

# DELEGATED POWERS AND LAW REFORM COMMITTEE

## 13th Meeting, 2021 (Session 6) 7 December 2021

### Instrument Responses

#### Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021 (2021/425)

**On 25 November 2021 the Committee asked the Scottish Government:**

The consolidated International Travel Regulations, commenced on 20 September in SSI 2021/322, were amended by SSI 2021/350 to introduce a coronavirus testing and quarantine system based on an individual's vaccination status rather than which country they have travelled from, for everyone other than arrivals from a 'red list' country. This instrument further amends the principal International Travel Regulations in SSI 2021/322 and inserts a new Part 1A (Eligible vaccinated arrivals) which substitutes regulation 3 with interpretation provisions for Part 1A and inserts new regulations 3A – 3H. Regulation 3A defines an eligible vaccinated arrival as a person who is not a red list arrival and who meets any of the descriptions in regulations 3B to 3H. Regulation 3B provides vaccination conditions which a person must meet to be an eligible vaccination arrival and regulations 3C to 3H provide eligibility conditions for participants in clinical vaccination trials, those who are exempt from vaccination on medical grounds or by virtue of their age, or who have received vaccination as part of a UK vaccine rollout overseas.

A person meets the vaccination conditions in regulation 3B if they have completed a course of vaccination using doses of an authorised vaccine or a WHO List vaccine more than fourteen days before their arrival in Scotland, and they can provide proof of their vaccination status and they have confirmed that they meet defined COVID-19 vaccination eligibility criteria on a Passenger Locator Form. An authorised vaccine is defined as a medicinal product for vaccination against coronavirus authorised in the UK or in other countries in ways specified in regulation 3(1)(a), (b) or (c). Regulation 3(1)(c) provides that an authorised vaccine may include doses received in any country or territory including, but not limited to, a relevant country listed in schedule 1A of the principal Regulations if it is authorised for use in the United Kingdom in terms of regulation 3(1)(a). This would appear to have the effect that a person may receive an authorised vaccine in any country in the world and therefore potentially be an eligible vaccinated arrival.

However, regulation 3B(1)(b) provides that the necessary proof of vaccination is restricted to certification issued only in the UK, the EU, EFTA and EU microstates, the USA and North America, or by relevant countries listed in table 2 of regulation 3(2) or schedule 1A or by a country listed in a new category of 'approved third countries' in regulation 3(5). This would appear to have the effect that a fully vaccinated person who completed their course of vaccination in a country which is neither a relevant country nor an approved third country, for example Mexico, and declares that they have done so on a Passenger Locator Form will, nevertheless be unable to provide proof of their vaccination status which

is acceptable in terms of regulation 3B. They could therefore not be treated as an eligible vaccinated arrival. However, in terms of regulation 3F if a person is unable to be vaccinated on medical grounds and has proof of their clinical status and declares that on a Passenger Locator Form, or is under eighteen years of age, they shall be treated as an eligible vaccinated arrival irrespective of their country of origin, even if that is Mexico.

1. Is this considered to be the legal effect of the new provisions in Part 1A?
2. If so, is the policy intention to exclude people who have completed a course of authorised vaccination in a country which is not listed as a relevant country or an approved third country such as, for example, Mexico, from the definition of eligible vaccinated arrival? Is it also the policy intention to deem people exempt from vaccination on medical grounds and children and young people travelling from countries such as Mexico, to be eligible vaccinated arrivals in terms of new regulations 3F and 3G?
3. If not, please confirm whether any corrective action is proposed, and if so, what action and when.

**On 30 November 2021 the Scottish Government responded:**

It is correct that the effect of regulation 3(1) of the principal International Travel Regulations is that a person may receive an authorised vaccine or a WHO List vaccine in any country in the world and therefore potentially be an eligible vaccinated arrival. The effect of regulation 3(1), read with regulation 3B, is that any such person who has received a recognised vaccine will only be able to benefit from eligible vaccinated arrival status if they are able to provide proof of that, eg. through a vaccine certificate from a relevant country or certification from NHS Scotland, the NHS Covid Pass, EU DCC Card, or CDC Card where appropriate (per regulation 3B(1)(b)).

To take the example of a person who has completed a course of authorised vaccination in a country which is not listed as a relevant country or an approved third country such as Mexico, the changes remove the requirement for such a person to have actually *received* the vaccine in a relevant country or the UK, but the requirements in terms of how that can be *evidenced* are maintained.

There is a regular process of engagement with international partners led by the Foreign, Commonwealth and Development Office and the Department for Transport to assess other countries' vaccine certificates against the data and security requirements agreed among the four nations, and to add those that meet the standard as relevant countries in the regulations. The certificate issued by the Government of Mexico does not meet UK data requirements, and so is not a valid proof of vaccination. A resident of Mexico who has been vaccinated with an authorised vaccine and can access certification as per regulation 3B(1)(b) can now present it in order to travel to the UK as an eligible vaccinated arrival.

In relation to regulation 3F, the policy intention is that the clinical exemption should apply in practice to UK residents (as indicated by the title of that regulation, "Eligible vaccinated arrivals: UK clinical exemptions conditions"). In practice, guidance issued by the Department for Transport on behalf of the four nations is relevant to what evidence will be accepted as proof that a person cannot be vaccinated for clinical reasons. For residents of Scotland, proof in the form of a secure paper certificate from NHS Scotland or an exempt status in the NHS Scotland COVID Status app will be accepted. Residents of other parts of the UK may be able to access paper or digital certification demonstrating medical exemption from vaccination in line with clinical guidance there. There is no established international protocol for verifying medical exemption certification from other countries, and

at this time the policy is limited to official certification from the NHS issued to UK residents in order to mitigate the risk of fraud.

In relation to regulation 3G, the policy intention is that any arrival into Scotland under the age of 18 will fall into the category of an eligible vaccinated arrival. The traveller's passport provides proof of age and no further documentation or certification needs to be verified to demonstrate this