

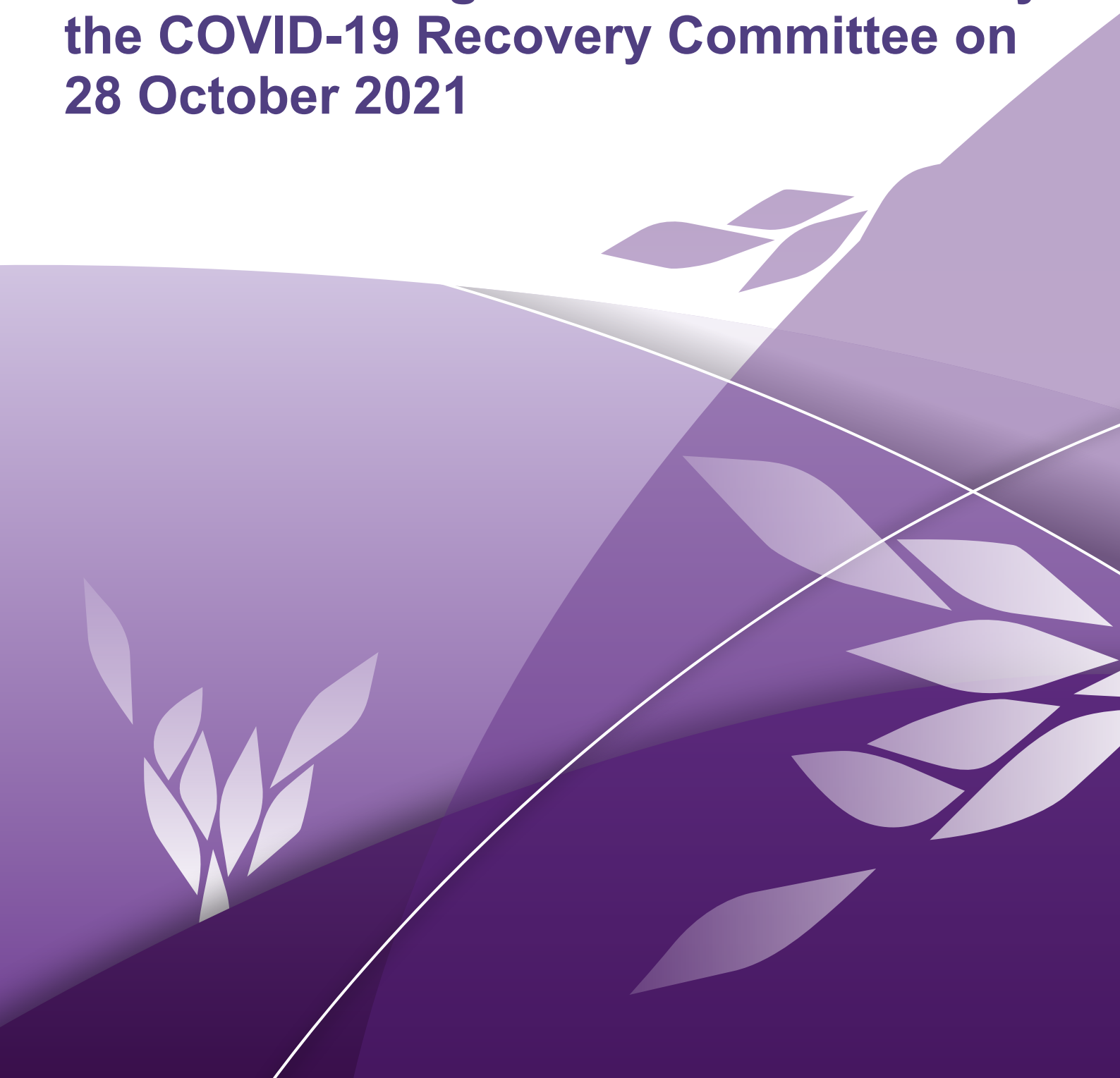


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COVID-19 Recovery Committee

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 28 October 2021



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COVID-19 Recovery Committee

To consider and report on matters relating to COVID-19 falling within the responsibility of the Cabinet Secretary for COVID Recovery and other Scottish Ministers where relevant, including—

- (a) Cross government coordination of COVID-19 recovery policies and strategic review;
- (b) the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19;
- (c) any secondary legislation arising from the Coronavirus (Scotland) Act; and
- (d) and any other legislation or policy in relation to the response to COVID-19.



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Scottish Conservative
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Introduction

1. This report sets out the COVID-19 Recovery Committee's consideration of Scottish Statutory Instruments (SSIs) at its meeting on 28 October 2021. The minutes of the meeting have been published on the Committee's [webpages](#). The Official Report of the meeting will be published on the Committee's [webpages](#) in due course.

