

CVDR/S6/22/6/4

COVID-19 Recovery Committee

**6th Meeting, 2022 (Session 6), Thursday 24
February 2022**

Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; Strategic Framework; 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 statement on COVID-19 on 22 February 2022;
 - [Coronavirus Acts: Eleventh report to Scottish Parliament](#) published on 11 February 2022;
 - [Coronavirus \(Scotland\) \(No.2\) Act 2020: Tenth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 9 February 2022; and
 - Strategic framework refresh (due to be published on 22 February 2022)
3. The Committee will also take evidence on the following subordinate legislation under agenda item 2, before it considers the corresponding motions, under agenda item 3—
 - The Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40)
 - The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 [draft]
 - The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [draft]

Background

4. SPICe has produced a [blog](#) with background information on the statutory powers that underpin the Scottish Government's strategy for responding to COVID-19. SPICe has also produced a legislation explainer which is attached at **Annexe A** to this note.

Agenda item 2: Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; Strategic framework; and Subordinate legislation

Ministerial statement on COVID-19: Tuesday 22 February 2022

5. The Scottish Government delivers a 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](#). The Committee takes evidence from Scottish Ministers on any policy announcements arising from the statement and any changes to the regulations.

6. The next statement will take place on 22 February 2022. 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 6**). 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. The paper will be provided as a late paper to incorporate the latest figures from Public Health Scotland.

Two-Monthly Reports to the Scottish Parliament

8. As required by section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland) (No.2) Act 2020 Act, this latest two-monthly report (The Eleventh Two-Monthly Report to the Scottish Parliament) sets out the status and operation of the legislation necessary to respond to the COVID-19 pandemic. It was published on 11 February 2022 and covers the period from 1 December 2021 to 31 January 2022. The report can be accessed on the Scottish Government's [website](#).

9. Chapter 5, pages 6-7 provides a brief summary of extension and expiry of the Coronavirus Acts and the Scottish Government's plans regarding these provisions.

10. The Coronavirus (Scotland) (No.2) Act 2020 provides that Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA. The tenth Freedom of Information Report was published on 9 February 2022 and covers the period from 27 November 2021 to 26 January 2022. The report can be accessed on the Scottish Government's [website](#).

Subordinate legislation

Overview

11. The first item of subordinate legislation listed on the agenda is subject to the 'made affirmative' procedure. Ordinarily 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 instruments being made. The Delegated Powers and Law Reform (DPLR) Committee and COVID-19 Recovery Committee will report on the instruments, before the whole Parliament considers the motions to approve them.

12. The Cabinet Secretary wrote to the Committee to explain that, on this occasion, a 40-day timescale will be used—

“The provisions in the Act (section 95) only allow this procedure to be used and not the use of the draft affirmative procedure. However, to enable more time for parliamentary scrutiny, the regulations will follow the timescales for the draft affirmative procedure, allowing 40 days for approval before the instrument comes into force on 24 March 2022. The 40-day period for approval of the instrument will expire before the instrument comes into force.”

13. This Letter is attached at **Annexe B**.

14. The second and third items of subordinate legislation listed on the agenda are subject to an 'affirmative' procedure. This means that the parliament would ordinarily have 40 days to scrutinise the regulations. The Scottish Government is seeking an

expedited timescale for these regulations as it wishes to renew the second item of subordinate legislation by 28 February 2022 and the third item of subordinate legislation by 24 March 2022. Scottish Government officials provided the following clarification for this request—

“Prior to Christmas, when normal affirmative laying dates would have required this SSI to have been laid, we were dealing with a high degree of uncertainty about Omicron and a set of measures which changed rapidly. At that point, therefore, it was not possible to be clear about the measures that Ministers may have considered to be needed at the end of February or the length of time for which measures would be required. Now that the effect of Omicron on the pandemic has become clearer closer to the expiry date, Ministers are in a position to consider these questions with greater certainty using up to date information and to be sure the extension is both required and is for the correct duration. The Coronavirus (Recovery and Reform) (Scotland) Bill proposes that Ministers should have powers to make public health protection regulations, including on an emergency basis where appropriate, and the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40) will extend the powers in schedule 19 of the Coronavirus Act 2020 for a 6 month period. But Ministers’ decisions about those matters are an entirely separate matter. The Bill and the Regulations ensure that Ministers have powers available to deal with health emergencies, whether Ministers choose to use those powers or not while the Regulations amending the expiry date of the Requirements Regulations will ensure that the current baseline measures remain in place at this time.”

15. In its [report](#) on its inquiry into the use of the made affirmative procedure during the coronavirus pandemic, the DPLR Committee made a number of recommendations in relation to future use of the made affirmative procedure and the expedited affirmative procedure. The Scottish Government will respond to this report in due course.

Policy Background: (SSI 2022/40)

16. On 3 February 2022, the Scottish Government laid [SSI 2022/40](#) and the regulations will come into force on 24 March 2022. As outlined above, the regulations are subject to the made affirmative procedure, however they must receive parliamentary approval by 23 March 2022 to allow them to come into force on 24 March 2022.

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

“The purpose of the instrument is to change the expiry date of the following provisions of the Coronavirus Act 2020 (“the Act”) from 24 March 2022 to 24 September 2022: section 18(2) and Part 2 of schedule 13 (registration of deaths and still-births); section 36 (vaccination and immunisation); section 37(2) and certain provisions of Part 2 of schedule 16 (temporary closure of educational institutions and childcare premises); section 38(2) and Part 2 of

schedule 17 (temporary continuity – education, training and childcare); and section 49 and schedule 19 (health protection regulations).”

18. The policy note to SSI 2022/40 states that “Assessment of the impact of extending these provisions has been considered as part of the process for introduction of the Coronavirus (Recovery and Reform) (Scotland) Bill”.

