

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2021 No. 322**

**The Health Protection (Coronavirus) (International Travel  
and Operator Liability) (Scotland) Regulations 2021**

**PART 7**

Parts 2 to 6: enforcement

**Part 2 (information): offences and penalties**

**28.**—(1) A person who contravenes a requirement in—

- (a) regulation 4(2), (4) or (5), or
- (b) regulation 5(3) or (5),

commits an offence (unless that person is a child).

(2) A person who provides false or misleading information for the purposes of regulations specified in paragraph (1)(a) and (b) commits an offence where that person—

- (a) knows that the information is false or misleading, or
- (b) is reckless as to whether the information is false or misleading.

(3) It is a defence to a charge of committing an offence under paragraph (1) or (2) to show that the person, in the circumstances, had a reasonable excuse.

(4) For the purposes of paragraph (3), a reasonable excuse includes, in particular where—

- (a) the information to be provided is not within P's knowledge or possession or under P's control,
- (b) P is accompanied by any child for whom P has responsibility and the child's passenger information has been submitted by someone else with responsibility for the child.

(5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

**Part 3 (testing before arrival in Scotland): offences and penalties**

**29.**—(1) A person who contravenes a requirement in regulation 8 (requirement to possess notification of negative test result) commits an offence.

(2) It is a defence to a charge of committing an offence under paragraph (1) to show that the person, in the circumstances, had a reasonable excuse.

(3) For the purposes of paragraph (2), a reasonable excuse includes, in particular where—

- (a) a person was medically unfit to provide a sample for a qualifying test and possessed a document, in English or accompanied by a certified English translation, signed by a medical practitioner entitled to practise in the country or territory in which that practitioner was based, to that effect,
- (b) it was not reasonably practicable for a person to obtain a qualifying test due to a disability,

- (c) a person required medical treatment with such urgency that obtaining a qualifying test was not reasonably practicable,
  - (d) a person contracted coronavirus and required emergency medical treatment,
  - (e) a person was accompanying, in order to provide support, whether medical or otherwise, a person described in sub-paragraph (c) or (d) where it was not reasonably practicable for the accompanying person to obtain a qualifying test,
  - (f) a person began their journey to Scotland in a country or territory in which—
    - (i) a qualifying test was not available to the public, with or without payment, or in which it was not reasonably practicable for a person to obtain a qualifying test due to a lack of reasonable access to a qualifying test or testing facility, and
    - (ii) it was not reasonably practicable for them to obtain a qualifying test in their last point of departure if this was different to where they began their journey,
  - (g) the time it has taken a person to travel from the country or territory where they began their journey to the country or territory of their last point of departure prior to arriving in Scotland meant that it was not reasonably practicable for them to meet the requirement in regulation 9(1)(c), and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure.
- (4) A person does not commit an offence where they contravene a requirement in regulation 8 if they reasonably believed at the time of the contravention that the notification of a negative result was valid and from a qualifying test.
- (5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **Part 4 (testing following arrival in Scotland): offences and penalties**

- 30.**—(1) It is an offence to contravene a requirement, without reasonable excuse, in—
- (a) regulation 12 (requirement to possess testing package),
  - (b) regulation 13(1) or, in the case of a person with responsibility for a child, regulation 13(2) (requirement to provide information), or
  - (c) regulation 14(1) or (5) (requirement to undertake tests).
- (2) Reasonable excuses for contravening regulation 12 include, in particular where—
- (a) it was not reasonably practicable for a person to book a test due to a disability,
  - (b) a person reasonably considered, before arriving in Scotland, that it would not be reasonably practicable for the person (or, as the case may be, the child for whom the person has responsibility) to provide a sample for a test in accordance with regulation 14 due to a disability,
  - (c) a person required medical treatment with such urgency that booking a test was not reasonably practicable,
  - (d) a person was accompanying a person described in paragraph (a) or (c) in order to provide support, where it was not reasonably practicable for the accompanying person to book a test,
  - (e) a person began their journey to Scotland in a country or territory in which the person—
    - (i) did not have reasonable access to the facilities or services required to book a test, with or without payment, and
    - (ii) such facilities or services were not reasonably accessible in their last point of departure if this was different to where they began their journey.

