

CVDR/S6/21/13/3

COVID-19 Recovery Committee

**13th Meeting, 2021 (Session 6), Thursday 2
December 2021**

Ministerial statements on COVID-19 and Subordinate legislation

Introduction

1. At this meeting, the Deputy First Minister and Cabinet Secretary for COVID Recovery (“the Cabinet Secretary”), will give evidence under agenda item 2.
2. The Committee will take evidence under this agenda item on the policy announcements arising from the latest Ministerial statements on COVID-19 (23 November and 30 November), and on the following subordinate legislation under agenda item 2, before it considers the corresponding motions, under agenda item 3—
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/425);
 - The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2021 [draft]

Background

3. SPICe has produced a [blog](#) with background information on the statutory powers that underpin the Scottish Government’s strategy for responding to COVID-19.

Agenda item 2: Ministerial statements on COVID-19 and Subordinate legislation

Ministerial statements on COVID-19: Tuesday, 23 and 30 November 2021

4. The Scottish Government delivers a weekly statement to parliament setting out its latest actions for responding to COVID-19 on Tuesday afternoons. The main public health measures being used to respond to COVID-19 are contained within the [principal health protection regulations](#). Public health measures relating to international travel are set out in the [principal international travel regulations](#). The Committee takes evidence from Scottish Ministers on any policy announcements arising from the statement and any changes to these regulations every fortnight.
5. The First Minister delivered the most recent statement on 23 November 2021. The written transcript of the statement is available on the [parliament's website](#).
6. The next statement will take place on 30 November 2021. Members will take evidence on any policy announcements arising from this statement under agenda item 2.

SPICe COVID-19 Update

7. SPICe produces a briefing entitled 'SPICe COVID-19 Update' (see **Paper 5**). This provides Members with links to the latest guidance and supporting information published by the Scottish Government, in addition to a selection of websites with information on wider health and social and economic indicators in Scotland.
8. This paper will be published as a late paper to allow the latest data from Public Health Scotland to be incorporated.

Subordinate legislation

Overview

9. SSI 2021/425 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 the instrument, before the whole Parliament considers a motion to approve them.
10. The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2021 [draft] are subject to the 'affirmative procedure'. This means that the parliament would ordinarily have 40 days to scrutinise the regulations. The

Minister for Parliamentary Business wrote to the Committee on 26 November 2021 to explain that for these regulations, a shorter timescale of 4 days was being utilised—

“The Government remains aware of the concerns expressed by the Delegated Powers and Law Reform Committee and others within Parliament about Ministers’ use of the made affirmative procedure for regulations relating to coronavirus. The Government has previously explained that management of the pandemic may give rise to the need for regulations to be made under made affirmative procedure given the urgency for making such regulations. However, the Government has also said that it would continue to assess whether circumstances may enable regulations to be laid and subject to the affirmative procedure if an expedited scrutiny process can be agreed with the Parliament.”

11. This letter is attached at the **Annexe**.

Policy Background: (SSI 2021/425)

12. On 19 November 2021, the Scottish Government laid [SSI 2021/425](#) and the regulations came into force on 22 November 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 16 December 2021 to remain in force beyond this date.

13. 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 expand the eligible vaccinated arrival category in a number of areas.

It updates 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 also updates the provisions to recognise certain WHO emergency use vaccines. It provides further for the recognition, in respect of countries already accepted into the eligible vaccinated arrivals scheme that, where they have overseas territories which use their respective mainland countries’ certification solutions, those overseas territories are also accepted into the scheme.

It amends the provisions on vaccine rollouts of British Overseas Territories and Crown Dependencies to include these under the list of relevant countries. This clarifies that people vaccinated in these territories under the territories’ own vaccination programme are in scope of the policy in the same manner as all other relevant countries and territories.

This instrument removes the requirement that an authorised vaccine is administered in a “relevant country” or the UK, allowing for a relevant country to certify recognised vaccines administered elsewhere if appropriate.

The instrument also makes an amendment to provide for a person who has received one dose of a two dose vaccine under the UK vaccine roll-out

overseas and received the other dose in another country, as vaccinated under the UK vaccine roll-out overseas.

It widens the definition of eligible vaccinated arrival for those participating in clinical trials.

It clarifies the clinical exemptions which apply to eligible vaccinated arrivals.

It extends the scope of the eligible vaccinated arrival scheme so it covers all children under the age of 18, whether they are resident in a relevant country or not.

It inserts a new definition of EU Digital Covid Certificate (“EUDCC”).

It amends the acceptable proof of vaccine and need to prove residency requirements for US travellers.

It removes the requirement on certain categories of transport crew, travelling in the course of their work, to complete the Passenger Locator Form (PLF) and passengers transiting through Scotland without passing through immigration control, including red list arrivals.

It updates the definition of a Polymerase Chain Reaction (PCR) test to align with the UK definition.

This instrument adds a specified competition to the list in Schedule 6.

14. The Scottish Government published an [Equalities Impact Assessment](#) to accompany SSI 2021/425.

15. The Delegated Powers and Law Reform (DPLR) Committee will consider SSI 2021/425 at its meeting on 30 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.

