

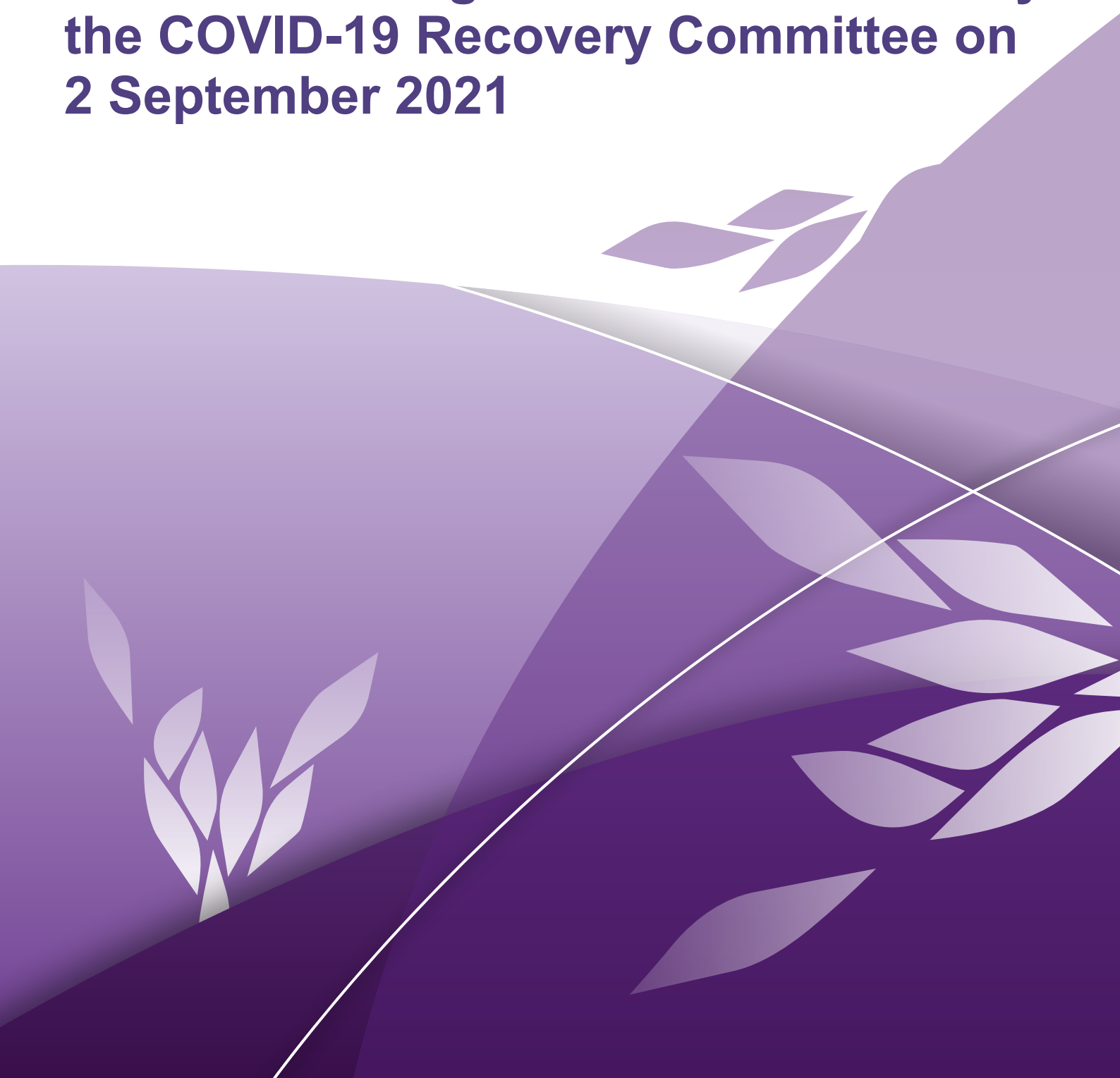


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COVID-19 Recovery Committee

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 2 September 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



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Scottish National Party



Deputy Convener
Murdo Fraser
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Alex Rowley
Scottish Labour



Brian Whittle
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 2 September 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) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 27) Regulations 2021 (SSI 2021/238)

2. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 27) Regulations 2021 were laid on 11 June 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(3) of schedule 19 of the Act.
 3. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to provide a person designated by a Local Authority with a power of entry to enforce restrictions relating to stadia and events. The Regulations also reduce the required distances to be maintained between persons in Hampden Park, Glasgow and the Glasgow Green Event Zone during the UEFA EURO 2020 Championship period.
 4. The Delegated Powers and Law Reform ('DPLR') Committee considered SSI 2021/238 at its meeting on 22 June 2021 and had [no points to raise](#).
 5. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00695](#) in his name— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 27) Regulations 2021 (SSI 2021/238) be approved.
6. The COVID-19 Recovery Committee agreed Motion S6M-00695.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 28) Regulations 2021 (SSI 2021/242)

7. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 28) Regulations 2021 were laid on 17 June 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(3) of schedule 19 of the Act.
8. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to remove the Republic of Ireland and the area of Bedford Borough Council from the list of areas to which the common travel area restrictions apply. These regulations also add Manchester and Salford to the list of areas to which common travel area restrictions apply.
9. The DPLR Committee considered SSI 2021/242 at its meeting on 22 June 2021 and had [no points to raise](#), but commented in its report that "The Committee noted that concerns had been raised about the potential lack of provision for consumer rights in relation to cancelled rail journeys stemming from the Regulations and agreed to highlight this to the lead committee."
10. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00694](#) in his name— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 28) Regulations 2021 (SSI 2021/242) be approved.
11. The COVID-19 Recovery Committee agreed Motion S6M-00694.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 29) Regulations 2021 (SSI 2021/252)

12. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 29) Regulations 2021 were laid on 24 June 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(3) of schedule 19 of the Act.
13. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the physical distancing requirements so that family members may be involved in funerals by carrying of the coffin or lowering the coffin into a lair. The regulations also provide extended opening hours for hospitality in the event that a match during the knockout stages of the UEFA EURO 2020 Championship which is being shown in hospitality premises runs over the currently permitted opening hours. The Regulations also adjust the physical distancing rules for the purpose of the 1888 Cup rugby event at Murrayfield Stadium, Edinburgh on 26 June 2021. The regulations also adjust the rules on face coverings at weddings and civil partnerships.
14. The DPLR Committee considered SSI 2021/252 at its meeting on [31 August 2021](#) and had no points to raise.
15. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00693](#) in his name— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 29) Regulations 2021 (SSI 2021/252) be approved.
16. The COVID-19 Recovery Committee agreed Motion S6M-00693.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 30) Regulations 2021 (SSI 2021/255)

17. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 30) Regulations 2021 were laid on 29 June 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(3) of schedule 19 of the Act.
18. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to remove the areas of Bolton Metropolitan Borough Council, Manchester City Council and Salford City Council from the list of areas to which the common travel area restrictions apply.
19. The DPLR Committee considered SSI 2021/255 at its meeting on [31 August 2021](#) and had no points to raise.
20. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00692](#) in his name—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 30) Regulations 2021 (SSI 2021/255) be approved.
21. The COVID-19 Recovery Committee agreed Motion S6M-00692.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 31) Regulations 2021 (SSI 2021/262)

22. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 31) Regulations 2021 were laid on 7 July 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(3) of schedule 19 of the Act.
23. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to reduce the required physical distances to be maintained between persons within the premises of the Renaissance Club, North Berwick for the period of the abrdn Scottish Open, which is scheduled to start on 8 July and end 11 July 2021 (or 12 July in the event play cannot be completed on the 11 July). These regulations also make a minor amendment to provisions relating to stadia and live events: a local authority will only be required to notify the Scottish Ministers of an application for an exemption on capacity in Levels 0, 1 or 2 when directed to do so by the Scottish Ministers. These regulations also remove the area of Blackburn with Darwen Borough Council in England from the list of areas to which the common travel area restrictions apply.
24. The DPLR Committee considered SSI 2021/262 at its meeting on [31 August 2021](#) and had no points to raise.
25. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00702](#) in his name— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 31) Regulations 2021 (SSI 2021/262) be approved.
26. The COVID-19 Recovery Committee agreed Motion S6M-00702.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 32) Regulations 2021 (SSI 2021/263)

27. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 32) Regulations 2021 were laid on 15 July 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(3) of schedule 19 of the Act.
28. The [policy note](#) states that—
 - ” These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to provide that physical distancing is reduced to 1 metre indoors and outdoors and to remove the requirement for physical distancing requirements between people within a social group outdoors. These regulations also provide that children under the age of 12 years do not count for the purpose of calculating the number of households permitted for gatherings indoors. The regulations also restrict hospitality trading times to between 04:00 and 00:00.
29. The DPLR Committee considered SSI 2021/263 at its meeting on [31 August 2021](#) and had no points to raise.
30. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00701](#) in his name— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 32) Regulations 2021 (SSI 2021/263) be approved.
31. The COVID-19 Recovery Committee agreed Motion S6M-00701.