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322)

2. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322) were laid on 16 September 2021. The instrument was made in exercise of the power conferred by sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008 and paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of section 122(6) of the 2008 Act and paragraph 6(2) and (3) of schedule 19 of the 2020 Act.

3. The [policy note](#) states that—

” The policy intention behind this instrument is primarily to consolidate the existing International Travel Regulations contained within several instruments, as well as their various corresponding amendment regulations, into one and to do so upon the expiry of the existing regulations. The Scottish Ministers are required to review the need for the requirements imposed by these Regulations at least once every 28 days. The first review is to be carried out by 18 October 2021. The Regulations will expire at the end of 16 May 2022 (at the same time as the current regulations for England).

The consolidation also makes some policy amendments to the regulations.

A change has been made to the list of specified competitions as it relates to the exemption for elite sports people to add European Tour Golf, the Alfred Dunhill Links Championship. While provision previously existed for an exemption for eligible arrivals from amber list countries to take part in this event, this will be extended to cover eligible travellers from red list counties under the conditions that apply to that exemption in recognition of the fact the event is open to competitors from both categories.

In relation to COP26, provision is made in light of the planned COP26 arrangements to clarify there is no requirement under the Scottish regulations for red list arrivals to complete managed isolation when they have completed a period of managed isolation in England.

A further change has been made to allow for an exemption from managed isolation for in-flight security officers. While they will be exempt, they will continue to be required to comply with other requirements appropriate to the country of departure and/or any countries transited through in the preceding 10 days. Travellers who fall within this exemption will be required to remain in self-isolation when not working or travelling for work, regardless of whether they have travelled from an amber or red country. This ensures alignment with the equivalent in regulations in England.

4. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/

322 at its meeting on 5 October 2021. The DPLR Committee raised the following points in its report published on [8 October 2021](#) —

” This instrument revokes three previous sets of Regulations and replaces them with consolidated International Travel Regulations with the aim of improving their readability and accessibility. The instrument also makes the following changes:

- to add the European Tour Golf - Alfred Dunhill Links Championship to the list of specified competitions in which elite sportspersons from red list countries are exempt from managed self-isolation on arrival in Scotland;
- to exempt certain participants in COP26 from red list countries from the requirement to undergo managed self-isolation if they have completed a period of managed isolation in England; and
- to exempt in-flight security officers from the requirement to self-isolate other than when they are not working or travelling for work.

In correspondence with the Scottish Government (see Annex to the DPLR report), the Committee highlighted that schedule 4 of the Regulations provides exemptions from requirements in the instrument for certain people including “members of aircraft crew” as defined in paragraph 10(2)(a)(ii).

The term ‘EU-OPS’ is used in paragraph 10(2)(a)(ii), which is defined in paragraph 10(2)(c) with reference to paragraph 1 of schedule 1 of the Air Navigation Order 2016. However, there is no reference to EU-OPS in that Order.

The Scottish Government confirmed that this is an error insofar as there is no longer such a reference in the 2016 Order and undertook to correct this at the next available opportunity.

The Committee draws the instrument to the attention of the Parliament under reporting ground (h) on the basis that the instrument's meaning could be clearer in respect of the reference to the term “EU-OPS” in paragraph 10(2)(a)(ii) of schedule 4 of the instrument, and the definition of that term in paragraph 10(2)(c) of schedule 4 by reference to paragraph 1 of schedule 1 of the Air Navigation Order 2016 where that term no longer exists.

The Committee also welcomes the Scottish Government’s commitment to clarify the position by updating the relevant reference at the next available opportunity. This has now been by the Health Protection (Coronavirus) Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No.2) Regulations 2021 (SSI 2021/349) also considered by the Committee on 5 October 2021 and with which it was content.

5. At the COVID-19 Recovery Committee’s meeting on 28 October 2021, the Minister for Transport, Graeme Dey moved Motion [S6M-01315](#) in the name of Michael Matheson—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322) be approved.

6. The COVID-19 Recovery Committee agreed Motion S6M-01315

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328)

7. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328) were laid on 21 September 2021. The instrument was made in exercise of the power conferred by sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008. The instrument is subject to made affirmative procedure by virtue of section 122(6) of that Act.

8. The [policy note](#) states that—

” The policy intention behind this instrument is to amend the existing list of acute countries, territories and parts of countries or territories as per below.

