

COVID-19 Recovery Committee

8th Meeting, 2021 (Session 6), Thursday 28 October 2021

Ministerial statement on COVID-19 and Subordinate legislation

Introduction

1. At this meeting, the Minister for Transport ("The Minister"), will give evidence under agenda item 3.
2. The Committee will take evidence under this agenda item on the policy announcements arising from the latest Ministerial statement on COVID-19, related to the Minister's portfolio, which is due to take place on 26 October 2021.
3. The Committee will also take evidence on the following subordinate legislation under agenda item 3, before it considers the corresponding motions, under agenda item 4—
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322) (from here on referred to as "the Principal Regulations")
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328) (from here on referred to as "the Amendment No. 1 Regulations")
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343) (from here on referred to as "the Amendment No. 2 Regulations")
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/350) (from here on referred to as "the Amendment No. 3 Regulations")
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357) (from here on referred to as "the Amendment No. 4 Regulations")

- The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/359) (from here on referred to as "the Amendment No. 5 Regulations")

Background

4. For more background information on the statutory powers being used by the Scottish Government to respond to COVID-19 and the Scottish Government's strategy for dealing with COVID-19 and COVID-19 recovery, see the [SPICe Blog](#).

Agenda item 2: Ministerial statement on COVID-19 and Subordinate Legislation

Ministerial statement on COVID-19: Tuesday, 26 October 2021

5. On 26 October 2021, the First Minister will set out the Scottish Government's most recent actions for dealing with COVID-19 in a statement to the Chamber. Members will take evidence on any policy announcements arising from this statement related to the Minister's portfolio under agenda item 3.

6. SPICe produces a weekly briefing entitled 'Weekly SPICe COVID-19 Update' (see **Paper 3**). This provides Members with links to the latest guidance and supporting information published by the Scottish Government, in addition to a selection of websites providing information on wider health and social and economic indicators in Scotland.

Subordinate Legislation

Overview

7. [On 17 September 2021](#), the Scottish Government announced significant changes to the traffic light system for international travel restrictions in line with UK Government policy. From 4 October 2021, the amber and green list countries were merged together and a new system for non-red list arrivals was introduced based on the passenger's vaccination status. [On 21 September 2021](#), during her statement to Parliament, the First Minister summarised these changes. The No. 3 Regulations being considered at this meeting give effect to this new policy.

8. All the subordinate legislation listed on the agenda is subject to the 'made affirmative' procedure. This means that the regulations can come into force immediately and without any parliamentary scrutiny. The regulations can only remain in force for 28 days from the date they were made into law. To continue in force for longer than 28 days, parliamentary approval is required and must be granted within the first 28 days of the instrument being made. The DPLR Committee and COVID-19

Recovery Committee will report on each of the instruments, before the whole Parliament considers motions to approve them.

Policy Background: The Principal Regulations

9. On 16 September 2021, the Scottish Government laid [the Principal Regulations](#) and they came into force on 20 September 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 29 October 2021 to remain in force beyond this date.

10. According to the [policy note](#), the purpose of the instrument is as follows—

“The policy intention behind this instrument is primarily to consolidate the existing International Travel Regulations contained within several instruments, as well as their various corresponding amendment regulations, into one and to do so upon the expiry of the existing regulations. The Scottish Ministers are required to review the need for the requirements imposed by these Regulations at least once every 28 days. The first review is to be carried out by 18 October 2021. The Regulations will expire at the end of 16 May 2022 (at the same time as the current regulations for England).

The consolidation also makes some policy amendments to the regulations.

A change has been made to the list of specified competitions as it relates to the exemption for elite sports people to add European Tour Golf, the Alfred Dunhill Links Championship. While provision previously existed for an exemption for eligible arrivals from amber list countries to take part in this event, this will be extended to cover eligible travellers from red list countries under the conditions that apply to that exemption in recognition of the fact the event is open to competitors from both categories.

In relation to COP26, provision is made in light of the planned COP26 arrangements to clarify there is no requirement under the Scottish regulations for red list arrivals to complete managed isolation when they have completed a period of managed isolation in England.

A further change has been made to allow for an exemption from managed isolation for in-flight security officers. While they will be exempt, they will continue to be required to comply with other requirements appropriate to the country of departure and/or any countries transited through in the preceding 10 days. Travellers who fall within this exemption will be required to remain in self-isolation when not working or travelling for work, regardless of whether they have travelled from an amber or red country. This ensures alignment with the equivalent in regulations in England.”

