (3) The condition is that—
- (a) the person who appears to be the occupier of the premises has consented to the relevant person entering the premises,
 - (b) the relevant person—
 - (i) has requested permission to enter the premises from the person who appears to be the occupier of the premises, but permission has been refused, and
 - (ii) reasonably believes the situation to be urgent,

(a) S.I. 2012/1916.

(c) the occupier of the premises is temporarily absent and the relevant person reasonably believes the situation to be urgent, or

(d) the entry is effected under the authority of a warrant issued under paragraph (7).

(4) For the purposes of paragraph (3)(b)(ii) or (3)(c), a reasonable belief in urgency means that the relevant person considers immediate entry to the premises to be necessary and proportionate for the purpose of preventing the continuation of the offence and for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination with coronavirus.

(5) A relevant person entering premises in accordance with paragraph (2) may use reasonable force to enter the premises if necessary.

(6) A relevant person entering premises in accordance with paragraph (1) or (2) may take such other persons, equipment and materials onto the premises as the relevant person considers necessary.

(6) A relevant person must, if requested to do so, produce a document or any other thing showing the relevant person's authority to exercise the power of entry in accordance with this regulation.

(7) A sheriff or justice of the peace may by warrant authorise a relevant person to enter premises under this regulation.

(8) A warrant under this regulation continues in force until the purpose for which it is issued is fulfilled.

(9) In this regulation, "relevant person" has the meaning given in regulation 15(8)(b).".

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (which come into force on 1 October 2021) amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the principal Regulations”).

Regulation 2(3) inserts new regulations 7A, 7B, 7C, 7D and 7E into the principal Regulations and regulation 2(5)(c) makes provision consequential to the new regulations.

Regulation 7A requires the person responsible for certain premises to have a reasonable system for checking that a person on the premises has been fully vaccinated, subject to specified exemptions.

Regulation 7B requires a person to whom relevant information has been supplied in the course of operating the system required by regulation 7A to treat that information as confidential.

Regulation 7C requires a person to whom the obligation in regulation 7A(1) applies to prepare and maintain a compliance plan describing the system required and any other measures that are in place to prevent, or minimise, the risk of coronavirus being spread on the premises.

Regulation 7D provides that a person who takes steps to prevent the requirement in regulation 7A(1) from applying in relation to that person’s premises does not commit a licensing offence.

Regulation 7E defines terms used in regulations 7A to 7D.

Regulation 2(4) omits Part 3 of the principal Regulations and regulation 2(2) and (5)(b) makes amendments consequential to that omission.

Regulation 2(5)(a) and (6) make minor amendments to regulations 15 and 16 of the principal Regulations.

Regulation 2(7) inserts new regulation 16A into the principal Regulations which provides for a power of entry for persons designated by a local authority for the purposes of enforcing the principal Regulations.

DRAFT POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (REQUIREMENTS) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.

These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the ‘Principal Regulations’) to provide that late night premises and premises where a relevant event is taking place must operate a reasonable system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or are exempt from the requirement to demonstrate that they are fully vaccinated. Relevant premises must also prepare a compliance plan describing how their systems will operate and other measures in place to prevent or minimise the spread of coronavirus. These Regulations amend the Principal Regulations to enable a local authority to take appropriate steps to enforce the requirement to operate a vaccine checking system. These Regulations introduce a right of entry for persons designated by a local authority to enter premises operating a system. These Regulations also remove capacity limits previously in the Principal Regulations on stadia and live events above which a capacity exemption application must be approved by a local authority.

Legislative background

1. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March 2020) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. From 14 September 2020 they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”) came into force and revoked the previous regulations. On 9 August 2021 the Principal Regulations came into force which revoked the Local Levels Regulations and introduced a new approach to tackling coronavirus.

Policy Objectives

Implement a system of mandatory COVID-19 vaccine certification

In line with our strategic intent to ‘*suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future*’, the policy objectives of Covid Vaccine Certification are to:

- Reduce the risk of transmission of Coronavirus
- Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

3. These Regulations implement the COVID-19 vaccine certification scheme (“the scheme”). These Regulations require late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement.

4. The winter period ahead will pose the significant risk of increased transmission and related pressure on the National Health Service. These Regulations should be considered alongside the latest State of the Epidemic Report. In light of these risks, urgent action is needed across all sectors to ensure compliance with a range of baseline COVID-19 mitigations. Vaccine certification is a further targeted and proportionate measure that is urgently needed to reduce further the risk posed by coronavirus and in doing so alleviate future pressure on the National Health Service.