- No additions
- Remove:
 - Bangladesh
 - Egypt
 - Kenya
 - Maldives
 - Oman
 - Pakistan
 - Sri Lanka
 - Turkey

The amendments made by this instrument apply only in relation to persons arriving in Scotland at or after 4:00 am on 22 September 2021.

9. The DPLR Committee considered SSI 2021/328 at its meeting on [28 September 2021](#) and had no points to raise.

10. At the COVID-19 Recovery Committee's meeting on 28 October 2021, the Minister for Transport, Graeme Dey, moved Motion [S6M-01398](#) in the name of Michael Matheson—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328) be approved.

11. The COVID-19 Recovery Committee agreed Motion S6M-01398.

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343)

12. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343) were laid on 29 September 2021. The instrument was made in exercise of the power conferred by section 94(1)(b)(i) of the Public Health etc. (Scotland) Act 2008. The instrument is subject to made affirmative procedure by virtue of sections 122(6) and 122(7) of that Act
13. The [policy note](#) states that—
 - ” This instrument amends the Health Protection (Coronavirus) (International Travel and Operators Liability) (Scotland) Regulations 2021 to allow for electronic certification issued by NHS Scotland to be used as proof of COVID vaccination status for the purpose of international travel. This will enable use of the use of the NHS Scotland COVID Status App.

This instrument also corrects an error in those regulations relating to the exemption applicable to members of aircraft crew where they have travelled to the United Kingdom in the course of their work or are otherwise required to travel to the United Kingdom for work purposes.
14. The DPLR Committee considered SSI 2021/343 at its meeting on [5 October 2021](#) and had no points to raise.
15. At the COVID-19 Recovery Committee's meeting on 28 October 2021, the Minister for Transport, Graeme Dey, moved Motion [S6M-01466](#) in the name of Michael Matheson—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343) be approved.
16. **The COVID-19 Recovery Committee agreed Motion S6M-01466.**

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (2021/350)

17. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (2021/350) were laid on 1 October 2021. The instrument was made in exercise of the power conferred by sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008. The instrument is subject to made affirmative procedure by virtue of section 122(6) of that Act.
18. The [policy note](#) states that—

” Amendments to country status: The aim of the instrument is to update Scotland’s approach to international travel by removing the green and amber lists and instead operating a system for non-red list arrivals based on the individual’s vaccination status. Requirements for travellers from red list countries are not amended by this instrument. The policy intention is to reduce changes in the system with countries moving between green and amber lists and instead to shift the system to vaccine status rather than country risk assessment as what defines the requirements on arrival into Scotland. The instrument makes these changes and consequential amendments as required.

Unvaccinated travellers or travellers vaccinated through a programme not recognised in the International Travel Regulations, who are not travelling from a red list country, will follow the level of restrictions that was previously applied to arrivals from Amber-list countries: that is a pre-departure test, 10 days self-isolation and mandatory PCR tests on days 2 and 8. This represents a significant increase in restrictions imposed on unvaccinated travellers from previously defined Green-list countries, and on travellers from Green-list countries who are vaccinated under an unrecognised vaccination programme. There is no change for unvaccinated travellers from Amber-list countries.

Eligible vaccinated travellers will not be required to take a pre-departure test, but will be required to take a day 2 PCR test, but not isolate or take a day 8 test.

Vaccines: In relation to COVID-19 vaccination policy, the aim of this instrument is to make a number of amendments to recognise the use of mixed dose vaccinations. The meaning of eligible vaccinated arrivals is now extended to include people who have received doses of different vaccines in the UK or a relevant country or in the UK vaccine roll-out overseas. The policy aim of this is to further open up the international travel sector to a larger number of people.

The list of countries falling within the definition of relevant country has also been expanded by way of this instrument. Vaccines received in Australia and Canada and approved by relevant regulators in those countries are added, as are vaccines authorised for use in the UK which have been received in Antigua and Barbuda, Bahrain, Barbados, Brunei, Dominica, Israel, Japan, Kuwait, Malaysia, New Zealand, Qatar, Saudi Arabia, Singapore, South Korea, Taiwan and the UAE.

Passenger information: In recognition of the changes made with regard to the removal of green and amber country designations, the requirement for passengers to update the Passenger Locator Form (PLF) has been amended. The obligation is now applicable to those subject to self-isolation requirements. This is aligned to the position in other parts of the United Kingdom and will provide consistency for passengers.

Testing and isolation – pre departure testing and post arrival testing: As stated above, changes have been made in terms of the testing requirements for vaccinated and unvaccinated passengers arriving into Scotland. For eligible vaccinated arrivals from non-red list countries they will no longer need to undertake a pre-departure test and provide a negative result. The policy objective of this is to reduce the cost for travellers and to facilitate international

travel in a way which is consistent across the whole of the UK as far as possible.

