

COVID-19 Recovery Committee

**11th Meeting, 2021 (Session 6), Thursday
18 November 2021**

Ministerial statements on COVID-19 and Subordinate legislation

Introduction

1. At this meeting, the Deputy First Minister and Cabinet Secretary for COVID Recovery (“the Cabinet Secretary”), will give evidence under agenda item 2.

2. The Committee will take evidence under this agenda item on the policy announcements arising from the latest Ministerial statements on COVID-19 (9 November and 16 November), and on the following subordinate legislation under agenda item 2, before it considers the corresponding motions, under agenda item 3—

- The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/382);
- The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384);
- The Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 [draft].

3. The Committee will also consider a motion under agenda item 3 on the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359). The consideration of this motion was deferred from an earlier meeting.

Background

4. SPICe has produced a [blog](#) with background information on the statutory powers that underpin the Scottish Government’s strategy for responding to COVID-19.

Agenda item 2: Ministerial statements on COVID-19 and Subordinate legislation

Ministerial statements on COVID-19: Tuesday, 9 and 16 November 2021

5. The Scottish Government delivers a weekly statement to parliament setting out its latest actions for responding to COVID-19 on Tuesday afternoons. The main public health measures being used to respond to COVID-19 are contained within the [principal health protection regulations](#). The Committee takes evidence from Scottish Ministers on any policy announcements arising from the statement and any changes to the regulations every fortnight.

6. The Deputy First Minister and Cabinet Secretary for COVID-19 delivered the most recent statement on 9 September 2021. The written transcript of the statement is available on the [parliament's website](#).

7. The next statement will take place on 16 November 2021. Members will take evidence on any policy announcements arising from this statement under agenda item 2.

8. In addition, the Scottish Government is required to review the measures contained within the [principal health protection regulations](#) every 21 days. This is known as the 'three-weekly review'. The next three-week review is due on 16 November 2021. The Committee requested the Scottish Government provide [further information](#) to parliament as part of the three-week review process in order to monitor the implementation of the vaccination certification scheme. The Scottish Government wrote to the Committee on 12 November 2021 providing further information as part of the latest three-week review and this letter is attached in the **Annexe**.

SPICe COVID-19 Update

9. SPICe produces a briefing entitled 'SPICe COVID-19 Update' (see **Paper 4**). This provides Members with links to the latest guidance and supporting information published by the Scottish Government, in addition to a selection of websites with information on wider health and social and economic indicators in Scotland.

10. This paper will be published as a late paper to allow the latest data from Public Health Scotland to be incorporated.

Subordinate legislation

Overview

11. The first two items of subordinate legislation listed on the agenda are subject to the ‘made affirmative’ procedure. This means that the regulations can come into force immediately and without any parliamentary scrutiny. The regulations can only remain in force for 28 days from the date they were made into law. To continue in force for longer than 28 days, parliamentary approval is required and must be granted within the first 28 days of the instrument being made. The DPLR Committee and COVID-19 Recovery Committee will report on each of the instruments, before the whole Parliament considers motions to approve them.

12. The third item of subordinate legislation listed on the agenda is subject to the ‘draft affirmative’ procedure. This means that the regulations are laid in draft form and will only come into force on the specified date in the commencement provision if approved by parliament. The COVID-19 Recovery Committee has 40 days to report to parliament on the instrument. The DPLR Committee and COVID-19 Recovery Committee must report the instrument before the whole parliament considers motions to approve them.

Policy Background: (SSI 2021/382)

13. On 29 October 2021, the Scottish Government laid [SSI 2021/382](#) and the regulations came into force on 31 October and 1 November 2021, in accordance with Regulation 1. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 25 November 2021 to remain in force beyond this date.

14. According to the [policy note](#), the purpose of the instrument is as follows—

“This instrument amends the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 to update the countries included in the red list for the purposes of testing and isolation requirements.

This instrument also expands the list of countries from where a person vaccinated with an authorised vaccine may be an eligible vaccinated arrival and the proof needed for this.

This instrument also introduces a further option for eligible travellers, arriving from non-red list countries and territories, to allow them to complete the mandatory day 2 test using a Lateral Flow Device (“LFD”) test, as an alternative to a Polymerase Chain Reaction (“PCR”) test.”

15. The policy note to SSI 2021/382 states that impact assessments impact assessments will be published on legislation.gov.uk in due course. At the time of writing, the impact assessments had not been published.

16. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/382 at its meeting on 9 November 2021 and had [no points to raise](#).

Policy Background: (SSI 2021/384)

17. On 29 October 2021, the Scottish Government laid [SSI 2021/384](#) and it came into force on 30 October 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 25 November 2021 to remain in force beyond this date.

