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Health and Sport Committee Comataidh Slàinte is Spòrs

Subordinate Legislation considered by the Health and Sport Committee on 25 August 2020



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Contents

Introduction	1
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209)	3
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221)	5
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224)	7
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229)	9
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233)	11
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235)	13
Matters drawn to the attention of Parliament	15
Approach to designation of countries, a more regional approach.	15
Checking and Tracing of those required to quarantine	15
Parliamentary Scrutiny	16

Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/health-committee.aspx>



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Introduction

1. On 23 June 2020, the Committee considered the following instruments:
 - [The Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Regulations 2020 \(SSI 2020/169\)](#) – designed to impose quarantine restrictions on those arriving in Scotland for 14 days and to mandate the provision of relevant contact information;
 - [The Health Protection \(Coronavirus, Public Health Information for Passengers Travelling to Scotland\) Regulations 2020 \(SSI 2020/170\)](#) – imposed requirements on carriers to provide public health information to travellers arriving in Scotland; and
 - [The Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment Regulations 2020 \(SSI 2020/171\)](#) – made a minor amendment to the penalties in SSI 2020/169.
2. The Cabinet Secretary for Justice, Humza Yousaf, [gave evidence](#) to the Committee on the instruments, which were formally debated and the Committee [reported](#) to Parliament.
3. Following the Cabinet Secretary’s appearance at the Committee, he [wrote](#) to the Committee on 7 July 2020 to clarify statements provided regarding how monitoring was being undertaken. The Convener [sought further details](#) on the discrepancies which were provided on [14 July 2020](#).
4. The [Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 3\) Regulations 2020 \(SSI 2020/209\)](#) and [Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 4\) Regulations 2020 \(SSI 2020/221\)](#) amend the original regulations to exempt travellers entering Scotland from various specified countries from the requirement to quarantine. Initially SSI 2020/209 specified a list, to which SSI 2020/221 added Spain as an exempt country on 20 July with effect from 23 July 2020.
5. On 25 July 2020, it was announced Spain would be removed from the exempt country list with immediate effect and the Committee received [correspondence](#) from the Cabinet Secretary for Justice to this effect. [The Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 5\) Regulations 2020 \(SSI 2020/224\)](#) were laid on 27 July 2020 which remove Spain from the list.
6. On 28 July 2020, a further instrument, the [Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 6\) Regulations 2020 \(SSI 2020/229\)](#), was laid to add the following countries to the exempt list: Estonia, Latvia, Saint Vincent and the Grenadines, Slovakia and Slovenia.
7. On 31 July 2020, it was announced Luxembourg would be removed from the exempt country list with immediate effect and the Committee received [correspondence](#) from the Cabinet Secretary for Transport, Infrastructure and Connectivity to this effect. [The Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 7\) Regulations 2020 \(SSI 2020/233\)](#) were laid on 31 July 2020 which remove Luxembourg from the list.

8. On 6 August 2020, it was announced Andorra, Belgium and The Bahamas would be removed from the exempt country list on 8 August at 04:00, and Brunei and Malaysia would be added to the exempt list of countries and territories on 11 August at 04:00. The Committee received [correspondence](#) from the Cabinet Secretary for Justice to this effect. [Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Amendment \(No. 8\) Regulations 2020 \(SSI/ 2020/235\)](#) to this effect were laid on 7 August 2020.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209)

9. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209) were laid before the Parliament on 10 July 2020 and referred to the Health and Sport Committee.
10. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
11. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
12. It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
13. The Cabinet Secretary for Health and Sport, Jeane Freeman MSP, has, by motion [S5M-22258](#), proposed that the Committee recommends approval of the Regulations.
14. At its meeting on the 25 August 2020, the Committee took evidence on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
15. Following the evidence session, Humza Yousaf moved motion [S5M-22258](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209) be approved.
16. The motion was agreed to.
17. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

18. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209) be approved.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221)

19. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221) laid before the Parliament on 22 July 2020 and referred to the Health and Sport Committee.
20. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
21. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
22. It is for the Health and Sport Committee to recommend to the Parliament whether the regulations should be approved.
23. The Cabinet Secretary for Justice, Humza Yousaf MSP, has, by motion [S5M-22460](#), proposed that the Committee recommends approval of the Regulations.
24. At its meeting on the 25 August 2020, the Committee took evidence on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
25. Following the evidence session, Humza Yousaf moved motion [S5M-22460](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221) be approved.
26. The motion was agreed to.
27. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

28. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221) be approved.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224)

29. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224) were laid before the Parliament on 27 July 2020 and referred to the Health and Sport Committee.
30. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
31. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
32. It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
33. The Cabinet Secretary for Justice, Humza Yousaf MSP, has, by motion [S5M-22463](#), proposed that the Committee recommends approval of the Regulations.
34. At its meeting on the 25 August 2020, the Committee took evidence on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
35. Following the evidence session, Humza Yousaf moved motion [S5M-22463](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224) be approved.
36. The motion was agreed to.
37. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

38. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224) be approved.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229)

39. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229) were laid before the Parliament on 28 July 2020 and referred to the Health and Sport Committee.
40. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
41. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
42. It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
43. The Cabinet Secretary for Justice, Humza Yousaf MSP, has, by motion [S5M-22464](#), proposed that the Committee recommends approval of the Regulations.
44. At its meeting on the 25 August 2020, the Committee took evidence on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
45. Following the evidence session, Humza Yousaf moved motion [S5M-22464](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229) be approved.
46. The motion was agreed to.
47. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

48. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229) be approved.

