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Lewis Macdonald MSP
Convener
Health and Sport Committee

14 January 2021

Dear Convener,

The Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021

I am writing to advise you that the Scottish Ministers made the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 today, 14 January, under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. The regulations will be laid before the Scottish Parliament on 15 January and will come into force on 15 January at 04.00. A saving provision provides that these regulations will apply to persons arriving in Scotland from 04.00 on 18 January. The provisions relating to the offence by an operator of failing to ensure a passenger has completed a Passenger Locator Form will come into force on 1 February.

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) 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 regulations have been approved by a resolution of the Parliament.

These regulations will make further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020. Part 1 of this instrument makes a further amendment to the principal Regulations to make provisions for a system of pre-departure testing with duties on passengers. Part 2 of the instrument places duties on operators in connection with pre-departure testing and it also imposes also a duty on operators not to allow persons to travel to Scotland without a completed Passenger Locator Form.

Passengers travelling to Scotland from outside the common travel area must possess a valid notification of a qualifying negative coronavirus test and present it to operators prior to boarding a service travelling to Scotland and if requested by an immigration officer. A valid test must be a test with a device that has a sensitivity of at least 80% and specificity of at least 97% and a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre. It must be taken within 3 days of beginning the journey, in addition to the further requirements for the test and notification provided in Schedule 2A.

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Children (under 18s) are not required to possess a negative test result although where a child aged 11-18 is travelling with a responsible adult that adult must possess a test result for that child. There is a limited range of further exemptions including for Crown servants and government contractors carrying out essential work, certain essential transport sector roles and workers required for emergency works or services.

These regulations make it an offence to contravene the above requirements without a reasonable excuse, and they empower an immigration officer or constable to issue a fixed penalty notice for breach of £480. The offences may also be prosecuted on summary conviction with a maximum fine of £5000.

The regulations also require that operators must ensure that a passenger who arrives at a port in Scotland is in possession of a required notification, detailed above, and a completed Passenger Locator Form, subject to a small number of exemptions and defences. Operators who fail to comply with these requirements commit an offence resulting in a fine.

Due to the risk of importation of the virus and the emergence of new and more highly transmissible virus strains across the world, the Scottish Ministers consider that these changes require to be made urgently and that they are necessary and justified in light of the risks of importation of additional cases of the virus or new strains. These regulations do not replace the requirement for passengers to isolate for 10 days on arrival, unless exempt owing to travel from an exempt country or territory or through a sectoral exemption, but add another layer of protection to existing measures.

We will look to have the Regulations approved by a resolution of the Parliament as soon as possible. You will also note that the Regulations require the Scottish Ministers to keep the necessity for these measures under regular review and we will do so and keep Parliament updated.

We are seeking to work on a Four Nations basis where possible as regards the border measures. These regulations have been made urgently in light of a risk presented by imported infections and will be laid before the Scottish Parliament as soon as possible thereafter. We wished to inform you as soon as possible in terms of our duties and we regard it as important that those travelling to and from Scotland in relation to affected countries have as much clarity as is possible regarding their position so that they can make appropriate arrangements if required.

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