5. Vaccine certification is one of a range of actions that the Government is taking to deliver its strategic intent and policy objectives. There are continuing statutory requirements to wear face coverings in certain settings, subject to exemptions, to collect contact details in hospitality and entertainment venues and to have regard to guidance on minimising exposure to coronavirus. Other key measures include the vaccination programme, now being expanded to 12-15 year-olds and to provide “booster” vaccinations, the ongoing promotion of adherence to the statutory measures, including through engagement with relevant stakeholders and the maintenance of international travel restrictions.

6. The scheme is being implemented in a targeted and proportionate manner related to higher risk activity. A broader scheme (such as expanding the scheme to apply to all hospitality) would deliver a greater public health benefit. However, the Government’s assessment is that, at this time, a broader application of the scheme would be disproportionate. This will be kept under review. The range of actions that can be taken to reduce risk in these higher risk settings is limited. Scottish Government considers certification to be less intrusive and restrictive than other options, such as mandatory physical distancing, mandatory face coverings, absolute capacity limits, closure or restricted opening hours. This will be kept under review.

Parliamentary Consideration

7. Scottish Government published [Coronavirus \(Covid-19\) Proposals for a mandatory vaccination scheme](#) on 9 September 2021. The paper was lodged in the Scottish Parliament Information Centre , on 8 September. On 9 September, Parliament debated and approved motion S6M-01123, the text of which is set out below:

That the Parliament commends the extraordinary effort of vaccination teams throughout Scotland, which means that, as of 6 September 2021, 84% of eligible over 18-year-olds were double-vaccinated against COVID-19; recognises that case numbers remain stubbornly high

and that action is needed from all sectors to ensure that baseline COVID measures are rigorously implemented; acknowledges that a number of other countries have introduced COVID certification schemes and that the UK Government has plans to introduce a vaccine certification scheme in England; believes that, in line with the Scottish Government's strategic intent, a COVID Vaccine Certification scheme can provide a targeted means to maximise Scotland's ability to keep certain higher risk settings open, while reducing the impact of transmission and encouraging the remaining sections of the population to get vaccinated; supports the implementation of a COVID Vaccine Certification scheme; agrees that the scheme will apply to nightclubs, sexual entertainment venues, indoor unseated live events with 500 or more attendees, outdoor unseated live events with 4,000 or more attendees and all events with 10,000 or more attendees; notes that measures are being taken to ensure digital inclusivity and to ensure that disabled people are not disproportionately impacted, and agrees that this scheme will be kept under regular review.

8. On 23 September 2021, Scottish Government published [Coronavirus \(Covid-19\) Vaccine certification update](#), which set out more details about the scheme.

9. The Deputy First Minister and Cabinet Secretary for Covid Recovery regularly attends the COVID-19 Recovery Committee. The Committee has taken evidence on the scheme from stakeholders and from the Deputy First Minister, and will have the opportunity to do so again on 30 September 2021.

Consultation and impact assessment

10. Scottish Government Ministers and officials have engaged extensively with equality, human rights and childrens' rights stakeholders and a wide range of business sector representatives from a range of specialisms, including events, music, sport, and the night-time economy, as well as trade unions and the legal profession in developing this scheme.

11. The diverse feedback received has informed the development of the scheme and the Equality Impact Assessment, Child Rights and Wellbeing Impact Assessment and Business and Regulatory Impact Assessment that are published alongside these Regulations. A Data and Privacy Impact Assessment ("DPIA") has been prepared for the implementation of the scheme, including these Regulations. Officials have consulted with the Information Commissioner's Office who have agreed a single DPIA is sufficient. The DPIA is being finalised and will be published as soon as possible. Detailed operational guidance is being developed in consultation with business sector representatives and will be published this week.

12. The Scottish Government has also prepared a paper that summarises the range of evidence available on vaccination certification schemes. It adopts a ["four harms approach"](#) covering the direct harms of COVID-19, the indirect health harms, the social and economic harms. Evidence is drawn from clinical and scientific literature, from public opinion and from international experience. This will also be published alongside the Regulations.

13. Stakeholder engagement and analysis of emerging evidence will continue and will inform development of operational guidance and regular reviews of the scheme. Impact assessments will be reviewed and updated as required.

Implementation

14. The Scottish Government is introducing the scheme after the point when everyone covered by the scheme has been offered two doses of vaccine. The scheme applies only to those over 18, but this will be kept under review as more age groups under 18 are offered two doses of the vaccine. The scheme will also be kept under review to take into account the roll out of booster vaccinations.