18. According to the [policy note](#), the purpose of the instrument is as follows—

“These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the ‘Principal Regulations’) to provide that persons who are a nominated representative of an organisation which has been accredited by the United Nations Framework on Climate Change for entrance to the COP 26 Blue Zone are deemed to be fully vaccinated for the purposes of entry to the COP 26 Green Zone. The amendments will cease to have effect on 13 November 2021.”

19. The Scottish Government published an [Equality Impact Assessment](#) to accompany the regulations.

20. The DPLR Committee considered SSI 2021/384 at its meeting on 9 November 2021 and had [no points to raise](#).

Policy Background: The Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021[draft]

21. On 2 November 2021, the Scottish Government laid [the Coronavirus Act 2020 \(Early Expiry of Provisions\) \(Scotland\) Regulations 2021 \[draft\]](#). These regulations require parliamentary approval to come into force on 12 December 2021. As the regulations are subject to the draft affirmative procedure, parliament has 40 days to scrutinise the instrument before it comes into force. The 40-day deadline for parliamentary approval is 11 December 2021.

22. According to the [draft policy note](#), the purpose of the instrument is as follows—

“The Scottish Ministers remain committed to only retaining powers in the Act which are necessary and proportionate. Provisions within the Act and the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020 are subject to regular two monthly reviews, and their ongoing usage and necessity is reported to the Scottish Parliament through the Coronavirus Acts reports.

As was reported in the Coronavirus Acts: Ninth report to Scottish Parliament, a declaration of serious and imminent threat to public health was made on 25 March 2020 under schedule 22 (with a further clarificatory declaration made

on 30 March 2020). This had the effect of starting a “public health response period” and “switching on” the schedule 22 powers. The views and agreement of the Chief Medical Officer were formally sought and secured prior to the making of the declaration in respect of the schedule 22 powers.

Although the schedule 22 powers have been “switched on” via the declaration made by the Scottish Ministers, they have not been used to make directions relating to events, gatherings and premises. Provision in that regard has instead been made by regulations made under schedule 19 of the Act. Provision has also been made in regulations, also made under schedule 19 powers, to allow Local Authorities to give directions relating to specified premises, events and public outdoor places in their area. If Scottish Ministers require to make provision during the current pandemic in relation to events, gatherings and premises, the schedule 19 powers remain available for use.

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirmed the Scottish Ministers’ intention to expire the schedule 22 powers in the UK Act to the Secretary of State for Health and Social Care on 20 September 2021.”

23. The policy note to the instrument states that “No impact assessments have been completed for this instrument as these are considered not to be required due to the powers within the provision that it expires having not been utilised.”

24. The DPLR Committee considered the instrument at its meeting on 9 November 2021 and had [no points to raise](#).

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359)

25. At its meeting on [28 October 2021](#), the Committee took evidence on the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359). The Committee deferred taking the motion to allow the DPLR Committee to consider and report on the instrument.

26. The DPLR Committee considered the instrument at its meeting on 9 November 2021 and raised the following points in its [report](#) published on 11 November 2021—

“This instrument makes a number of changes to the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/ 322) including expanding the criteria for defining ‘eligible vaccinated arrivals’, adding requirements in respect of Passenger Locator Forms and amending exemptions in place for diplomatic personnel, their staff and dependents in relation to COP26.

Regulation 4(d) of the instrument, inserts paragraph (4A) into regulation 3 of the principal International Travel Regulations. As amended, regulation 3

provides that a person is an eligible vaccinated arrival if, among other things, the person is not vaccinated for medical reasons “by virtue of a determination made in accordance with (i) the Health Protection (Coronavirus) Requirements) (Scotland) Regulations 2021 or (ii) the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021”.

In correspondence with the Scottish Government, the Committee highlighted that as neither of those Regulations make explicit provision for such a determination to be made, it could be clearer how and by whom an exemption from vaccination on medical grounds is made in accordance with a determination made under either of these Regulations.

In its response, the Scottish Government pointed out that the position is set out in guidance to which travel operators or persons responsible for premises must have regard and as such, it considers that guidance makes clear the process for obtaining and evidencing a medical exemption in accordance with both the Scottish Requirements Regulations and the English International Travel Regulations. The full correspondence between the Committee and the Scottish Government is included in the Annex to their report.

The Committee draws the instrument to the attention of the Parliament on reporting ground (h) on the basis that its meaning could be clearer in respect of how, and by whom, a determination of exemption from vaccination for medical reasons is made as there is no reference to any determination in respect of exemption from vaccination on medical grounds in either of the Regulations cited in regulation 4(d) of the instrument. The Committee calls upon the Scottish Government to clarify this point at the next legislative opportunity.”

Agenda item 3: Subordinate legislation

27. Under agenda item 3, the Cabinet Secretary will be invited to move motions—

- [Motion S6M-01688](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359) be approved.
- [Motion S6M-01885](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/382) be approved.
- [Motion S6M-01886](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384) be approved.