Policy Background: The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2021 [draft]

16. On 29 November 2021, the Scottish Government laid [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No 4\) Regulations 2021 \[draft\]](#). These regulations require parliamentary approval to come into force on 6 December 2021. As outlined above, the regulations are subject to an expedited draft affirmative procedure, with parliament having 4 days to scrutinise the instrument before it comes into force.

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

“These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the ‘Principal Regulations’) to

provide that a negative test for Covid-19 is an alternative to vaccination for the purposes of permitted attendance at certain premises.

These Regulations amend the COVID-19 status certification scheme (“the scheme”). These Regulations amend the scheme’s requirements for late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement. The Regulations amend those requirements to provide that a negative test for coronavirus within the previous 24 hours is an alternative to being fully vaccinated against coronavirus or exempt from that requirement.

The Regulations also make a number of consequential amendments to the provisions for medical exemptions and data protection. In addition, the Regulations provide additional clarity that protests and demonstrations are exempt from the scheme and clarify powers in relation to the inspection of compliance plans

One of the scheme’s objectives when it was first introduced was to increase vaccine uptake. Scottish Ministers’ judgement at the time the scheme was introduced was that it was not appropriate at that time to include a negative test as an alternative to vaccination, but that this would be kept under review.

Vaccine uptake has since increased and Scotland’s vaccination rates, including for boosters, are currently the highest in the UK. Scottish Ministers now consider it proportionate to amend the scheme to include negative test results. The inclusion of negative tests for coronavirus as an alternative to vaccination will help support our strategic objective by incentivising those using the settings covered by the scheme to test regularly and to get a PCR test and self isolate if this is positive. The inclusion of testing will enable those not vaccinated or exempt to use premises covered by the scheme without compromising safety. This reduces the risk of community transmission in all settings frequented by these people, and protects those that they come into contact with in all settings.

The inclusion of negative tests will also provide those who are not able to show that they are fully vaccinated with an alternative means of gaining entry. The means that people currently excluded from the scheme – such as those who have been vaccinated in other countries with a vaccine that is not recognised by the scheme or people who have received a second dose within the last 14 days – can now gain entry if they provide a record of a negative test. “

18. The Scottish Government published a draft [Equality Impact Assessment](#) and a draft [Children’s Rights and Wellbeing Impact Assessment](#) to accompany the draft regulations.

19. The Delegated Powers and Law Reform (DPLR) Committee will consider the draft regulations at its meeting on 30 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.

Agenda item 3: Subordinate legislation

20. Under agenda item 3, the Cabinet Secretary will be invited to move motions—

- [Motion S6M-02261](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/425) be approved.
- Motion recommending approval of the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2021 [draft] [not yet published]

Next steps

21. The Committee will publish a report setting out its consideration of the motions under agenda item 3 in due course.

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November 2021

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26 November 2021

THE HEALTH PROTECTION (CORONAVIRUS) (REQUIREMENTS) (SCOTLAND) AMENDMENT (NO 4) REGULATIONS 2021

On 23 November the First Minister announced that the Covid Certification scheme will be amended so that it will be possible to access venues or events covered by the scheme by showing either proof of vaccination, as now, or a recent negative test result. Doing so will ensure that the scheme remains proportionate. It will mean that people currently excluded from the scheme because they are not fully protected by vaccination for a variety of reasons will have an alternative means to gain entry and Scottish Ministers therefore consider it necessary to implement this change as quickly as possible, from 6 December. This timescale does not facilitate following the normal scrutiny timescale for draft affirmative procedure.

The Government remains aware of the concerns expressed by the Delegated Powers and Law Reform Committee and others within Parliament about Ministers' use of the made affirmative procedure for regulations relating to coronavirus. The Government has previously explained that management of the pandemic may give rise to the need for regulations to be made under made affirmative procedure given the urgency for making such regulations. However, the Government has also said that it would continue to assess whether circumstances may enable regulations to be laid and subject to the affirmative procedure if an expedited scrutiny process can be agreed with the Parliament.

As regards the Health Protection (Coronavirus)(Requirements)(Scotland) Amendment (No 4) Regulations 2021 my officials have been in discussion with your clerks about progressing the regulations under the draft affirmative procedure to the following timetable:

- Monday 29th November – laying of draft affirmative regulations
- Tuesday 30th November – DPLRC scrutiny
- Thursday 2nd December – Covid-19 Recovery Committee scrutiny
- Thursday 2nd December – plenary vote
- Monday 6th December – SSI comes into force (subject to the plenary vote)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

I should be grateful for confirmation that your Committees will be able to facilitate scrutiny of the regulations to that timetable on this occasion.

I should wish to make clear that whatever arrangements may be agreeable to Parliament on this occasion does not in any way imply any precedent for any future regulations necessarily following a similar scrutiny pattern. The Government will continue to assess the pandemic as it develops and, in the event of any legislative action being deemed necessary, identify the timescale for such provision to come into force and then consider what procedure to apply.

Yours sincerely,



GEORGE ADAM