15. Initially, the scheme will not permit a negative test result to be offered as an alternative to evidence of vaccination. Nor, at this stage, will a positive test (natural immunity) be permitted as an alternative to evidence of vaccination. However, acceptance of test results will be kept under review. At this stage, the Scottish Government does not consider that it would be appropriate to include testing and, indeed, could undermine one of the policy aims of the scheme, which is to increase vaccine uptake. Also, it is important at this stage to prioritise PCR lab capacity for Test and Protect purposes and, while promoting regular LFD tests is an extremely important aspect of our overall approach, further work would be required on an optimal approach to incorporating testing, including consideration of the appropriateness of self-testing in this context.

16. The Scottish Government is implementing the scheme at the soonest possible operational opportunity. In designing the urgent implementation and initial operationalising of this scheme, the Scottish Government's aim is to strike the right balance between implementing this scheme as quickly as possible and doing so in a graduated manner that is proportionate and will deliver the optimum public health benefit.

Review

17. The Principal Regulations require Scottish Ministers to review the requirements imposed by those regulations at least once every 21 days. Scottish Ministers will also continue to assess whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned.

Requirements in the regulations

18. These Regulations provide that persons responsible for late night premises or premises where a relevant event is taking place are required to operate a reasonable system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or exempt from the requirement to demonstrate that they are fully vaccinated. Late night premises or premises where a relevant event is taking place must refuse access or remove a person that cannot demonstrate that they are fully vaccinated or exempt from that requirement. Premises are required to prepare a compliance plan describing how their system will operate and the other measures put in place to prevent or minimise the spread of coronavirus. These Regulations provide that in considering what is a reasonable system, they must have regard to any guidance issued by the Scottish Ministers.

19. The requirement to have a system in place includes the legal requirement to process any data that it is necessary for the operation of that system. A person to whom information has been supplied that can be used to determine whether someone is fully vaccinated, cannot be fully vaccinated for medical reasons or is a participant in a trial of a vaccine against coronavirus must treat that information as confidential.

20. For the purposes of these Regulations “late night premises” are premises that: serve alcohol at any time between 0000 hours and 0500 hours; have a dancefloor, or other designated space, provided for dancing by customers; and play live or recorded music for dancing, unless they are being used for a funeral, marriage ceremony, civil partnership registration, or a reception or gathering which relates to such occasions.

21. For the purposes of these Regulations, “a relevant event” is an event planned on the basis that: (i) it will be attended by more than 10,000 people; or (ii) it will take place wholly or mainly outdoors and will be attended by 4,000 or more people simultaneously (excluding children under 5 years of age and people working at the event), and not all of those attendees will be seated; or (iii) it will take place wholly or mainly indoors and will be attended by 500 or more people simultaneously (excluding children under 5 years of age and people working at the event), and not all of those attendees will be seated. These Regulations provide that certain events are exempt, including those relating to a funeral, marriage ceremony or civil partnership registration.

22. These Regulations repeal Part 3 of the Principal Regulations which provided capacity limits on stadia and live events. Settings which were previously subject to the capacity limits will now largely be covered by the certification scheme which seeks to achieve the same policy aims and the continued use of capacity limits was therefore not considered necessary at this stage, given the need for restrictions to be proportionate..

23. These Regulations provide that failure to ensure that there is a reasonable system in operation will be an offence. Regulation 16(4) of the Principal Regulations provides that it is a defence to a charge of committing that to show that, in the circumstances, the person had a reasonable excuse. These Regulations amend the enforcement provisions of the Principal Regulations to clarify the requirement that persons to whom a notice is given must, so far as reasonably practicable, comply with that notice. The purposes for which a local authority may designate persons to enforce the Principal Regulations are amended to include the requirement to operate a system by relevant premises. These Regulations also introduce a right of entry for persons designated by a local authority to enter premises operating a system for the purpose of enforcing the requirement to operate a system by a relevant premises.

24. The Scottish Government is mindful of the need for businesses to adapt to the requirements introduced by these Regulations. The Regulations come into force on 05:00 on 1st October 2021, but the Regulations delay the application of the enforcement provisions in the Principal Regulations as they apply to the Scheme (other than the duty of confidentiality) until 05:00 on 18 October 2021. This is intended to allow businesses a reasonable period of time to implement Certification before there is any prospect of enforcement action being commenced against them.

DRAFT POLICY NOTE

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Legislative background

1. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March 2020) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. From 14 September 2020 they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”) came into force and revoked the previous regulations. On 9 August 2021 the Principal Regulations came into force which revoked the Local Levels Regulations and introduced a new approach to tackling coronavirus.

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- Reduce the risk of transmission of Coronavirus
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- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

3. These Regulations implement the COVID-19 vaccine certification scheme (“the scheme”). These Regulations require late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement.

