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COVID-19 Committee

Subordinate Legislation Considered by the Covid-19 Committee on 20 August 2020



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COVID-19 Committee

Remit: To consider and report on the Scottish Government's response to COVID-19 including the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19 and any secondary legislation arising from the Coronavirus (Scotland) Act and any other legislation in relation to the response to COVID-19.



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Covid.Committee@parliament.scot

Committee Membership



Convener
Murdo Fraser
 Scottish Conservative
 and Unionist Party



Deputy Convener
Monica Lennon
 Scottish Labour



Willie Coffey
 Scottish National Party



Annabelle Ewing
 Scottish National Party



Ross Greer
 Scottish Green Party



Shona Robison
 Scottish National Party



Stewart Stevenson
 Scottish National Party



Adam Tomkins
 Scottish Conservative
 and Unionist Party



Beatrice Wishart
 Scottish Liberal
 Democrats

Introduction

1. This report sets out the Covid-19 Committee's consideration of Scottish Statutory Instruments ('SSIs') at its meeting on 20 August 2020. The Minutes of the meeting have been published on the [Committee's webpage](#). These note that apologies were received Willie Coffey MSP, Shona Robison MSP and Annabelle Ewing MSP. Ruth Maguire MSP, Clare Adamson MSP and Alasdair Allan MSP attended the meeting as substitutes. The Official Report of the meeting will be published by 6.00pm on 21 August 2020 on the [Committee's website](#).
2. The Committee also took evidence on SSIs within the scope of this report at its meeting on 28 July 2020 and the [Official Report](#) and [Minutes](#) of that meeting has been published on the Committee's website.

SSIs Amending The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

Background

3. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the principal regulations”) were laid and came into force on 26 March and were approved by the Parliament on 1 April. These regulations were intended “to ensure that action to implement social distancing and impose restrictions on gatherings, events and operation of business activity can be enforced.” Under the regulations, Scottish Ministers are required to “keep restrictions or requirements under review and for those to be lifted as soon as they are no longer deemed necessary to prevent, protect against or control the incidence or the spread of coronavirus.”

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.5) Regulations 2020: SSI 2020/190

4. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.5) Regulations 2020: SSI 2020/190 were laid on 26 June 2020. SSI 2020/190 was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
5. The [Policy Note](#) states that the Regulations amend the principal regulations in the following areas—
 - to provide that in relation to a civil partnership or marriage, an approved celebrant, authorised registrar and any interpreter will not be included for the purposes of calculating the three households that may take part in the gathering.
 - to provide that it is now a reasonable excuse for a person to leave the place where they are living to move house, to undertake certain activities in connection with the purchase, sale, letting or rental of a residential property or to attend a property owned by that person to ensure it is in good condition and to undertake or arrange for the upkeep and maintenance of the property.
 - to omit certain businesses and services from the list of businesses and services that are required to be closed, with the effect that they can reopen to the public. The reasonable excuse relating to obtaining supplies for households has been updated accordingly.
 - to provide a further reasonable excuse; to make use of a service provided by a business or service that is not listed in Part 2 of schedule 1.

- to enable libraries at, or associated with, a college or university to re-open to members of staff and postgraduate students, where it is not reasonably possible for those services to be accessed from home.
6. The Delegated Powers and Law Reform ('DPLR') Committee reported on SSI 2020/190 on [12 August 2020](#) and had no points to raise.
 7. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 28 July. At its meeting on 20 August, the Cabinet Secretary moved [Motion S5M-22419](#) in his name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.5) Regulations 2020: SSI 2020/190 be approved.
 8. The motion was agreed to without division.
 9. **The Covid-19 Committee agreed Motion S5M-22419.**

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.6) Regulations 2020: SSI 2020/199

10. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.6) Regulations 2020: SSI 2020/199 were laid on 2 July 2020. SSI 2020/199 was made in exercise of the powers conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 ("the Act"). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
11. The [Policy Note](#) states that the Regulations amend the principal regulations in the following areas—
 - to provide that businesses listed in Part 1 of schedule 1 must close any indoor premises or part of those premises used for the consumption of food or drink on those premises.
 - to provide that accommodation providers may now provide self-catering accommodation in certain circumstances.
 - The reasonable excuse relating to a person who owns a residential property other than the place where they are living is amended to reflect the wider changes around self-catering accommodation. Such persons now have a reasonable excuse to visit the property, either alone or with other members of their household.
12. The DPLR Committee reported on SSI 2020/199 on [12 August 2020](#) and had no points to raise.
13. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 28 July. At its meeting on 20 August,

the Cabinet Secretary moved [Motion S5M-22420](#) in his name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.6) Regulations 2020: SSI 2020/199 be approved.