- [Motion S6M-01918](#)—That the COVID-19 Recovery Committee recommends that the Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 [draft] be approved.

Next steps

28. The Committee will publish a report setting out its consideration of the motions under agenda item 3 in due course.

Committee Clerks
November 2021

**Letter from the Deputy First Minister and Cabinet Secretary for Covid Recovery
to the Convener - 12 November 2021**

VACCINE CERTIFICATION MONITORING INFORMATION

In my letter of 28 October, I provided the Committee with information on the data we currently use to monitor the impact of the scheme across the aims, and during my appearance before the Committee on 4 November I undertook to write with further information. I have set out at **Annex A** further information relevant to monitoring of the scheme that may be of interest.

With regard to the information I provided previously, when I attended the Committee on 4 November we discussed a point of inaccuracy in my letter of 28 October in which I had said that data on the number of people who have reported inaccuracies with the information contained in their vaccination record was not currently available.

The data released by NHS National Services Scotland under FOI on 1 November stated that since the NSS National Contact Centre (NCC) started assisting with vaccination issues on approximately the 15th July 2021, the NCC had received approximately 42,000 cases where an issue was raised to investigate. Most of the issues relate to vaccination records.

I indicated to the Committee that I was reviewing the point made in my letter in the light of that FOI release.

I have subsequently asked NSS for additional information in order to better understand the position and NSS has confirmed that a case relates to each issue raised, so a person can raise more than one issue and hence have more than one live case created. If an individual raised more than one case for the same issue (e.g. incorrect name) then the cases are consolidated into a single case.

NSS took a sample of 100 cases and found that of the sample:

- 28% related to cases regarding personal data issues such as name or address;
- 41% related to clinical issues;
- 16% related to first or second vaccine outside Scotland
- The remainder related to miscellaneous issues including CHI queries and data flows.

As of 11 November, there were 7,735 cases still being worked through. I hope the Committee will agree that the number of records that need to be updated is extremely small in the context of nearly 10 million vaccinations having been delivered since the programme began. It is to be expected that a programme of this size, delivered at this pace, will generate some issues for a limited number of people.

I can confirm that my letter of 28 October was an accurate reflection of the position in that data is not available on the number of individuals who have raised an issue.

Officials have also considered what further data and evidence is available to support monitoring, beyond that suggested by the Committee. The material attached to my letter of the 28 October has been updated and is attached at **Annex B** to reflect this.

Now that domestic Certification has been in operation in Scotland for nearly six weeks, and enforcement of the regulations is in place, officials met again with equality and human rights stakeholders on 11 November to discuss their experience of the scheme so far and initial views on the possibility of extending its scope. It was a constructive discussion and I will share a note of the meeting with the Committee.

As I said on 4 November, I remain committed to engaging with the Committee on data and evidence moving forward and will provide further updates in due course. I hope this is of assistance to the Committee in providing further clarity.

JOHN SWINNEY

Annex A

Additional information to support monitoring

The following sources provide further information relevant to monitoring of the scheme.

Business Impacts and Conditions Survey (BICS) – Weighted Scotland Estimates

BICS is a voluntary fortnightly business survey which captures rapid data on businesses' responses on how their turnover, workforce, prices, trade and business resilience have been affected by current conditions, including the coronavirus (COVID-19) pandemic and the end of the EU transition period. The estimates are for businesses with a presence in Scotland and that have 10 or more employees. Most recent data was published on 12 November, and focuses on businesses' responses from Wave 7 to Wave 42 of the survey.

Specific data that may be of interest to the Committee include:

- tables on business trading, turnover performance, and turnover expectations, which are disaggregated to Food & Beverage Services to reflect conditions in the broader sector which includes segments of the night-time economy; and
- data on Covid safety measures, including customer vaccination checks, which are available across economic sectors and disaggregated to Food & Beverage Services.

[BICS weighted Scotland estimates: data to wave 42 - gov.scot \(www.gov.scot\)](https://www.gov.scot/bics-weighted-scotland-estimates-data-to-wave-42)

Public Attitudes to Coronavirus - Survey data tables

Latest data was published on 8th November 2021 and includes two waves of public attitudes polling that were conducted in October 2021. This research about levels of public knowledge, use and support for the scheme.

[Public attitudes to coronavirus: tracker - data tables - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/public-attitudes-to-coronavirus-tracker-data-tables-2021-10-20/pages/1-introduction-to-the-data-tables.aspx)

Covid Status App Downloads statistics

Since 3rd November, the Public Health Scotland COVID-19 Statistical Report has begun publishing weekly statistics on the number of times the Covid Status App has been downloaded, and the number of paper and PDF copies of COVID-19 status.