- (3) Reasonable excuses for contravening regulation 14(1) or (5) include, in particular, where—
- (a) it is not reasonably practicable for P to undertake a test due to a disability,
  - (b) P requires medical treatment with such urgency that undertaking a test is not reasonably practicable,
  - (c) a test is cancelled for reasons beyond P’s control,
  - (d) P has left the common travel area in accordance with regulation 31(3)(a),
  - (e) P has left Scotland in accordance with regulation 32(2)(a).
- (4) A person who commits an offence under paragraph (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Part 5 (managed isolation): offences and penalties**

- 31.**—(1) It is an offence for a person to contravene a requirement in—
- (a) regulation 20(1) (requirement to enter at designated port),
  - (b) regulation 20(3) (requirement to possess managed isolation package),
  - (c) regulation 21(1) (requirement to travel to and remain in managed accommodation), or
  - (d) regulation 21(5) (requirement in relation to a child).
- (2) It is a defence to a charge of committing an offence under paragraph (1)(a), (b) or (d) to show that the person, in the circumstances, had a reasonable excuse.
- (3) It is a defence to a charge of committing an offence under paragraph (1)(c) for a person (“P”) to show that they are outside of the place where they are staying in accordance with regulation 21(1) for one of the following reasons—
- (a) to travel, in order to leave the common travel area, provided that P does so directly, (except where regulation 16(1)(a)(i) applies in relation to P),
  - (b) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings,
  - (c) on compassionate grounds, to attend a funeral of—
    - (i) a member of P’s household,
    - (ii) a close family member, or
    - (iii) if no-one within heads (i) or (ii) is attending, a friend,
  - (d) on compassionate grounds, for reasons relating to the end of a person’s life,
  - (e) for exercise,
  - (f) with permission from a person authorised by the Scottish Ministers to grant permission,
  - (g) in other exceptional circumstances, such as—
    - (i) to seek medical assistance where this is required urgently or on the advice of a registered medical practitioner, including to access services from dentists, opticians, audiologists, chiropodists, chiropractors, osteopaths and other medical and health practitioners, including services relating to mental health,
    - (ii) to access critical public services, including social services or services provided to victims (such as victims of crime),
    - (iii) to avoid injury, illness or to escape risk of harm,
    - (iv) to access veterinary services where this is required urgently or on the advice of a veterinary surgeon.

(4) A person may only leave or be outside of the place where they are staying in reliance on the grounds mentioned in paragraph (3)(c), (d) or (e)—

- (a) if P has been given prior permission by a person authorised by the Secretary of State or the Scottish Ministers for this purpose;
- (b) if P complies with any reasonable requirements imposed by the person so authorised in relation to the exercise, the visit to the person or the attendance at the funeral.

(5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Part 6 (self-isolation): offences and penalties**

**32.**—(1) It is an offence for a person to contravene a requirement in—

- (a) regulation 26(2) (requirement to travel to and stay in specified premises), or
- (b) regulation 26(8) (requirement in relation to a child).

(2) It is a defence to a charge of committing an offence under paragraph (1)(a) for a person (“P”) to show that they are outside of the place where they are staying in accordance with regulation 26(2) for one of the following reasons—

- (a) to travel, in order to leave Scotland, provided that P does so directly (except where regulation 16(1)(a)(ii) applies in relation to P),
- (b) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household),
- (c) to seek medical assistance, including to access services from dentists, opticians, audiologists, chiropodists, chiropractors, osteopaths and other medical and health practitioners, including services relating to mental health,
- (d) to access veterinary services,
- (e) on compassionate grounds, to attend a funeral of—
  - (i) a member of P’s household,
  - (ii) a close family member, or
  - (iii) if no-one within heads (i) or (ii) is attending, a friend,
- (f) on compassionate grounds, for reasons relating to the end of a person’s life,
- (g) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings,
- (h) to access public services (including social services or victims’ services) where—
  - (i) access to the service is critical to P’s well-being, and
  - (ii) the service cannot be provided if P remains at P’s specified premises,
- (i) to avoid injury, illness or to escape risk of harm,
- (j) to move to a different place for the purposes of regulation 26(2) where—
  - (i) a legal obligation requires P to change the specified premises where P is staying for the purposes of that regulation, or
  - (ii) P is otherwise unable to remain at the specified premises where P is staying for the purposes of that regulation.

(3) It is a defence to a charge under paragraph (1)(b) to show that P, in the circumstances, had a reasonable excuse.

(4) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Powers of direction and removal**

**33.**—(1) Where a constable has reasonable grounds for suspecting that a person (“P”) has contravened the requirement in regulation 21(1) (requirement to stay in managed accommodation) or 26(2) (requirement to stay in specified premises), the constable may—

- (a) direct P to return to the place where P is staying,
- (b) remove P to the place where P is staying,
- (c) where it is not practicable or appropriate in the circumstances to take the action in subparagraph (a) or (b), remove P to a hotel or other accommodation facilitated by the Secretary of State or the Scottish Ministers.

(2) Paragraph (1)(b) and (c) do not apply where P is a person described in paragraph 1 of schedule 4.

(3) A constable exercising the power in paragraph (1) may use reasonable force, if necessary, in doing so.

(4) Where a child (“C”) is outside of the place where they are staying in accordance with regulation 21(1) or 26(2) and is accompanied by a person who has responsibility for the child (“A”)—

- (a) the constable may direct A to take C to the place where C is staying,
- (b) A must, so far as reasonably practicable, ensure that C complies with any direction or instruction given by a constable to C.