The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277)

32. The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 were laid on 5 August 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(3) of schedule 19 of the Act.
33. The [policy note](#) states that—
- ” These Regulations revoke the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. The regulations provide that relevant hospitality and entertainment premises are required to obtain and record visitor information for the purpose of preventing the spread of coronavirus or monitoring the spread of infection and the incidence of coronavirus disease. The regulations also require persons responsible for places of worship, carrying on a business or providing a service to have regard to relevant guidance issued by the Scottish Ministers about measures to minimise risk of exposure to coronavirus. The regulations provide that persons in specified indoor places must wear a face covering unless a specific exemption applies. The regulations require persons who use a passenger transport service or passenger transport service premises to wear a face covering unless a specific exemption applies. The regulations cap numbers at live events at 5000 people for events held outdoors and at 2000 people for events held indoors subject to local authority approval of higher attendance limits in accordance with the process set out in the regulations. Enforcement powers are provided for. The regulations require Scottish Ministers to review the requirements at least once every 21 days and the regulations require Scottish Ministers to revoke any requirement as soon as it is no longer necessary.
34. The DPLR Committee considered SSI 2021/277 at its meeting on 31 August 2021. It had the following points to raise in its report published on [2 September 2021](#)—

” The instrument revokes the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344). It nevertheless retains some requirements still considered necessary by the Scottish Government in response to the coronavirus pandemic and provides that these are applied uniformly across Scotland. The instrument still requires that, subject to some exemptions, face coverings are worn in most indoor spaces.

The guidance accompanying this instrument states that face coverings are not required to be worn whilst dancing in a nightclub or dancehall. However, a specific exemption for dancing is not listed in this instrument.

In correspondence with the Scottish Government (please see Annex A), it considered that dancing is a form of exercise which reasonably requires that the person is not wearing a face covering. An exemption for exercise is provided for by regulation 5(r) and the Scottish Government said that "the guidance is based on this consideration."

The Committee raised a number of points in relation to the exemption in regulation 5(r), namely:

- the importance of clarity of law in order that provisions might be properly understood. For example, "dancing" does not appear in the instrument and therefore there is no definition of what constitutes dancing;
- whether it is sufficiently clear to a reader of the instrument that dancing in a nightclub or dancehall is considered a form of exercise;
- whether dancing might be considered an appropriate exemption in other premises outwith a nightclub or dancehall;
- whether there might be opportunities to investigate how the regulations interact with licensing law;
- whether the explanatory notes might include a definition and also practical scenarios where the consideration could arise; and
- how these regulations are being enforced in nightclubs and dancehalls.

While acknowledging that some of these points were in relation to policy rather than its own technical and legal scrutiny, the Committee agreed to highlight these questions to the lead committee.

In relation to the Committee's specific remit with regards to the definition of "taking part in exercise of a type which reasonably requires that the person is not wearing a face covering", in regulation 5(r), it draws the instrument to the attention of the Parliament under reporting ground (h) – that its meaning or form could be clearer.

Furthermore, the Committee noted that the instrument revokes the Health Protection (Coronavirus) (Scotland) Regulations 2020 but does not revoke all the other instruments which amended that instrument. The Scottish Government was grateful that this oversight was brought to its attention and

confirmed by correspondence that the relevant amending instruments will be revoked at the earliest convenient opportunity.

Whilst welcoming the Scottish Government's commitment to revoke the relevant amending instruments at the next legislative opportunity, the Committee also draws the instrument to the attention of the Parliament under the general reporting ground.

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

35. At the COVID-19 Recovery Committee's meeting on 2 September 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-00901](#) in his name—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277) be approved.

36. The COVID-19 Recovery Committee agreed Motion S6M-00901.