11. The policy note states that no impact assessments have been prepared in relation to the Principal Regulations.

12. The Delegated Powers and Law Reform (DPLR) Committee considered the Principal Regulations at its meeting on 5 October 2021. It had the following points to raise in its report published on [8 October 2021](#)—

“This instrument revokes three previous sets of Regulations and replaces them with consolidated International Travel Regulations with the aim of improving their readability and accessibility.

The instrument also makes the following changes:

- to add the European Tour Golf - Alfred Dunhill Links Championship to the list of specified competitions in which elite sportspersons from red list countries are exempt from managed self-isolation on arrival in Scotland;
- to exempt certain participants in COP26 from red list countries from the requirement to undergo managed self-isolation if they have completed a period of managed isolation in England; and
- to exempt in-flight security officers from the requirement to self-isolate other than when they are not working or travelling for work.

In correspondence with the Scottish Government (see Annex to the DPLR report), the Committee highlighted that schedule 4 of the Regulations provides exemptions from requirements in the instrument for certain people including “members of aircraft crew” as defined in paragraph 10(2)(a)(ii).

The term ‘EU-OPS’ is used in paragraph 10(2)(a)(ii), which is defined in paragraph 10(2)(c) with reference to paragraph 1 of schedule 1 of the Air Navigation Order 2016. However, there is no reference to EU-OPS in that Order.

The Scottish Government confirmed that this is an error insofar as there is no longer such a reference in the 2016 Order and undertook to correct this at the next available opportunity.

The Committee draws the instrument to the attention of the Parliament under reporting ground (h) on the basis that the instrument's meaning could be clearer in respect of the reference to the term “EU-OPS” in paragraph 10(2)(a)(ii) of schedule 4 of the instrument, and the definition of that term in paragraph 10(2)(c) of schedule 4 by reference to paragraph 1 of schedule 1 of the Air Navigation Order 2016 where that term no longer exists.

The Committee also welcomes the Scottish Government’s commitment to clarify the position by updating the relevant reference at the next available opportunity. This has now been by the Health Protection (Coronavirus) Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No.2) Regulations 2021 (SSI 2021/349) also considered by the Committee on 5 October 2021 and with which it was content.”

Policy Background: The Amendment No. 1 Regulations

13. On 21 September 2021, the Scottish Government laid [the Amendment No.1 Regulations](#) and they came into force on 22 September 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 5 November 2021 to remain in force beyond this date.

14. According to the [policy note](#), the purpose of the instrument is as follows—

“The policy intention behind this instrument is to amend the existing list of acute countries, territories and parts of countries or territories as per below.

- No additions
- Remove:
 - Bangladesh
 - Egypt
 - Kenya
 - Maldives
 - Oman
 - Pakistan
 - Sri Lanka
 - Turkey

The amendments made by this instrument apply only in relation to persons arriving in Scotland at or after 4:00 am on 22 September 2021.”

15. The policy note states that assessment of the impact of the changes to country status as set out in the instrument, was previously undertaken and following reconsideration, no changes are required for these amendments. The original assessment is accessible via <https://www.legislation.gov.uk/ssi/2021/208/resources>.

16. The DPLR Committee considered The Amendment No.1 Regulations at its meeting on 28 September 2021 and had [no points to raise](#).

Policy Background: The Amendment No. 2 Regulations

17. On 29 September 2021, the Scottish Government laid [the Amendment No. 2 Regulations](#) and they came into force on the 30 September 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 11 November 2021 to remain in force beyond this date.

18. According to the [policy note](#), the purpose of the instrument is as follows—

“This instrument amends the Health Protection (Coronavirus) (International Travel and Operators Liability) (Scotland) Regulations 2021 to allow for electronic certification issued by NHS Scotland to be used as proof of COVID vaccination status for the purpose of international travel. This will enable use of the use of the NHS Scotland COVID Status App.

This instrument also corrects an error in those regulations relating to the exemption applicable to members of aircraft crew where they have travelled to the United Kingdom in the course of their work or are otherwise required to travel to the United Kingdom for work purposes.”

19. No Impact Assessments have been prepared to accompany the No. 2 Regulations however the policy note states that impact assessments on the introduction of the app as part of domestic certification in Scotland have been prepared and will be published on [legislation.gov.uk](https://www.legislation.gov.uk).