(5) Where a constable has reasonable grounds for suspecting that a child (“C”) has repeatedly contravened the requirement in regulation 21(1) or 26(2), the constable may direct any person who has responsibility for C to ensure, so far as reasonably practicable, that C complies with that requirement.

(6) A constable may only exercise a power under paragraph (1), (4) or (5) if the constable considers that it is a necessary and proportionate means of ensuring compliance with the requirement in regulation 21(1) or 26(2).

(7) A constable exercising a power under paragraph (1), (4) or (5) may give to P or A any direction or instruction the constable considers necessary and proportionate.

(8) Where P is a person required to comply with regulation 21(1), an authorised person may give a direction to P to ensure that P complies with the requirements of that regulation, including a direction—

- (a) that P remain in a particular area of a port to await transportation to P’s designated accommodation,
- (b) that P move to a particular place to board P’s designated transportation,
- (c) that P board P’s designated transportation to travel to P’s designated accommodation, or
- (d) that P remain in, or return to, the place where P is staying in accordance with regulation 21(1).

(9) For the purposes of paragraph (8), “authorised person” means a person authorised by the Scottish Ministers for the purposes of this regulation.

### **Further offences and penalties**

**34.**—(1) It is an offence for a person to contravene a requirement imposed in or under regulation 33 (powers of direction and removal).

(2) It is an offence for a person to provide false or misleading information for the purposes of Parts 5, 6 or 7 where that person—

- (a) knows that the information is false or misleading,

(b) is reckless as to whether the information is false or misleading.

(3) A person who deliberately obstructs any person carrying out a function under these Regulations commits an offence.

(4) It is a defence to a charge of committing an offence under paragraphs (1), (2) or (3) to show that the person, in the circumstances, had a reasonable excuse.

(5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Fixed penalty notices**

**35.**—(1) A constable may issue a fixed penalty notice to anyone that the constable has reasonable grounds to believe—

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 or over.

(2) An immigration officer may issue a fixed penalty notice to anyone that the immigration officer has reasonable grounds to believe—

- (a) has committed—
  - (i) an information offence,
  - (ii) an offence under regulation 29(1) (testing before arrival in Scotland),
  - (iii) an offence under regulation 30(1)(a) (requirement to possess testing package),
  - (iv) an offence under regulation 31(1)(a) (requirement to enter at designated port),
  - (v) an offence under regulation 31(1)(b) (requirement to possess managed isolation package), or
  - (vi) an offence under regulation 34(3) (deliberate obstruction), and
- (b) is aged 18 or over.

(3) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty in accordance with these Regulations.

(4) For the purposes of these Regulations—

- (a) the form of a fixed penalty notice,
- (b) the effect of a fixed penalty notice, and
- (c) the procedure that applies to a fixed penalty notice,

are the same as those that apply to a fixed penalty notice given under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004<sup>(1)</sup>, as provided for in sections 129 to 134 of that Act, and sections 226B and 226I of the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup> subject to the modifications in paragraph (5).

(5) The modifications are—

- (a) section 129(1) is to be disregarded,
- (b) the definitions of “fixed penalty notice” in sections 129(2) and 134 are to be construed as a reference to a notice under paragraph (1),

(1) 2004 asp 8. Sections 130(3), 131(6) and 132(1) were amended by paragraph 32(b) of schedule 1 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (“the 2007 Act”) and section 132(6) was repealed by paragraph 32(c) of schedule 1 of the 2007 Act.

(2) 1995 c. 46. Section 226B and 226I were inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2006 (asp 6) and amended by S.S.I. 2020/339.

- (c) the definition of “prescribed area” in section 129(2) is to be disregarded,
  - (d) section 130(1), (2) and (3)(f) is to be disregarded,
  - (e) the references to “section 129” in section 131(1) and section 133(1) are to be construed as references to this regulation,
  - (f) the reference in section 131(5) to “in accordance with this Part” is to be construed as a reference to these Regulations, and the reference to “a sum equal to one and a half times” is to be disregarded,
  - (g) the definition of “fixed penalty offence” in section 134 is to be construed as though it referred to an offence of the type referred to in paragraph (1)(a),
  - (h) the reference to “by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004” in section 226B(5)(a)(ii) of the Criminal Procedure (Scotland) Act 1995 is to be construed as a reference to that section as modified by this paragraph, and
  - (i) the reference to “a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004” in section 226I(1) of the Criminal Procedure (Scotland) Act 1995 is to be construed as a reference to that section as modified by this paragraph.
- (6) In paragraph (2)(a)(i), “information offence” means an offence under Part 2 (passenger information) or an offence under regulation 34(3) where the person is believed to have intentionally obstructed an immigration officers carrying out a function in relation to Part 2.

**Fixed penalty notices: penalty amounts**

**36.** The penalty payable in respect of a fixed penalty notice issued under these Regulations is £480.