14. The motion was agreed to without division.

15. **The Covid-19 Committee agreed Motion S5M-22420.**

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.7) Regulations 2020: SSI 2020/210

16. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.7) Regulations 2020: SSI 2020/210 were laid on 9 July 2020. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.

17. The [Policy Note](#) to these Regulations explains that they seek to amend the principal regulations to—

- provide that people who are responsible for businesses or services that meet the definition of a passenger transport service premises or a shop must take all reasonable measures to ensure that a distance of one metre is maintained between any persons on those premises.
- revoke regulation 5 of the principal regulations, with the effect that it is no longer an offence for a person to leave the place where they are living without a reasonable excuse.
- amend the principal regulations to provide that where a gathering takes place outdoors it may consist of five households and where a gathering takes place indoors it may consist of three households and allows gatherings for the purpose of supervised outdoor recreation for people who are under 18 years of age.
- amend the principal regulations to allow two households to form an extended household.
- require people to wear a face covering when inside a shop and create a new offence for those failing to do so. Certain exceptions and reasonable excuses for failing to meet this duty are provided

18. The DPLR Committee reported on SSI 2020/210 on [12 August 2020](#) and had no points to raise. Whilst DPLRC did not report on the instrument under any of its technical reporting grounds, it did wish to highlight to the lead committee “some broader issues that have been raised” by Graham Simpson MSP, namely—

- “that the instrument's provisions were unclear in relation to where face masks are and are not required to be worn (particularly in relation to shops which contain a Post Office or facilities which involve money transfer).
 - that the affirmative procedure should have been used to ensure effective parliamentary scrutiny.”
19. Whilst the DPLR Committee noted that “there was no technical inaccuracy on which it would report”, it agreed “to bring these concerns to the attention of the lead committee in case this is helpful in its policy consideration.”
20. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 28 July. At its meeting on 20 August, the Cabinet Secretary moved [Motion S5M-22257](#) in his name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.7) Regulations 2020: SSI 2020/210 be approved.
21. The motion was agreed to without division.
22. **The Covid-19 Committee agreed Motion S5M-22257.**

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.8) Regulations 2020: SSI 2020/211

23. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.8) Regulations 2020: SSI 2020/211 were laid on 14 July 2020. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
24. The [Policy Note](#) to these Regulations explains that they seek to amend the principal regulations to—
- revoke Regulation 3(1) of the principal regulations to provide that businesses may serve food and drink for consumption indoors. Such businesses will still be required to adhere to relevant guidance and take all reasonable measures to ensure physical distancing is maintained within their premises;
 - revoke Regulation 4(2) of the principal regulations to provide that libraries, holiday accommodation providers, places of worship and crematoriums that could previously only open in certain circumstances, may now fully reopen “except in certain circumstances.” Again, such premises will be required to adhere to relevant guidance and maintain physical distancing;
 - ease the restrictions on gatherings at funerals, marriage ceremonies and civil partnership registrations or where the gathering is for the purpose of childcare under Regulation 6(1) of the principal regulations;

- omit paragraphs 5,10 and 23 of schedule 1 of the principal regulations to provide that a number of other businesses and services that were previously required to be closed under the principal regulations, such as museums, galleries, cinemas may reopen. Again, such premises will be required to adhere to relevant guidance and maintain physical distancing;
 - omit paragraphs 13,15 and 16 of schedule 1 of the principal regulations to provide that a number of other businesses and services that were previously required to be closed under the principal regulations, such as hair and beauty salons, barbers, spas, massage, tattoo, and piercing parlours may reopen. Again, such premises will be required to adhere to relevant guidance and maintain physical distancing.
25. The DPLR Committee reported on SSI 2020/211 on [12 August 2020](#) and had no points to raise.
26. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 28 July. At its meeting on 20 August, the Cabinet Secretary moved [Motion S5M-22292](#) in Jeane Freeman's name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.8) Regulations 2020: SSI 2020/211 be approved.
27. The motion was agreed to without division.