This instrument also updates the requirements relating to the need to possess a testing package for the detection of coronavirus on arrival in Scotland and sets out which people are required to self-isolate should they fail to take a test, or as a consequence of a test result.

For those who are not eligible vaccinated arrivals, they must possess a testing package which includes a day 2 and a day 8 test. The testing package for eligible vaccinated arrivals is to be for a day 2 test. However there is an exemption from testing package requirements for short stay cruise ship passengers.

Similarly, the requirement for self-isolation at specified premises on arrival in Scotland will now apply to all arrivals (other than red list arrivals subject to managed isolation) unless they are eligible vaccinated arrivals or are exempt in another way. This previously did not apply to green list arrivals.

Cruises: In recognition of the unique operational requirements, including potentially long periods at sea, the regulations have been amended further to allow cruises to operate. This specifically means that passengers who don't disembark are not required to complete either the Passenger Locator Form (PLF) or a pre-departure test; for any passenger that does test positive, they can be returned to land; the requirement for day 2 testing for short-stay cruise passengers has been removed.

This allows for a defence, in certain circumstances, to the offence of failing to possess a notification of a negative coronavirus test upon arrival in Scotland, and to the offence on an operator of failing to ensure that a passenger is in possession of one, where a positive test was taken on a cruise ship or vessel. The policy intention is to allow passengers to be landed into Scotland where there is no other reasonably practicable alternative.

For the purposes of these change a cruise ship has been defined as "a vessel, certified to carry more than 200 passengers, engaged on a voyage primarily for leisure or recreation during which passengers stay overnight on board for at least two nights".

Operator obligations and liabilities: Previously in Scotland, carriers have been required to ensure that passengers claiming to be eligible vaccinated arrivals were in possession of the evidence to support this. The changes made in this instrument now remove that obligation on carriers where a person has indicated on a Passenger Locator Form that they are an eligible vaccinated arrival and proof has been provided and verified on the Passenger Locator Form. The policy intention of this change is to reduce the burden on carriers while enabling passengers to provide the necessary information in a secure way.

Operators of international passenger services will also now be required to provide updated information to passengers before and during their journey. The updated information is specified within the changes made. The purpose of this is to ensure that passengers receive the most current and appropriate

information ahead of their arrival into Scotland in relation to the public health measures they will need to abide by.

Sectoral exemptions: Sectoral exemptions for representatives at international events and conferences and Crown Servants and visiting forces have been amended. New exemptions have been introduced for foreign police officials, performing arts professionals and those engaged in film and TV production. The purpose of these exemptions is to allow professionals to undertake their work in the required way.

Sporting events: Additions are made to the list of specified competitions to include international boxing events overseen by the British Board of Boxing Control. This allows for elite sportspersons (as defined in the International Travel Regulations) to be exempted from requirements for managed isolation or self-isolation to participate in the specified events.

19. The DPLR Committee considered SSI 2021/350 at its meeting on [26 October 2021](#) and had no points to raise.
20. At the COVID-19 Recovery Committee's meeting on 28 October 2021, the Minister for Transport, Graeme Dey, moved Motion [S6M-01528](#) in the name of Michael Matheson —That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/350) be approved.

21. **The COVID-19 Recovery Committee agreed Motion S6M-01528.**

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357)

22. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357) were laid on 8 October 2021. The instrument was made in exercise of the power conferred by sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008. The instrument is subject to made affirmative procedure by virtue of section 122(6) of that Act.
23. The [policy note](#) states that—
- ” 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. It provides also for those vaccinated with approved vaccines administered on behalf of the United Nations.
- This instrument provides for the manner in which the International Travel Regulations apply in relation to participants at the “Conference of the Parties” relating to climate change and the World Leaders Summit in November 2021.
- It also allows the EU Digital Covid Certificate to be used as evidence of negative test status. This allows passengers to use this as a way to demonstrate test status where this is required.
24. The DPLR Committee considered SSI 2021/357 at its meeting on [26 October 2021](#) and had no points to raise. The DPLR Committee noted, however, in its report published on [28 October 2021](#) that—
- ” While the Committee was content with SSI 2021/357, it nevertheless highlighted in its discussion on the instrument the importance it places on consistency of terminology in secondary legislation particularly when terms are defined.
25. At the COVID-19 Recovery Committee's meeting on 28 October 2021, the Minister for Transport, Graeme Dey, moved Motion [S6M-01634](#) in the name of Michael Matheson—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357) be approved.

26. The COVID-19 Recovery Committee agreed Motion S6M-01634.

