

## COVID-19 Recovery Committee

**2nd Meeting, 2022 (Session 6), Thursday  
20 January 2022**

### **Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; 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 1.
2. The Committee will take evidence under this agenda item on—
  - the policy announcements arising from the latest Ministerial statement on COVID-19 on 18 January 2022;
  - [Coronavirus Acts: Tenth report to Scottish Parliament](#) published on 13 December 2021; and
  - [Coronavirus \(Scotland\) \(No.2\) Act 2020: Ninth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002 for the period 27 September to 26 November 2021](#) published on 10 December 2021.
3. The Committee will also take evidence on the following subordinate legislation under agenda item 1, before it considers the corresponding motions, under agenda item 2—
  - The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/475)
  - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/478)
  - The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/496)

- The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/497)
- The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/498)
- The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2022 (SSI 2022/2)
- The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 (SSI 2022/6)

## 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 1: Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; and Subordinate legislation

### Ministerial statement on COVID-19: Tuesday 18 January 2022

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. In light of the latest Omicron variant, the Committee has scheduled weekly evidence sessions with Scottish Ministers.

6. The next statement will take place on 18 January 2022. Members will take evidence on any policy announcements arising from this statement under agenda item 1.

### SPICe COVID-19 Update

7. SPICe produces a briefing entitled 'SPICe COVID-19 Update' (see **Paper 3**). 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.

## Two-Monthly Reports to the Scottish Parliament

8. As required by section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland) (No.2) Act 2020 Act, this latest two-monthly report (The Tenth Two-Monthly Report to the Scottish Parliament) sets out the status and operation of the legislation necessary to respond to the COVID-19 pandemic. It was published on 13 December 2021 and covers the period from 1 October 2021 to 30 November 2021. The report can be accessed on the Scottish Government's [website](#).

9. The Coronavirus (Scotland) (No.2) Act 2020 provides that Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA. The ninth Freedom of Information Report was published on 10 December 2021 and covers the period from 27 September 2021 to 26 November 2021. The report can be accessed on the Scottish Government's [website](#).

## Subordinate legislation

### *Overview*

10. The 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 instruments being made. The DPLR Committee and COVID-19 Recovery Committee will report on the instruments, before the whole Parliament considers the motions to approve them.

### *Policy Background: (SSI 2021/475)*

11. On 16 December 2021, the Scottish Government laid [SSI 2021/475](#) and the regulations came into force on 17 December 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 29 January 2022 to remain in force beyond this date.

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

“The Omicron variant of the SARS-CoV-2 virus first identified in South Africa and designated a Variant of Concern by the WHO on 26th November is transmitting rapidly within Scotland with strong evidence that community transmission is widespread. The policy objective of these regulations is to strengthen both current legislative requirements and current guidance to place an onus on businesses, places of worship and service providers to minimise the risk of exposure to coronavirus and enable social contact to continue in the safest way possible.

Guidance will set out measures that businesses, service providers and places of worship can take to minimise the risk of exposure to coronavirus relating to their premises. Guidance will cover matters such as measures to reduce crowding, encourage distancing, promote the use of face coverings, maximise ventilation and working from home where reasonably practicable to do so. The regulations will require the taking of such of the measures in guidance as are reasonably practicable.

Extending the distance from 1 metre to 2 metres in certain indoor settings where an exemption from wearing a face coverings applies will support minimising the risk of exposure to coronavirus and enable social contact to continue in the safest way possible. This extension includes exemptions which apply in the workplace; when leading an act of worship; rehearsing or performing or in certain parts of a marriage ceremony. This is essential as COVID-19 spreads through respiratory droplets produced when an infected person coughs, sneezes, talks or sings, and droplets and aerosols from their mouth or nose are released into the air.”

13. The Scottish Government published the following impact assessments to accompany SSI 2021/475—

- [Children’s Rights and Wellbeing Impact Assessment](#)
- [Equality Impact Assessment part 1](#)
- [Equality Impact Assessment part 2](#)
- [Final Impact Assessment part 1](#)
- [Final Impact Assessment part 2](#)

14. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/475 at its meeting on 11 January and it had the following points to raise in its report published on [14 January 2022](#)—

**“DPLR Committee consideration of SSIs 2021 475, 496, 497 and 498**

The Committee firstly noted that no technical points under its remit had been raised on these four instruments.

Instead, the focus of its discussion was whether the affirmative procedure (where a draft SSI is laid before the Parliament and is required to be approved before it can come into force) would have been the more appropriate choice of procedure for each set of regulations.

The made affirmative procedure was used in each case (where regulations can come into force immediately but are required to be approved by the Parliament within 28 days of being made in order to remain in force, not taking into account any period of dissolution or recess of more than 4 days during that period).

Graham Simpson MSP noted his concerns of the effect of these instruments on the leisure sector, such as sporting events, theatres, pubs and night club. Mr Simpson considered that the use of the made affirmative was not appropriate. Instead, he suggested they would have benefited from some

scrutiny and that, "Parliament could have made time for the use of the affirmative procedure."