28. The Covid-19 Committee agreed Motion S5M-22292.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.9) Regulations 2020: SSI2020/232

29. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.9) Regulations 2020: SSI2020/232 were laid on 30 July 2020. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
30. The [Policy Note](#) states that these Regulations amend the principal regulations to provide that persons responsible for the provision of education are not required to maintain social distancing between pupils and between pupils and teachers. The Regulations also amend the definition of a shop to exclude cinemas, meaning they must maintain physical distancing of at least two metres, and revoke the requirement to close community centres.
31. The DPLR Committee reported on SSI 2020/232 on [12 August 2020](#) and had no points to raise.

32. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 20 August 2020. At this meeting, the Cabinet Secretary moved [Motion S5M-22426](#) in his name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.9) Regulations 2020: SSI2020/232 be approved.
33. The motion was agreed to without division.

34. **The Covid-19 Committee agreed Motion S5M-22426.**

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.10) Regulations 2020: SSI 2020/236

35. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.10) Regulations 2020: SSI 2020/236 were laid on 7 August 2020. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
36. The [Policy Note](#) states that these Regulations amend the principal regulations which previously applied to retail environments with the effect that face coverings are mandatory in a wider range of public spaces including places of worship, crematoriums, community centres, post offices, takeaways, banks and financial institutions. The Regulations also exclude face shields from the definition of a face covering “because recent evidence indicates that face shields do not provide enough protection and so should not be regarded as meeting the legal definition of a face covering.” Certain additional exemptions to the requirement to wear face coverings are also provided for “to ensure that the exemptions properly reflect the activities that will take place in public places such as places of worship, libraries and community centres.”
37. The Regulations also provide a non-exhaustive list of measures that must be taken in places of worship, where reasonably practicable, to reduce the risk of the spread of coronavirus such as the use of barriers or screens, PPE, changes to layouts, and the controlled use of shared facilities. Finally, the Regulations give powers to ministers to issue guidance on measures that should be taken “to minimise the risk of the incidence and spread of coronavirus.”
38. The DPLR Committee reported on SSI 2020/236 on [19 August 2020](#) and had no points to raise.
39. The Covid-19 Committee took evidence from the Cabinet Secretary for Constitution, Europe and External Affairs at its meeting on 20 August 2020. At this meeting, the Cabinet Secretary moved [Motion S5M-22421](#) in his name— That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.10) Regulations 2020: SSI 2020/236 be approved.

40. The motion was agreed to without division.

41. **The Covid-19 Committee agreed Motion S5M-22421.**

The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020: SSI 2020/234

42. The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020: SSI 2020/234 were laid on 5 August 2020. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.
 43. The [Policy Note](#) states that “these Regulations set out restrictions on hospitality businesses and premises in “the protected area”, which means the area comprising the local government area of Aberdeen City.”
 44. The Regulations provide that businesses “must close any premises or part of their premises that is used for the consumption of food and drink on the premises” with the exception of hotels and other accommodation providers. “Further limited exceptions” are set out in the schedule and include canteens in hospitals, prisons and military bases along with services providing food and drink to homeless people.
 45. The Regulations provide powers to police officers and other persons designated by the local authority with enforcement powers including powers to issue fixed penalty notices where they have reason to believe an offence has been committed under the Regulations.
 46. The Policy Note confirms that the Regulations will expire after three weeks and that ministers will have a duty to review the need for these restrictions “at least once every seven days.”
 47. The DPLR Committee reported on SSI 2020/234 on [12 August 2020](#) and confirmed that it had no points to raise.
 48. The Covid-19 Committee took evidence from the Cabinet Secretary for Health and Sport at its meeting on 20 August 2020. At this meeting, the Cabinet Secretary moved [Motion S5M-22422](#) in the name of Humza Yousaf—That the Covid-19 Committee recommends that the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020: SSI 2020/234 be approved.
49. **The motion was agreed to by division: For 7 (Monica Lennon, Stewart Stevenson, Clare Adamson, Alasdair Allan, Ruth Maguire, Beatrice Wishart, Ross Greer), Against 0, Abstentions 2 (Murdo Fraser and Adam Tomkins).**
 50. **The Covid-19 Committee agreed Motion S5M-22422.**