The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233)

49. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233) were laid before the Parliament on 31 July 2020 and referred to the Health and Sport Committee.
50. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
51. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
52. It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
53. The Cabinet Secretary for Justice, Humza Yousaf MSP, has, by motion [S5M-22465](#), proposed that the Committee recommends approval of the Regulations.
54. At its meeting on the 25 August 2020, the Committee took evidence on the The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
55. Following the evidence session, Humza Yousaf moved motion [S5M-22465](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233) be approved.
56. The motion was agreed to.
57. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

58. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233) be approved.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235)

59. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235) were laid before the Parliament on 7 August 2020 and referred to the Health and Sport Committee.
60. They are laid under section 94(1) (International Travel) of the Public Health etc. (Scotland) Act 2008. 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.
61. At its meeting on 18 August 2020, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
62. It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
63. The Cabinet Secretary for Justice, Humza Yousaf MSP, has, by motion [S5M-22466](#), proposed that the Committee recommends approval of the Regulations.
64. At its meeting on the 25 August 2020, the Committee took evidence on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235) from—
 - Humza Yousaf, Cabinet Secretary for Justice;
 - Rachel Sunderland, Deputy Director, Population and Migration Division;
 - Roger Halliday, Chief Statistician; and
 - Jamie MacDougall, Deputy Director, Test and Protect Portfolio, all Scottish Government.
65. Following the evidence session, Humza Yousaf moved motion [S5M-22466](#)—

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235) be approved.
66. The motion was agreed to.
67. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (when available) at the following link:

- [Health and Sport Committee Official Reports](#)

68. The Health and Sport Committee recommends to Parliament that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI/ 2020/235) be approved.

Matters drawn to the attention of Parliament

69. In the course of considering these Regulations the Committee considered and questioned the Cabinet Secretary on a number of areas around the approach to consideration of countries, Parliamentary processes for consideration and review and the enforcement of the Regulations.
70. While the Committee recommends each set of Recommendations be approved we draw to the attention of Parliament the following considerations.

Approach to designation of countries, a more regional approach.

71. The Committee considered whether the approach being adopted in relation to countries should be capable of a more regional approach with different treatment of different regions being adopted. This arose in particular in relation to the Amendment No.5 regulations covering the removal of Spain from the exempt list and whether it was possible to exclude the Balearic and Canary Islands from the change. The Committee requested the Cabinet Secretary to consider taking a more nuanced and regional approach to determining future designations.

Checking and Tracing of those required to quarantine

72. The Committee heard from the Cabinet Secretary that only a small proportion of people required to quarantine were subject to any follow up contact after receipt of an initial e-mail. A target of up to 20% had been provided to the Committee for the numbers to be followed up with a maximum capacity of 450 set although that figure has been exceeded in recent weeks. The Cabinet Secretary also indicated he would like to go further than the 450 capacity, towards the 20% target. During the last 2 weeks the Committee were told around 16,000 people entering Scotland had become liable to quarantine.
73. The Committee consider, given the emergency nature of these regulations, and the danger posed to the Scottish public that “the greatest risk of infection is from travellers arriving in Scotland carrying the virus”¹. The Committee consider checking and tracing those persons subject to quarantine requires to be given a higher priority and the target numbers must be substantially increased.
74. The Committee also considered Parliament should be provided with timely and accurate information on the numbers being followed up by both Public Health Scotland and the Scottish Police Service.

Parliamentary Scrutiny

75. The Committee have concerns that the current approach to the making of these regulations using emergency criteria under the [Public Health etc \(Scotland\) Act 2008](#) is not providing the Scottish Parliament with appropriate and timeous opportunities to scrutinise the actions being taken by the Scottish Government in this sensitive area. This particularly applies, but concerns are not solely restricted to, the designations adding countries to the exempt list using powers in section 122 of the above Act. Using section 122 allows for the making of urgent regulations which then come into force immediately.
76. The Committee acknowledges the Cabinet Secretary undertook to reflect on the use of the emergency powers and consider what alternative might address their concerns.

Health and Sport Committee

Subordinate Legislation considered by the Health and Sport Committee on 25 August 2020, 7th Report, 2020 (Session 5)

- 1 [Letter from Humza Yousaf MSP, Cabinet Secretary for Justice to Lewis Macdonald MSP, Convener of the Health and Sport Committee - 14 July 2020](#)

