

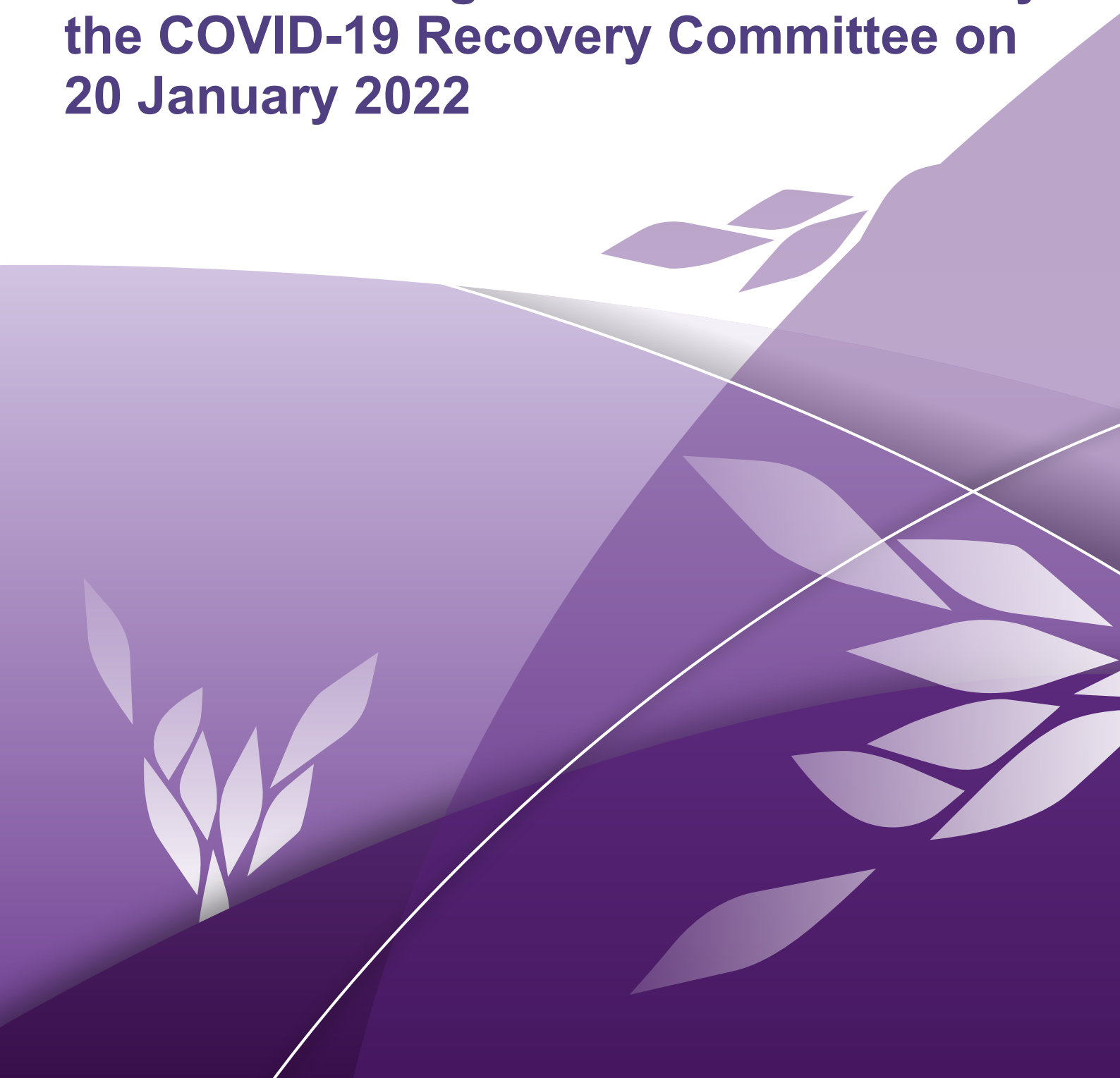


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COVID-19 Recovery Committee

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 20 January 2022



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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 20 January 2022. 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) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/475)

2. [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 5\) Regulations 2021 \(SSI 2021/475\)](#) were laid on 16 December 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.

3. The [policy note](#) states that—

” 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.

4. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/475 at its meeting on 11 January 2022. The DPLR Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the Regulations. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [14 January 2022](#), at paragraphs 4 to 20.

5. The Covid-19 Recovery Committee notes the discussion in the DPLR Committee’s report in relation to the use of the made affirmative procedure for this instrument.

