

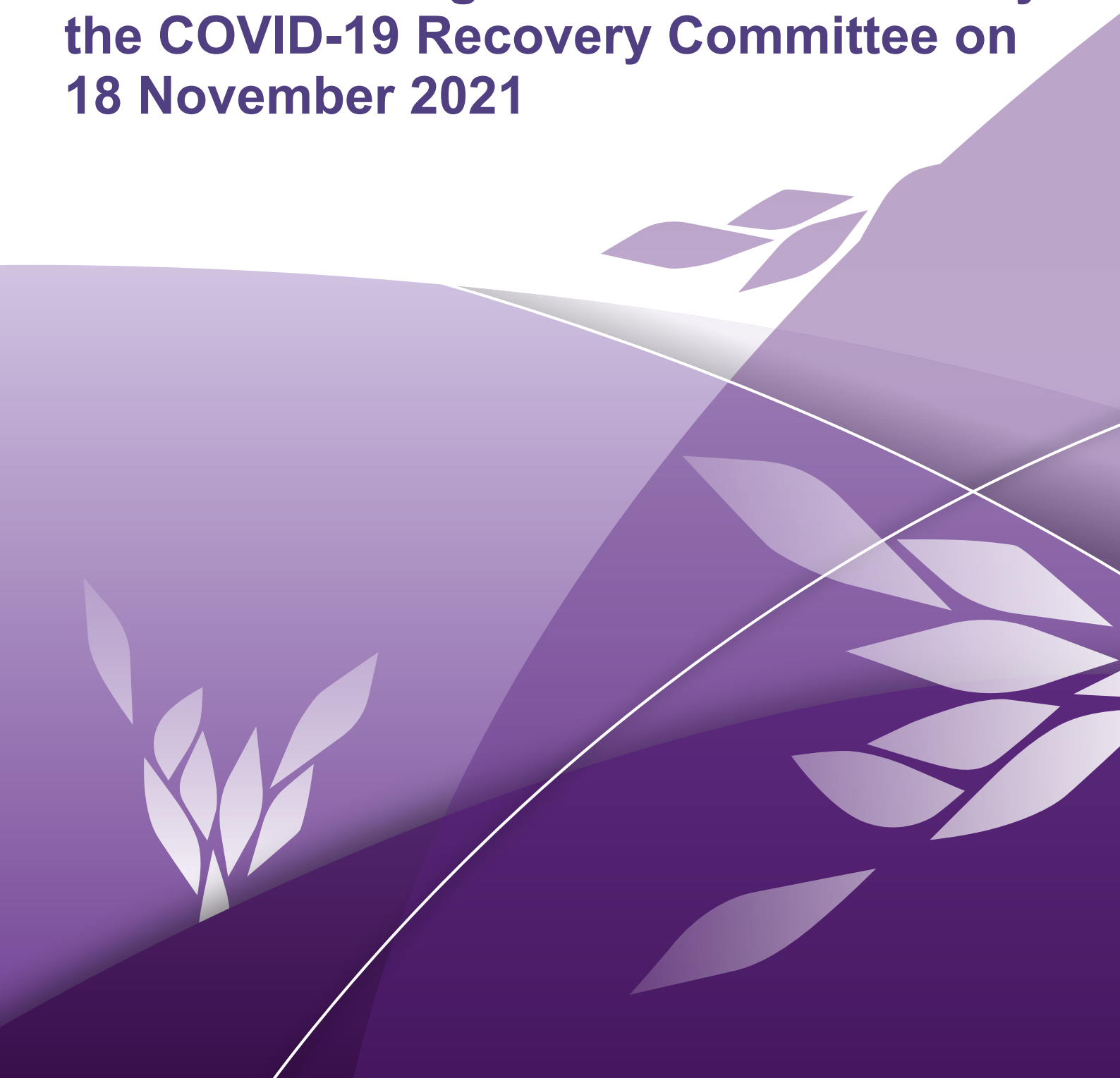


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## **COVID-19 Recovery Committee**

# **Subordinate Legislation Considered by the COVID-19 Recovery Committee on 18 November 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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# Committee Membership



**Convener**  
**Siobhian Brown**  
Scottish National Party



**Deputy Convener**  
**Murdo Fraser**  
Scottish Conservative  
and Unionist Party



**Jim Fairlie**  
Scottish National Party



**John Mason**  
Scottish National Party



**Alex Rowley**  
Scottish Labour



**Brian Whittle**  
Scottish Conservative  
and Unionist Party

# Introduction

1. This report sets out the COVID-19 Recovery Committee's consideration of Scottish Statutory Instruments (SSIs) at its meeting on 18 November 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) Amendment (No. 5) Regulations 2021 (SSI 2021/359)

2. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359) were laid on 14 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.

3. The [policy note](#) states that—

” The overarching policy aim of this instrument is to update Scotland’s approach to international travel, removing or lessening restrictions where that approach is consistent with clinical evidence and advice while balancing the need for continued public health measures to be applied where needed.

This instrument makes a number of primarily minor amendments. These specifically are:

- to make technical changes to update the terms of the exemption for diplomatic staff and their dependents;
- to expand the category of persons who meet the definition of “eligible vaccinated arrival” in terms of regulation 3 of the International Travel Regulations to include persons in Scotland or England who are not vaccinated for medical reasons;
- to make technical amendments which update the requirements in relation to how some individuals should complete the PLF. This relates specifically to travellers who meet the COVID-19 vaccine eligibility criteria (which means those persons are eligible vaccinated arrivals), including those who are participating in clinical trials or who are not vaccinated for medical reasons;
- to remove the requirement for passengers to provide their seat number on the PLF; and
- to make outstanding amendments that relate to the COP26 exemption in Schedule 5A.

4. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/359 at its meeting on 9 November 2021. It had the following points to raise 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 (SS1 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.

The correspondence annexed to the DPLR Committee's report can be found [in the original report as published](#).

5. The COVID-19 Recovery Committee took evidence on the Regulations at its meeting on [28 October 2021](#), then deferred taking the motion to approve them until its meeting on 18 November 2021.
6. At the COVID-19 Recovery Committee's meeting on 18 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney moved [Motion S6M-01688](#) 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. 5) Regulations 2021 (SSI 2021/359) be approved.



**7. The COVID-19 Recovery Committee agreed Motion S6M-01688.**

# The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/382)

8. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/382) were laid on 29 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.

9. 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.

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.

10. 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.

11. At the COVID-19 Recovery Committee's meeting on 18 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved [Motion S6M-01885](#) 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. 6) Regulations 2021 (SSI 2021/382) be approved.

12. **The COVID-19 Recovery Committee agreed Motion S6M-01885.**

# The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384)

13. The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384) were laid on 29 October 2021. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of paragraph 6(2) and (3) of schedule 19 of the Act.
  14. The [policy note](#) states that—
    - ” 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.
  15. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/384 at its meeting on [9 November 2021](#) and had no points to raise.
  16. At the COVID-19 Recovery Committee's meeting on 18 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved [Motion S6M-01886](#) in his name—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384) be approved.
17. **The COVID-19 Recovery Committee agreed Motion S6M-01886.**

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

18. The Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 [draft] were laid on 2 November 2021. The instrument was made in exercise of the power conferred by section 90(1) of the Coronavirus Act 2020. The instrument is subject to affirmative procedure.

19. The [policy note](#) states that—

” 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.

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

21. At the COVID-19 Recovery Committee's meeting on 18 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved [Motion S6M-01918](#) in his name—That the COVID-19 Recovery Committee recommends that the Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 [draft] be approved.

**22. The COVID-19 Recovery Committee agreed Motion S6M-01918.**

