

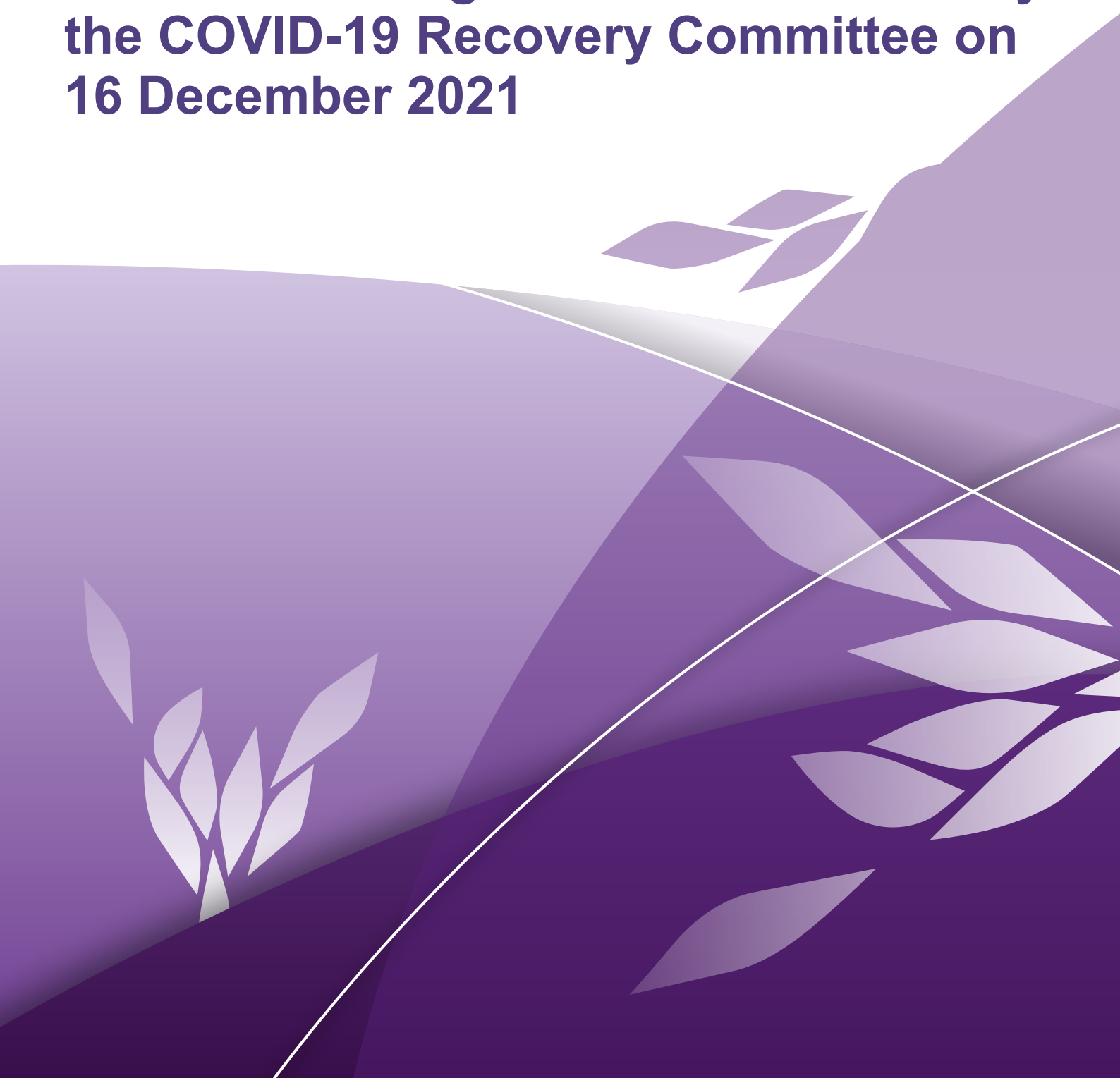


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## **COVID-19 Recovery Committee**

# **Subordinate Legislation Considered by the COVID-19 Recovery Committee on 16 December 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.



[covid19.committee@parliament.scot](mailto:covid19.committee@parliament.scot)

# 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 16 December 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. 8) Regulations 2021 (SSI 2021/440)

2. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/440) were laid on 29 November 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 the Act.

3. The [policy note](#) states that—

” The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections and the threat this poses to vaccine efficacy.

This instrument adds Botswana, Eswatini, Lesotho, Namibia, South Africa and Zimbabwe to the “red list countries” contained in schedule 1, effective from 11.59 a.m. on 26 November 2021. These countries have been added in recognition of the existence and prevalence within these counties of variant b.1.1.529 which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through these countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on day 2 and 8 after their arrival and to possess a managed quarantine package.

However, due to the urgency with which the changes have been made, interim measures will be in place from 11.59 a.m. on 26 November 2021 until 04:00 a.m. on 27 November 2021.

These interim measures preclude individual travellers who have departed from or transited through schedule 1 countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland being classed as an eligible vaccinated arrival and so requires them take a pre-departure test, to purchase and take day 2 and day 8 PCR tests and to self isolate at a specified address upon arrival in Scotland.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.

4. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/440 at its meeting on [7 December 2021](#) and had no points to raise.