Paul Sweeney MSP said he was also minded to express dissatisfaction with the use of the made affirmative procedure. Mr Sweeney said he had reflected on "the real-life implications of some of the measures" as he had heard from constituents such as representatives of the Ambassador Theatre Group. He considered that the made affirmative procedure did not allow "true scrutiny to ensure that the regulations were watertight and that the potential negative effects on the public were avoided."

Likewise, Craig Hoy MSP considered that the affirmative procedure would have been the better one to use in the circumstances and that there was not sufficient "justification from the Government for why it [the regulations] had to be implemented the next day and not the next week or 10 days later."

Jenni Minto MSP acknowledged some of Mr Sweeney's comments. However, Ms Minto considered that, in light of the evidence heard earlier in the meeting from the Deputy First Minister on the omicron variant and "the huge increase in cases of the virus", she was content that the use of the made affirmative procedure "was the correct one to use."

In light of the above, the Committee disagreed (by division: For 2 (Bill Kidd MSP and Jenni Minto MSP), Against 3 (Graham Simpson MSP, Craig Hoy MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the instruments."

### *Policy Background: (SSI 2021/478)*

15. On 17 December 2021, the Scottish Government laid [SSI 2021/478](#) and the regulations came into force on the same day. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 29 January 2022 to remain in force beyond this date.

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

"This instrument reinstates the provisions introduced via the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021. The Number 7 regulations ceased to have effect on 15 December as they had not completed the Parliamentary process within the 28 days required. The reason for this is that there were technical issues experienced with the BlueJeans video conferencing service in Parliament on 15 December and it was thus not possible for them to be approved within the 28 days and so they ceased to have effect from 15 December. The purpose of the regulations made today is to reinstate the measures originally introduced by the Number 7 regulations, subject to any consequential changes required as a result of other amendments made since they were made."

17. The policy note to SSI 2021/478 states that “the impact assessments associated with the amendments being reinstated by this instrument is available on the Legislation.gov.uk website.”

18. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/478 at its meeting on 11 January and had [no points to raise](#).

### *Policy Background: (SSI 2021/496)*

19. On 23 December 2021, the Scottish Government laid [SSI 2021/496](#) and the regulations came into force on the same day. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 3 February 2022 to remain in force beyond this date.

20. 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 introduce a requirement to take measures to ensure, so far as reasonably practicable, that a distance of 1 metre is maintained between people on or waiting to enter hospitality and leisure premises and that only enough people are admitted to the premises to allow the 1 metre distance to be maintained. The Regulations also introduce a requirement for table service in premises where alcohol is sold for consumption on the premises, and that the customer must remain seated whilst consuming food and drink on the premises. The Regulations also introduce capacity limits for live events held indoors and outdoors - 100 people at indoor standing events, 200 people at indoor seated events and 500 people at outdoor events (whether seated or standing).”

21. The policy note to SSI 2021/496 states that “appropriate impact assessments are being prepared for these regulations”. No assessments have been published at the time of writing.

22. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/496 at its meeting on 11 January and raised the points as set out in paragraph 14 of this note.

### *Policy Background: (SSI 2021/497)*

23. On 23 December 2021, the Scottish Government laid [SSI 2021/497](#) and the regulations came into force on 27 December 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 3 February 2022 to remain in force beyond this date.

24. 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

close nightclubs, dance halls or discotheque premises, subject to exceptions, from 5.00 a.m. on 27 December 2021. It would remain open to these businesses to operate the premises with distancing and table service, rather than as a nightclub, dance hall or discotheque.”

25. The policy note to SSI 2021/497 states that “appropriate impact assessments are being prepared for these regulations”. No assessments have been published at the time of writing.

26. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/497 at its meeting on 11 January and raised the points as set out in paragraph 14 of this note.

### *Policy Background: (SSI 2021/498)*

27. On 24 December 2021, the Scottish Government made [SSI 2021/498](#), the regulations came into force on 27 December 2021 and were laid on 29 December 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 6 February 2022 to remain in force beyond this date.

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

“These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 to allow nightclubs to adjust their operations so as to not operate as a nightclub for the purposed of remaining open in line with these regulations, without being in breach of any licensing arrangements.”

29. The policy note to SSI 2021/498 states that “appropriate impact assessments are being prepared for these regulations”. No assessments have been published at the time of writing.

30. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/498 at its meeting on 11 January and raised the points as set out in paragraph 14 of this note.

### *Policy Background: (SSI 2022/2)*

31. On 7 January 2022, the Scottish Government laid [SSI 2022/2](#) and the regulations came into force on 7, 9 and 10 January 2022. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 6 February 2022 to remain in force beyond this date.

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

“**Policy Objectives** The overarching policy aim of this instrument is to update Scotland’s approach to international travel by, in this case, removing and lessening the emergency restrictions introduced as a direct result of the

emergence of the Omicron variant of COVID-19. These changes are made in recognition of the fact that maintaining them would no longer be a proportionate response.

