

2021 No. 349

PUBLIC HEALTH

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

Approved by the Scottish Parliament

Made - - - -at 11.39 a.m. on 30th September 2021

Laid before the Scottish Parliament at 3.30 p.m. on 30th September 2021

Coming into force - - - at 5.00 a.m. 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 5.00 a.m. 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 5.00 a.m. 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,

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

- (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.
- (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,
 - (b) 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,

(a) S.I. 2012/1916.

- (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,
- (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).".

JOHN SWINNEY
A member of the Scottish Government

St Andrew's House,
Edinburgh
At 11.39 a.m. on 30th September 2021

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.

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