4. The winter period ahead will pose the significant risk of increased transmission and related pressure on the National Health Service. These Regulations should be considered alongside the latest State of the Epidemic Report. In light of these risks, urgent action is needed across all sectors to ensure compliance with a range of baseline COVID-19 mitigations. Vaccine certification is a further targeted and proportionate measure that is urgently needed to reduce further the risk posed by coronavirus and in doing so alleviate future pressure on the National Health Service.

5. Vaccine certification is one of a range of actions that the Government is taking to deliver its strategic intent and policy objectives. There are continuing statutory requirements to wear face coverings in certain settings, subject to exemptions, to collect contact details in hospitality and entertainment venues and to have regard to guidance on minimising exposure to coronavirus. Other key measures include the vaccination programme, now being expanded to 12-15 year-olds and to provide “booster” vaccinations, the ongoing promotion of adherence to the statutory measures, including through engagement with relevant stakeholders and the maintenance of international travel restrictions.

6. The scheme is being implemented in a targeted and proportionate manner related to higher risk activity. A broader scheme (such as expanding the scheme to apply to all hospitality) would deliver a greater public health benefit. However, the Government’s assessment is that, at this time, a broader application of the scheme would be disproportionate. This will be kept under review. The range of actions that can be taken to reduce risk in these higher risk settings is limited. Scottish Government considers certification to be less intrusive and restrictive than other options, such as mandatory physical distancing, mandatory face coverings, absolute capacity limits, closure or restricted opening hours. This will be kept under review.

Parliamentary Consideration

7. Scottish Government published [Coronavirus \(Covid-19\) Proposals for a mandatory vaccination scheme](#) on 9 September 2021. The paper was lodged in the Scottish Parliament Information Centre , on 8 September. On 9 September, Parliament debated and approved motion S6M-01123, the text of which is set out below:

That the Parliament commends the extraordinary effort of vaccination teams throughout Scotland, which means that, as of 6 September 2021, 84% of eligible over 18-year-olds were double-vaccinated against COVID-19; recognises that case numbers remain stubbornly high

and that action is needed from all sectors to ensure that baseline COVID measures are rigorously implemented; acknowledges that a number of other countries have introduced COVID certification schemes and that the UK Government has plans to introduce a vaccine certification scheme in England; believes that, in line with the Scottish Government's strategic intent, a COVID Vaccine Certification scheme can provide a targeted means to maximise Scotland's ability to keep certain higher risk settings open, while reducing the impact of transmission and encouraging the remaining sections of the population to get vaccinated; supports the implementation of a COVID Vaccine Certification scheme; agrees that the scheme will apply to nightclubs, sexual entertainment venues, indoor unseated live events with 500 or more attendees, outdoor unseated live events with 4,000 or more attendees and all events with 10,000 or more attendees; notes that measures are being taken to ensure digital inclusivity and to ensure that disabled people are not disproportionately impacted, and agrees that this scheme will be kept under regular review.

8. On 23 September 2021, Scottish Government published [Coronavirus \(Covid-19\) Vaccine certification update](#), which set out more details about the scheme.

9. The Deputy First Minister and Cabinet Secretary for Covid Recovery regularly attends the COVID-19 Recovery Committee. The Committee has taken evidence on the scheme from stakeholders and from the Deputy First Minister, and will have the opportunity to do so again on 30 September 2021.

Consultation and impact assessment

10. Scottish Government Ministers and officials have engaged extensively with equality, human rights and childrens' rights stakeholders and a wide range of business sector representatives from a range of specialisms, including events, music, sport, and the night-time economy, as well as trade unions and the legal profession in developing this scheme.

11. The diverse feedback received has informed the development of the scheme and the Equality Impact Assessment, Child Rights and Wellbeing Impact Assessment and Business and Regulatory Impact Assessment that are published alongside these Regulations. A Data and Privacy Impact Assessment ("DPIA") has been prepared for the implementation of the scheme, including these Regulations. Officials have consulted with the Information Commissioner's Office who have agreed a single DPIA is sufficient. The DPIA is being finalised and will be published as soon as possible. Detailed operational guidance is being developed in consultation with business sector representatives and will be published this week.

12. The Scottish Government has also prepared a paper that summarises the range of evidence available on vaccination certification schemes. It adopts a ["four harms approach"](#) covering the direct harms of COVID-19, the indirect health harms, the social and economic harms. Evidence is drawn from clinical and scientific literature, from public opinion and from international experience. This will also be published alongside the Regulations.

13. Stakeholder engagement and analysis of emerging evidence will continue and will inform development of operational guidance and regular reviews of the scheme. Impact assessments will be reviewed and updated as required.