[COVID-19 Statistical Report \(publichealthscotland.scot\)](https://publichealthscotland.scot/publications/covid-19-statistical-report-2021-11-03/pages/1-introduction.aspx)

Annex B

Information to support monitoring – Update to material provided to Committee on 28 October 2021

Impact on transmission and vaccination	
Evidence of impact of scheme on rates of transmission of the virus	Information about positive case rates are published. COVID-19 Daily Dashboard Tableau Public . As is commonly the position with restrictions, it is not possible to establish the exact individual impact of this scheme on wider changes in transmission of the virus.
Rates of vaccination by age, sex, disability, race and SIMD area.	Vaccination data is published by PHS and broken down by age/sex/ethnicity/SIMD. This is not available by disability. COVID-19 Daily Dashboard Tableau Public COVID-19 vaccinations - COVID-19 - Our areas of work - Public Health Scotland
Economic and business impacts	
Turnover in the night-time economy, including any evidence of displacement in the activities directly affected by the scheme.	Quantified turnover data for Scottish businesses are reported through the Scottish Annual Business Survey (SABS), the most recent data for which covers 2018. 2019 data will be published on 30/11/21. Accurate and timely turnover data is therefore not available.

	<p>The Scottish Government publishes rapid indicators of business performance at sectoral level through its analysis of ONS's Business Insights and Conditions Survey. Data on estimated shares of firms experiencing changes in turnover at Scotland level are now being published for SIC code 56 (Food & Beverage Services), which covers a number of the categories of activities covered within the 'night-time economy' (including restaurants, pubs and bars), and this will be reported where sample sizes allow.</p>
<p>Attendance levels at the following events, including comparative figures for pre-pandemic levels:</p> <ul style="list-style-type: none"> • late night venues with music, alcohol and dancing • live events: indoors unseated 500+ in the audience • live events: outdoors unseated 4,000+ in the audience • all live events: 10,000+ in the audience 	<p>Data on attendance is not available on a comparable basis across the different types of event. However, information and intelligence provided by business organisations will be used to build a picture of how attendance has been affected. This will be complemented by public attitudes data where possible.</p>
<p>Breakdown of attendance levels by people in the lower vaccinated groups (e.g. breakdown by age, gender, ethnicity, and geographic area of residence)</p>	<p>As above.</p>

Equality and Human rights impacts	
<p>Number of people who have downloaded the COVID status app and accessed their QR code; and number of people who have requested a paper copy.</p>	<p>Data on the number of app downloads, paper copies requested, and PDF versions of COVID-19 status downloaded are published weekly by PHS in their COVID-19 Statistical Report. The data does not represent unique individuals as a single user may choose to download the app on multiple devices or request a second paper copy.</p>
<p>Breakdown of people using QR codes versus a paper copy by socio-economic profile, such as age, gender, ethnicity, geography.</p>	<p>Data is not available. Headline data on the number of people who have used the app and the number of paper copies requested will be published in the PHS</p>

	weekly COVID-19 Statistical Report . In line with the Data Protection Impact Assessment, the processing of personal data is used solely to link to vaccination history to provide COVID status, so no further breakdowns of the data are planned for publication.
Number of people who have reported difficulties in accessing the COVID status app; their QR code; or paper copies.	Data is not available on the numbers of people. Users are able to report any difficulties by phoning the COVID Status Helpline. The data released by NHS National Services Scotland under FOI on 1 November stated that since the NSS National Contact Centre (NCC) started assisting with vaccination issues on approximately the 15th July 2021, the NCC have received approximately 42,000 cases with an issue where a case was raised to investigate. Most of the issues relate to vaccination records. A case relates to the issue raised so a person can raise more than one issue and hence have more than one live case created.
Number of people who have reported inaccuracies with the information contained in their vaccination record.	Data is not currently available. Users are able to report any issues by phoning the COVID Status Helpline. The data released by NHS National Services Scotland under FOI on 1 November, stated that since the NSS National Contact Centre (NCC) started assisting with vaccination issues on approximately the 15th July 2021, the NCC has received approximately 42,000 cases with issue where a case was raised to investigate. Most of the issues relate to vaccination records. A case relates to the issue raised so a person can raise more than one issue and hence have more than one live case created.

Public attitudes and behaviours	
Attitudes, knowledge and behaviours	The Scottish Government regularly publishes data from surveys on

	<p>attitudes, knowledge and behaviours in relation to the pandemic. Recent survey waves have included a range of questions about public knowledge and support, for the certification scheme, and information about its impact. The most recent information, from surveys carried out since the announcement of the scheme, up to 19-20 October 2021, is published at:</p> <p><u>Public attitudes to coronavirus: tracker - data tables - gov.scot (www.gov.scot). The results of further survey waves will be published at the same link, in due course.</u></p>
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