COVID-19 Recovery Committee

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 20 January 2022, 2nd Report, 2022 (Session 6)

6. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—

[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.

7. **The COVID-19 Recovery Committee agreed Motion S6M-02594.**

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/478)

8. [The Health Protection \(Coronavirus\) \(International Travel and Operator Liability\) \(Scotland\) Amendment \(No. 13\) Regulations 2021 \(SSI 2021/478\)](#) were laid on 17 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.
9. The [policy note](#) states that—
 - ” 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.
10. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/475 at its meeting on 11 January 2022 and had no points to raise.
11. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—
[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.

12. **The COVID-19 Recovery Committee agreed S6M-02602.**

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/496)

13. [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 6\) Regulations 2021 \(SSI 2021/496\)](#) were laid on 23 December 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 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).
15. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/496 at its meeting on 11 January 2022. The DPLR Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the Regulations. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [14 January 2022](#), at paragraphs 4 to 20.
16. The Covid-19 Recovery Committee notes the discussion in the DPLR Committee’s report in relation to the use of the made affirmative procedure for this instrument.
17. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—

[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.
18. **The COVID-19 Recovery Committee agreed Motion S6M-02698.**

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/497)

19. [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 7\) Regulations 2021 \(SSI 2021/497\)](#) were laid on 23 December 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.
20. The [policy note](#) states that—
 - ” 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.
21. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/497 at its meeting on 11 January 2022. The DPLR Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the Regulations. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [14 January 2022](#), at paragraphs 4 to 20.
22. The Covid-19 Recovery Committee notes the discussion in the DPLR Committee’s report in relation to the use of the made affirmative procedure for this instrument.
23. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—

[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.
24. **The COVID-19 Recovery Committee agreed Motion S6M-02699.**

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/498)

25. [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 8\) Regulations 2021 \(SSI 2021/498\)](#) were laid on 30 December 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.
26. The [policy note](#) states that—
 - ” 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.
27. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/498 at its meeting on 11 January 2022. The DPLR Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the Regulations. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [14 January 2022](#), at paragraphs 4 to 20.
28. The Covid-19 Recovery Committee notes the discussion in the DPLR Committee’s report in relation to the use of the made affirmative procedure for this instrument.
29. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—

[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.

30. **The COVID-19 Recovery Committee agreed Motion S6M-02760.**

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2022 (SSI 2022/2)

31. [The Health Protection \(Coronavirus\) \(International Travel and Operator Liability\) \(Scotland\) Amendment Regulations 2022 \(SSI 2022/2\)](#) were laid on 7 January 2022. 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.
32. The [policy note](#) states that—

” 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 Delegated Powers and Law Reform (DPLR) Committee considered SSI 2022/2 at its meeting on 18 January 2022. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [18 January 2022](#), at paragraphs 14 to 20. It recommended—

” 19. The Committee draws the instrument to the attention of the Parliament on:

- 1. Reporting ground (h) on the basis that the meaning of regulation 7 could be clearer that the confirmatory test taken by an eligible vaccinated arrival following a positive day 2 Lateral Flow Device test must be a PCR test;**
- 2. Reporting ground (i) on the basis that its drafting appears to be defective. The change in the definition of “WHO List vaccine” in regulation 3 was intended to come into force on 10 January 2022 at the same time as the equivalent change was made in England and Wales by the UK Government, rather than on 7 January 2022 as provided for in regulation 1 of the instrument; and**
- 3. Reporting ground (j) on the basis that the instrument is in breach of laying requirements in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, having been laid after the majority of its provisions came into force.**

20. The Committee also calls on the Scottish Government to amend the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021, in light of the insertion by regulation 7 of the instrument, to define the term “confirmatory test” at the next legislative opportunity.

34. At the COVID-19 Recovery Committee's meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in the name of Michael Matheson—

[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.

- 35. The COVID-19 Recovery Committee agreed Motion S6M-02733.**

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 (SSI 2022/6)

36. [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment Regulations 2022 \(SSI 2022/6\)](#) were laid on 13 January 2022. 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.

37. The [policy note](#) states that—

” 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).

38. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2022/6 at its meeting on [18 January 2022](#) and had no points to raise.

39. At the COVID-19 Recovery Committee’s meeting on 20 January 2022, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney, moved the following motion in his name—

[S6M-02799](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 (SSI 2022/6) be approved.

40. The COVID-19 Recovery Committee agreed Motion S6M-02799.