20. The DPLR Committee considered the Amendment No.2 Regulations at its meeting on 5 October 2021 and had [no points to raise](#).

Policy Background: The Amendment No. 3 Regulations

21. On 1 October 2021, the Scottish Government laid [the Amendment No. 3 Regulations](#) and they came into force on the 4 October 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 13 November 2021 to remain in force beyond this date.

22. According to the [policy note](#), the purpose of the instrument is as follows—

“Amendments to country status: The aim of the instrument is to update Scotland’s approach to international travel by removing the green and amber lists and instead operating a system for non-red list arrivals based on the individual’s vaccination status. Requirements for travellers from red list countries are not amended by this instrument. The policy intention is to reduce changes in the system with countries moving between green and amber lists and instead to shift the system to vaccine status rather than country risk assessment as what defines the requirements on arrival into Scotland. The instrument makes these changes and consequential amendments as required.

Unvaccinated travellers or travellers vaccinated through a programme not recognised in the International Travel Regulations, who are not travelling from a red list country, will follow the level of restrictions that was previously applied to arrivals from Amber-list countries: that is a pre-departure test, 10 days self-isolation and mandatory PCR tests on days 2 and 8. This represents a significant increase in restrictions imposed on unvaccinated travellers from previously defined Green-list countries, and on travellers from Green-list countries who are vaccinated under an unrecognised vaccination programme. There is no change for unvaccinated travellers from Amber-list countries.

Eligible vaccinated travellers will not be required to take a pre-departure test, but will be required to take a day 2 PCR test, but not isolate or take a day 8 test.

Vaccines: In relation to COVID-19 vaccination policy, the aim of this instrument is to make a number of amendments to recognise the use of mixed

dose vaccinations. The meaning of eligible vaccinated arrivals is now extended to include people who have received doses of different vaccines in the UK or a relevant country or in the UK vaccine roll-out overseas. The policy aim of this is to further open up the international travel sector to a larger number of people.

The list of countries falling within the definition of relevant country has also been expanded by way of this instrument. Vaccines received in Australia and Canada and approved by relevant regulators in those countries are added, as are vaccines authorised for use in the UK which have been received in Antigua and Barbuda, Bahrain, Barbados, Brunei, Dominica, Israel, Japan, Kuwait, Malaysia, New Zealand, Qatar, Saudi Arabia, Singapore, South Korea, Taiwan and the UAE.

Passenger information: In recognition of the changes made with regard to the removal of green and amber country designations, the requirement for passengers to update the Passenger Locator Form (PLF) has been amended. The obligation is now applicable to those subject to self-isolation requirements. This is aligned to the position in other parts of the United Kingdom and will provide consistency for passengers.

Testing and isolation – pre departure testing and post arrival testing: As stated above, changes have been made in terms of the testing requirements for vaccinated and unvaccinated passengers arriving into Scotland. For eligible vaccinated arrivals from non-red list countries they will no longer need to undertake a pre-departure test and provide a negative result. The policy objective of this is to reduce the cost for travellers and to facilitate international travel in a way which is consistent across the whole of the UK as far as possible.

This instrument also updates the requirements relating to the need to possess a testing package for the detection of coronavirus on arrival in Scotland and sets out which people are required to self-isolate should they fail to take a test, or as a consequence of a test result.

For those who are not eligible vaccinated arrivals, they must possess a testing package which includes a day 2 and a day 8 test. The testing package for eligible vaccinated arrivals is to be for a day 2 test. However there is an exemption from testing package requirements for short stay cruise ship passengers.

Similarly, the requirement for self-isolation at specified premises on arrival in Scotland will now apply to all arrivals (other than red list arrivals subject to managed isolation) unless they are eligible vaccinated arrivals or are exempt in another way. This previously did not apply to green list arrivals.

Cruises: In recognition of the unique operational requirements, including potentially long periods at sea, the regulations have been amended further to allow cruises to operate. This specifically means that passengers who don't disembark are not required to complete either the Passenger Locator Form (PLF) or a pre-departure test; for any passenger that does test positive, they

can be returned to land; the requirement for day 2 testing for short-stay cruise passengers has been removed.

This allows for a defence, in certain circumstances, to the offence of failing to possess a notification of a negative coronavirus test upon arrival in Scotland, and to the offence on an operator of failing to ensure that a passenger is in possession of one, where a positive test was taken on a cruise ship or vessel. The policy intention is to allow passengers to be landed into Scotland where there is no other reasonably practicable alternative.