The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020: SSI 2020/188

51. The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020: SSI 2020/188 were laid on 25 June 2020. The instrument was made in exercise of the powers conferred by sections 2, 7 and paragraph 7(3) of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 (“the 2020 Act”). The instrument is subject to made-affirmative procedure.
52. The [Policy Note](#) states that the Policy Objectives of the Regulations are to create the Social Care Staff Support Fund in order to ensure that relevant social care workers do not experience financial hardship due to either of the following reasons:
- They are ill with coronavirus; or
 - They are self-isolating in line with the latest Scottish NHS guidance, or specific social care infection prevention control guidance where this exists
53. The Policy Note states that the Fund will ensure that social care workers receive their expected income in these circumstances, and confirms that it will be available for the duration of the 2020 Act. It lists the four conditions which workers must meet in order to be eligible for the scheme as follows:
- their ability to undertake contracted health and care work is, or has been, restricted for a reason relating to coronavirus;
 - their income is, or has been, reduced as a result of that restriction;
 - the worker is, or was
 - (a) unable to attend work as a result of having coronavirus; or
 - (b) self-isolating in accordance with relevant public health guidance; and,
 - as a result of the three conditions above, the worker would experience, or is experiencing, financial hardship during the period when Part 1 of the 2020 Act is in force.
54. The Policy Note states that those who are eligible to access the Social Care Staff Support Fund must be workers in the relevant categories of the social care sector and provides definitions of these relevant categories.
55. The DPLR Committee considered SSI 2020/188 on [11 August 2020](#) and reported it to the Covid-19 Committee “under the general reporting ground in respect of a cross-referencing error”. The report described the error as follows—
- "Regulation 4 of the instrument sets out that in order to make a claim on the Fund, a relevant social care worker must provide evidence to the Scottish Ministers or to such person appointed by the Scottish Ministers in accordance with regulation 2(3). This should be a reference to regulation 2(4) rather than regulation 2(3)."

The report then states that the Committee notes that the Scottish Government proposes to "correct this error by way of correction slip".

56. The Covid-19 Committee took evidence from the Cabinet Secretary for Health and Sport at its meeting on 28 July 2020. At its meeting on 20 August 2020, the Cabinet Secretary moved [Motion S5M-22238](#) in her name— That the Covid-19 Committee recommends that the Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020: SSI 2020/188 be approved.
57. The motion was agreed to without division.
58. **The Covid-19 Committee agreed Motion S5M-22238.**

The Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020: SSI 2020/201

59. The Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020: SSI 2020/201 were laid on 2 July 2020. The instrument was made in exercise of the powers conferred by section 65B of the Public Services Reform Act 2010. The instrument is subject to affirmative procedure.
60. The [Policy Note](#) explains that The Coronavirus (Scotland) (No.2) Act makes provision to enable Scottish Ministers to make an application to the Court of Session or Sheriff Court for an emergency intervention order in a care home. An application may be made where, for a reason relating to coronavirus, there is a serious risk to the life, health or wellbeing of an individual in the home.
61. It states under the Policy Objectives that an emergency intervention order grants Scottish Ministers the power to authorise a nominated officer to take specified steps in relation to the care home for the duration of the Order. Scottish Ministers can exercise the powers that would be available under an emergency intervention order prior to making an application to the Court where they are satisfied that it is essential to do so for a reason relating to coronavirus, to prevent an imminent and serious risk to the life or health of persons at the care home.
62. The Policy Notes states that where an officer of a Local Authority or Health Board is appointed nominated officer, they are acting on behalf of the Local Authority or Health Board respectively and that it is likely that the Chief Social Work Officer (CSWO) of the Local Authority will be appointed as nominated officer due to their existing statutory responsibilities for adult social care.
63. The DPLR Committee reported on SSI 2020/201 on [12 August 2020](#) and had no points to raise.
64. The Covid-19 Committee took evidence from the Cabinet Secretary for Health and Sport at its meeting on 28 July 2020. At its meeting on 20 August 2020, the Cabinet Secretary moved [Motion S5M-22299](#) in her name—That the Covid-19 Committee recommends that the Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020: SSI 2020/201 be approved.
65. The motion was agreed to without division.

66. The Covid-19 Committee agreed Motion S5M-22299.