**Vaccines** This instrument expands the list of countries within schedule 1A to add the following countries to it:- Bhutan, Cameroon, Cyprus, northern, Cote d'Ivoire, Fiji, Iraq, Liberia, Mali, Mauritania, Niger, Palau, Papua New Guinea, Paraguay, Solomon Islands, The Gambia, Uzbekistan. This means that travellers who receive vaccines in these countries count as eligible vaccinated arrivals. Additionally, it amends the definition of "WHO List vaccine" in regulation 3(1) to include additional vaccines (Covovax and Novavax).

**Pre-departure testing** The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 re-introduced pre-departure testing for non-red list arrivals to Scotland in recognition of the increased risk of imported Omicron infections.

This instrument provides that eligible vaccinated arrivals and those under 18 will no longer be required to undertake a pre-departure test and provide a negative result.

**Testing – post arrival testing and isolation** The Health Protection (Coronavirus) (International Travel and Operator Liability)(Scotland) (Amendment No 6) Regulations 2021 allowed travellers to complete the mandatory day 2 test using a Lateral Flow Device ("LFD") test, as an alternative to a Polymerase Chain Reaction ("PCR") test. This was removed by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 with effect from 0400 on 30 November in light of the increased risk arising from imported Omicron infections.

This instrument reinstates the option for eligible travellers, arriving from non-red list countries and territories, to complete their mandatory day 2 test using an LFD test with associated photographic verification as opposed to a PCR test. If a traveller receives a positive result from an LFD test they require to take a confirmatory PCR test. The confirmatory PCR test will be provided free of charge. Provision is made for the notification of results from said LFD tests.

The traveller is not required to self-isolate before completing their mandatory day 2 test. If the traveller receives a positive result from the PCR test then they are required to self-isolate in terms of guidance. If the traveller receives a negative result then, again in terms of guidance, they are not required to self-isolate. If the traveller receives an inconclusive result, they are required to take a further PCR test.

For non-eligible travellers returning from non-red list countries stringent testing measures, including a pre-departure test, day 2 and 8 PCR tests are retained."



33. The policy note to SSI 2022/2 states that “The impacts of expanding the list of countries whose vaccination programmes meet the necessary criteria, removing the requirement of pre-departure testing, the removal of the requirement to self-isolate until the day 2 test result is received and changing from post arrival PCR to LFD tests have previously been assessed. These impact assessments have been published on the Legislation.gov.uk website”.

34. The Delegated Powers and Law Reform (DPLR) Committee will consider SSI 2022/2 at its meeting on 18 January and will publish its report shortly after that meeting. A copy of the DPLR Committee’s report will be provided to Members when it becomes available.

### *Policy Background: (SSI 2022/6)*

35. On 13 January 2022, the Scottish Government laid [SSI 2022/6](#) and the regulations came into force on 17 January 2022. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 9 February 2022 to remain in force beyond this date.

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

**“Capacity limits for outdoor events and physical distancing:** In response to the emergence of the Omicron variant of the SARS-CoV-2 virus and its transmission in Scotland in late 2021, the Scottish Government put in place protective measures to reduce the rates of transmission. These included the introduction of capacity limits for live events and a requirement to take measures to ensure, so far as reasonably practicable, that a distance of 1 metre is maintained between people on or waiting to enter hospitality and leisure premises and that only enough people are admitted to the premises to allow the 1 metre distance to be maintained.

The Scottish Government now considers that the protective measures introduced in December can start to be lifted in a phased way. The first phase as set out in this instrument is for the capacity limits on live events outdoors to be removed and also for physical distancing requirements to be removed at outdoor event venues, outdoor exhibitions and outdoor spaces in sports stadia.

**Definitions for certification requirements:** The Scottish Government considers it necessary to amend the definition of ‘fully vaccinated’ and associated terms used in regulations 7A-7E of the principal Regulations, which sets out the domestic Covid certification scheme. In light of evidence on vaccine waning; efficacy of vaccines against Omicron; the JCVI recommendations for when to receive booster doses and evidence that immunity is significantly enhanced following a booster. This instrument provides that, to be considered fully vaccinated for the purposes of domestic certification, a person must have had a booster, if 120 days have passed since their primary course of an authorised vaccine (as defined in this instrument)”.

37. The policy note to SSI 2022/6 states that “We will update the most recently published EQIA, CRWIA and BRIA (published in November 2021) to incorporate vaccination expiration and addition of boosters to the domestic Certification Scheme.”

38. The Delegated Powers and Law Reform (DPLR) Committee will consider SSI 2022/2 at its meeting on 18 January and will publish its report shortly after that meeting. A copy of the DPLR Committee’s report will be provided to Members when it becomes available.

## **Agenda item 2: Subordinate legislation**

39. Under agenda item 2, the Cabinet Secretary will be invited to move motions—

- [S6M-02594](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/475) be approved.
- [S6M-02602](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/478) be approved.
- [S6M-02698](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/496) be approved.
- [S6M-02699](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/497) be approved.
- [S6M-02760](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/498) be approved.
- [S6M-02733](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2022 (SSI 2022/2) be approved.
- [S6M-02799](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 (SSI 2022/6) be approved.

## **Next steps**

40. The Committee will publish a report setting out its consideration of the motions under agenda item 2 in due course.

**Committee Clerks**  
**January 2022**