For the purposes of these change a cruise ship has been defined as “a vessel, certified to carry more than 200 passengers, engaged on a voyage primarily for leisure or recreation during which passengers stay overnight on board for at least two nights”.

Operator obligations and liabilities: Previously in Scotland, carriers have been required to ensure that passengers claiming to be eligible vaccinated arrivals were in possession of the evidence to support this. The changes made in this instrument now remove that obligation on carriers where a person has indicated on a Passenger Locator Form that they are an eligible vaccinated arrival and proof has been provided and verified on the Passenger Locator Form. The policy intention of this change is to reduce the burden on carriers while enabling passengers to provide the necessary information in a secure way.

Operators of international passenger services will also now be required to provide updated information to passengers before and during their journey. The updated information is specified within the changes made. The purpose of this is to ensure that passengers receive the most current and appropriate information ahead of their arrival into Scotland in relation to the public health measures they will need to abide by.

Sectoral exemptions: Sectoral exemptions for representatives at international events and conferences and Crown Servants and visiting forces have been amended. New exemptions have been introduced for foreign police officials, performing arts professionals and those engaged in film and TV production. The purpose of these exemptions is to allow professionals to undertake their work in the required way.

Sporting events: Additions are made to the list of specified competitions to include international boxing events overseen by the British Board of Boxing Control. This allows for elite sportspersons (as defined in the International Travel Regulations) to be exempted from requirements for managed isolation or self-isolation to participate in the specified events.”

23. The policy note states that impact assessments have been prepared and will be published on legislation.gov.uk in due course. The impact assessments have not been published at the time of writing.

24. The DPLR Committee will consider the Amendment No. 3 Regulations at its meeting on 26 October 2021 and will publish its report shortly after that meeting. A copy of the DPLR Committee's report will be provided to Members when it becomes available.

Policy Background: The Amendment No. 4 Regulations

25. On 8 October 2021, the Scottish Government laid [the Amendment No. 4 Regulations](#) and the provisions came into force on 9 and 11 October 2021 in accordance with regulation 1. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 20 November 2021 for them to remain in force beyond this date.

26. According to the [policy note](#), the purpose of the instrument is as follows—

“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. It provides also for those vaccinated with approved vaccines administered on behalf of the United Nations.

This instrument provides for the manner in which the International Travel Regulations apply in relation to participants at the “Conference of the Parties” relating to climate change and the World Leaders Summit in November 2021.

It also allows the EU Digital Covid Certificate to be used as evidence of negative test status. This allows passengers to use this as a way to demonstrate test status where this is required.”

27. The policy note states that impact assessments have previously been prepared in relation to the individual components that have been changed via this instrument. As such, no further impact assessment has been carried out. All previous impact assessments are available via Legislation.gov.uk.

28. The DPLR Committee will consider the Amendment No. 4 Regulations at its meeting on 26 October 2021 and will publish its report shortly after that meeting. A copy of the DPLR Committee's report will be provided to Members when it becomes available.

Policy Background: The Amendment No. 5 Regulations

29. On 14 October 2021, the Scottish Government laid [the Amendment No. 5 Regulations](#) and the provisions came into force on 15 October 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 21 November 2021 for them to remain in force beyond this date.

30. According to the [policy note](#), the purpose of the instrument is as follows—

“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.

31. The policy note states that impact assessments will be published on [legislation.gov.uk](#) in due course. The impact assessments have not been published at the time of writing.

32. The DPLR Committee will consider the Amendment No. 5 Regulations at its meeting on 2 November 2021 and will publish its report shortly after that meeting. A copy of the DPLR Committee’s report will be provided to Members when it becomes available. This Committee will consider the motion to approve these regulations at its meeting on 18 November 2021.

Agenda item 4: Subordinate legislation

33. Under agenda item 4, the Minister will be invited to move motions—

- [Motion S6M-01315](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322) be approved.
- [Motion S6M-01398](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328) be approved.
- [Motion S6M-01466](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343) be approved.
- [Motion S6M-01528](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/350) be approved.
- [Motion S6M-01634](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357) be approved.

Next steps

34. The Committee will publish a report setting out its consideration of the motions under agenda item 4 in due course.

Committee Clerks
October 2021