## **COVID-19 Recovery Committee**

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 16 December 2021, 10th Report, 2021 (Session 6)

5. At the COVID-19 Recovery Committee's meeting on 16 December 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved [Motion S6M-02339](#) 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. 8) Regulations 2021 (SSI 2021/440) be approved.

6. **The COVID-19 Recovery Committee agreed Motion S6M-02339.**



# The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/441)

7. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/441) were laid on 29 November 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 the Act.

8. The [policy note](#) states that—

” The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections and the threat this poses to vaccine efficacy.

This instrument adds Angola, Malawi, Mozambique and Zambia to the “red list countries” contained in schedule 1. These countries have been added in recognition of the existence and prevalence within these counties of variant b.1.1.529 which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through these countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on day 2 and 8 after their arrival and to possess a managed quarantine package.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.

9. The DPLR Committee considered SSI 2021/441 at its meeting on [7 December 2021](#) and had no points to raise.

10. At the COVID-19 Recovery Committee's meeting on 16 December 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved [Motion S6M-02340](#) 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. 9) Regulations 2021 (SSI 2021/441) be approved.

11. **The COVID-19 Recovery Committee agreed Motion S6M-02340.**

# The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/443)

12. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/443) were laid on 30 November 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 the Act.

13. The [policy note](#) states that—

” The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument requires that all passengers deemed to be eligible vaccinated travellers from non-red list countries arriving into Scotland purchase and take a Polymerase Chain Reaction (“PCR”) COVID-19 test by the end of day two following their arrival as opposed to using a Lateral Flow Device (“LFD”) test. Tests purchased via private providers are acceptable.

The requirement to take a PCR test applies to all people who are currently eligible for testing and upholds any existing exemptions including on the grounds of age and medical reasons.

If the individual receives a positive result from the PCR test then they must isolate for a full 10 days from the date which they received positive test result. If the individual receives a negative result then they are not required to continue to self-isolate. If the individual receives an inconclusive result, they are required to take a further PCR test and isolate until the results are known.

Stringent testing measures, including a pre-departure test, day 2 PCR test and day 8 PCR test when arriving in Scotland, are retained for non-vaccinated travellers returning from non-red list countries and those arriving from red list countries.

14. The DPLR Committee considered SSI 2021/443 at its meeting on [7 December 2021](#) and had no points to raise.

15. At the COVID-19 Recovery Committee's meeting on 16 December 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved [Motion S6M-02341](#) 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. 10) Regulations 2021 (SSI 2021/443) be approved.

16. **The COVID-19 Recovery Committee agreed Motion S6M-02341.**

# The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454)

17. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454) were laid on 6 December 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 the Act.

18. The [policy note](#) states that—

” The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument adds Nigeria to the “red list countries” contained in schedule 1 of the International Travel Regulations. Nigeria has been added in recognition of the existence and potential prevalence of variant b.1.1.529 (Omicron) which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through this country and territory, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on days 2 and 8 after their arrival and to possess a managed quarantine package.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.

19. The DPLR Committee considered SSI 2021/454 at its meeting on [14 December 2021](#) and had no points to raise.

20. At the COVID-19 Recovery Committee's meeting on 16 December 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved [Motion S6M-02436](#) 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. 11) Regulations 2021 (SSI 2021/454) be approved.

21. **The COVID-19 Recovery Committee agreed Motion S6M-02436.**

# **The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455)**

22. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455) were laid on 7 December 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 the Act.
23. The [policy note](#) states that—

- ” The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument re-introduces pre-departure testing in respect of non-red list arrivals to Scotland. Pre-departure testing was introduced on 15 January 2021 by the Health Protection (Coronavirus) (Pre-departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20). It was then removed in respect of eligible vaccinated arrivals by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 3) Regulations 2021 (SSI 2021/350). The effect of this was that pre-departure testing applied only to red list arrivals, to non-eligible vaccinated and unvaccinated arrivals.

In light of the recognition of increased risk of imported infections this instrument re-introduces it. It also amends the timing the test sample is taken from a person.

Currently the provision states that the test sample must be taken no more than 3 days before:- for a person travelling to Scotland on a commercial transport service, the service’s scheduled time of departure; or, in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Scotland.

This instrument provides for the test sample to be taken within 2 days before departure to Scotland. If the journey is a multi-leg journey it must be taken within 2 days before the start of the first leg. Timing pre-departure testing as close as possible to the time of departure increases the probability of discovering infection that would enter the travel corridor and the UK.

Children aged 12 and over will require to possess notification of a negative test result. This is a change from the previous position. Previously, children (defined as under 18) were exempt from the requirement to possess a negative test notification unless they were travelling with an adult. For those travelling with a responsible adult the adult had to possess valid notification of a negative test result taken by the child. There is no duty on an operator to ensure that a child who is travelling without a responsible adult possesses notification of a negative test result. In light of the current increased risk of imported infections this change places a duty on children aged 12 and over or a responsible adult to possess the notification. However, children will not be penalised for failure to possess the notification as they are exempted from the penalty provisions.

The instrument updates the passenger information provided by operators in line with this amendment.

24. The DPLR Committee considered SSI 2021/455 at its meeting on [14 December 2021](#) and had no points to raise.
25. At the COVID-19 Recovery Committee's meeting on 16 December 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved [Motion S6M-02454](#) 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. 12)  
Regulations 2021 (SSI 2021/455) be approved.

**26. The COVID-19 Recovery Committee agreed Motion S6M-02454.**