Implementation

14. The Scottish Government is introducing the scheme after the point when everyone covered by the scheme has been offered two doses of vaccine. The scheme applies only to those over 18, but this will be kept under review as more age groups under 18 are offered two doses of the vaccine. The scheme will also be kept under review to take into account the roll out of booster vaccinations.

15. Initially, the scheme will not permit a negative test result to be offered as an alternative to evidence of vaccination. Nor, at this stage, will a positive test (natural immunity) be permitted as an alternative to evidence of vaccination. However, acceptance of test results will be kept under review. At this stage, the Scottish Government does not consider that it would be appropriate to include testing and, indeed, could undermine one of the policy aims of the scheme, which is to increase vaccine uptake. Also, it is important at this stage to prioritise PCR lab capacity for Test and Protect purposes and, while promoting regular LFD tests is an extremely important aspect of our overall approach, further work would be required on an optimal approach to incorporating testing, including consideration of the appropriateness of self-testing in this context.

16. The Scottish Government is implementing the scheme at the soonest possible operational opportunity. In designing the urgent implementation and initial operationalising of this scheme, the Scottish Government's aim is to strike the right balance between implementing this scheme as quickly as possible and doing so in a graduated manner that is proportionate and will deliver the optimum public health benefit.

Review

17. The Principal Regulations require Scottish Ministers to review the requirements imposed by those regulations at least once every 21 days. Scottish Ministers will also continue to assess whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned.

Requirements in the regulations

18. These Regulations provide that persons responsible for late night premises or premises where a relevant event is taking place are required to operate a reasonable system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or exempt from the requirement to demonstrate that they are fully vaccinated. Late night premises or premises where a relevant event is taking place must refuse access or remove a person that cannot demonstrate that they are fully vaccinated or exempt from that requirement. Premises are required to prepare a compliance plan describing how their system will operate and the other measures put in place to prevent or minimise the spread of coronavirus. These Regulations provide that in considering what is a reasonable system, they must have regard to any guidance issued by the Scottish Ministers.

19. The requirement to have a system in place includes the legal requirement to process any data that it is necessary for the operation of that system. A person to whom information has been supplied that can be used to determine whether someone is fully vaccinated, cannot be fully vaccinated for medical reasons or is a participant in a trial of a vaccine against coronavirus must treat that information as confidential.

20. For the purposes of these Regulations “late night premises” are premises that: serve alcohol at any time between 0000 hours and 0500 hours; have a dancefloor, or other designated space, provided for dancing by customers; and play live or recorded music for dancing, unless they are being used for a funeral, marriage ceremony, civil partnership registration, or a reception or gathering which relates to such occasions.

21. For the purposes of these Regulations, “a relevant event” is an event planned on the basis that: (i) it will be attended by more than 10,000 people; or (ii) it will take place wholly or mainly outdoors and will be attended by 4,000 or more people simultaneously (excluding children under 5 years of age and people working at the event), and not all of those attendees will be seated; or (iii) it will take place wholly or mainly indoors and will be attended by 500 or more people simultaneously (excluding children under 5 years of age and people working at the event), and not all of those attendees will be seated. These Regulations provide that certain events are exempt, including those relating to a funeral, marriage ceremony or civil partnership registration.

22. These Regulations repeal Part 3 of the Principal Regulations which provided capacity limits on stadia and live events. Settings which were previously subject to the capacity limits will now largely be covered by the certification scheme which seeks to achieve the same policy aims and the continued use of capacity limits was therefore not considered necessary at this stage, given the need for restrictions to be proportionate..

23. These Regulations provide that failure to ensure that there is a reasonable system in operation will be an offence. Regulation 16(4) of the Principal Regulations provides that it is a defence to a charge of committing that to show that, in the circumstances, the person had a reasonable excuse. These Regulations amend the enforcement provisions of the Principal Regulations to clarify the requirement that persons to whom a notice is given must, so far as reasonably practicable, comply with that notice. The purposes for which a local authority may designate persons to enforce the Principal Regulations are amended to include the requirement to operate a system by relevant premises. These Regulations also introduce a right of entry for persons designated by a local authority to enter premises operating a system for the purpose of enforcing the requirement to operate a system by a relevant premises.

24. The Scottish Government is mindful of the need for businesses to adapt to the requirements introduced by these Regulations. The Regulations come into force on 05:00 on 1st October 2021, but the Regulations delay the application of the enforcement provisions in the Principal Regulations as they apply to the Scheme (other than the duty of confidentiality) until 05:00 on 18 October 2021. This is intended to allow businesses a reasonable period of time to implement Certification before there is any prospect of enforcement action being commenced against them.