19. The DPLR Committee will consider SSI 2022/40 at its meeting on 22 February 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 2022 [draft]

20. On 9 February 2022, the Scottish Government laid the [Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 4\) Regulations 2022 \[draft\]](#). These regulations require parliamentary approval to come into force on 28 February 2022.

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

“These Regulations amend the date on which the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the Principal Regulations”) expire from 28 February 2022 to 24 September 2022.”

22. The draft policy note to the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 [draft] states that “Impact assessments are not considered to be required for these Regulations.”

23. The Delegated Powers and Law Reform (DPLR) Committee will consider the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 [draft] at its meeting on 22 February 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, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [draft]

24. On 9 February 2022, the Scottish Government laid [the Health Protection \(Coronavirus, Restrictions\) \(Directions by Local Authorities\) \(Scotland\) Amendment Regulations 2022 \[draft\]](#). These regulations require parliamentary approval to come into force on 24 March 2022.

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

“These Regulations amend the date on which The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (“the Directions Regulations”) expire from 25 March 2022 to 24 September 2022.”

26. The draft policy note to the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [draft] states that “Impact assessments are not considered to be required for these Regulations.”

27. The DPLR Committee will consider the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [draft] at its meeting on 22 February 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

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

- [S6M-03075](#)—That the COVID-19 Recovery Committee recommends that the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40) be approved.
- [S6M-03168](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 [draft] be approved.
- [S6M-03169](#)—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [draft] be approved.

Next steps

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

**Committee Clerks
February 2022**

ANNEXE A

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Legislation Explainer

This note sets out how the most recent regulations laid by the Scottish Government fit in to the wider picture of covid legislation

Background

Firstly, it should be said that there are perhaps three main sources of Covid legislation:

1. **The (UK) Coronavirus Act** - Schedule 19 gave Scottish Ministers the broad ranging powers to impose restrictions or requirements on “persons, things or premises” for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland. In practice this has included restricting the operation of retail and hospitality businesses, restricting public gatherings, requiring the use of face coverings, and limiting travel between parts of the country. It has also included allowing Scottish local authorities to give directions relating to specified premises, events and public outdoor places in its area.
2. **The Scottish Coronavirus Acts** (the original two Acts, and the subsequent extension and expiry Act) - the Scottish Acts included a range of powers often related to the running of public services, for example covering courts, prisoners, freedom of information, bankruptcy, tenancies, mental health, social care and so forth.
3. Finally **a range of other legislation** has been used, including the Public Health etc (Scotland) Act 2008, which has provided the basis for international travel restrictions.

And as [this BBC news article](#) (from December 2021) points out, not all measures are underpinned by legislation. Some involve advice and guidance from the government.

The UK Coronavirus Act 2020, with the powers it gives to Ministers in schedule 19 to restrict “persons, things or premises” has therefore been the basis for most of the “lockdown” measures during the course of the pandemic. This Act received Royal Assent and came into force, subject to certain exceptions, on 25 March 2020. From this the Scottish Government made regulations to implement physical distancing and impose restrictions on gatherings, events and operation of business activity.

As the severity of the pandemic has changed, different regulations have been brought in at different times. For example:

- From 14 September 2020 the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020.
- From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020.
- A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”) came into force and revoked the previous regulations.
- On 9 August 2021 the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 came into force and revoked the Local Levels Regulations. Those Regulations have been amended a number of times, most recently on 27 January 2022, when they were amended by the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2022.

The power to make these regulations conferred by paragraph 1(1) of schedule 19 of the Act is due to expire on 25 March 2022.

Extending the expiry date

The UK Act has thus been crucial to the management of the pandemic in Scotland. [The Coronavirus Act 2020 \(Alteration of Expiry Date\) \(Scotland\) Regulations 2022](#) (S.S.I. 2022/40), which was laid on 3 February 2022, extends the expiry date of certain provisions of the Act, **including schedule 19 (health protection regulations)**, to 24 September 2022, in order that the power to make health protection regulations is available to Scottish Ministers after the UK Act expires on 24 March 2022.

Among the regulations made under the powers in schedule 19 of the UK 2020 Act, and which are currently in force, are:

- The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277); and
- The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (SSI 2020/262)

The [Policy Note of that SSI](#) explains that by the time the provisions expire on 24 September 2022, “it is the Scottish Government’s intention that the subject-matter of these provisions will be included in permanent Scottish legislation through the Coronavirus (Recovery and Reform) (Scotland) Bill, subject to the Scottish Parliament’s approval of that Bill.”

The instrument has been laid subject to made affirmative procedure. However, the Policy Note also says that “to enable more time for parliamentary scrutiny, this instrument will follow the timescales for the draft affirmative procedure, allowing 40 days for approval before the instrument comes into force on 24 March 2022. The 40 day period for approval of the instrument will expire before the instrument comes into force”.

Two additional extension regulations

Two regulations were laid on 9 February

- Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022
- Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020

What will these regulations do?

The (No.4) Regulations amend the expiry date of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 from 28 February 2022 to 24 September 2022. It would remain the case that Scottish Ministers would be required to review these 2021 Requirements Regulations at least every 21 days.

The Policy Note for the (No. 4) Regulations says that “following the lifting of the protective measures put in place to reduce transmission in response to the emergence of the Omicron variant of the SARS-CoV-2 virus the Principal Regulations now contain the following baseline measures” which are “considered necessary and proportionate” to remain in place

- face covering requirements,
- requirements in relation to the Covid-19 vaccine certification scheme,
- requirement to collect and share customer information,
- requirement for businesses, service providers and places of worship to have regard to guidance on minimising exposure to coronavirus and to take measures to minimise incidence and spread of coronavirus.

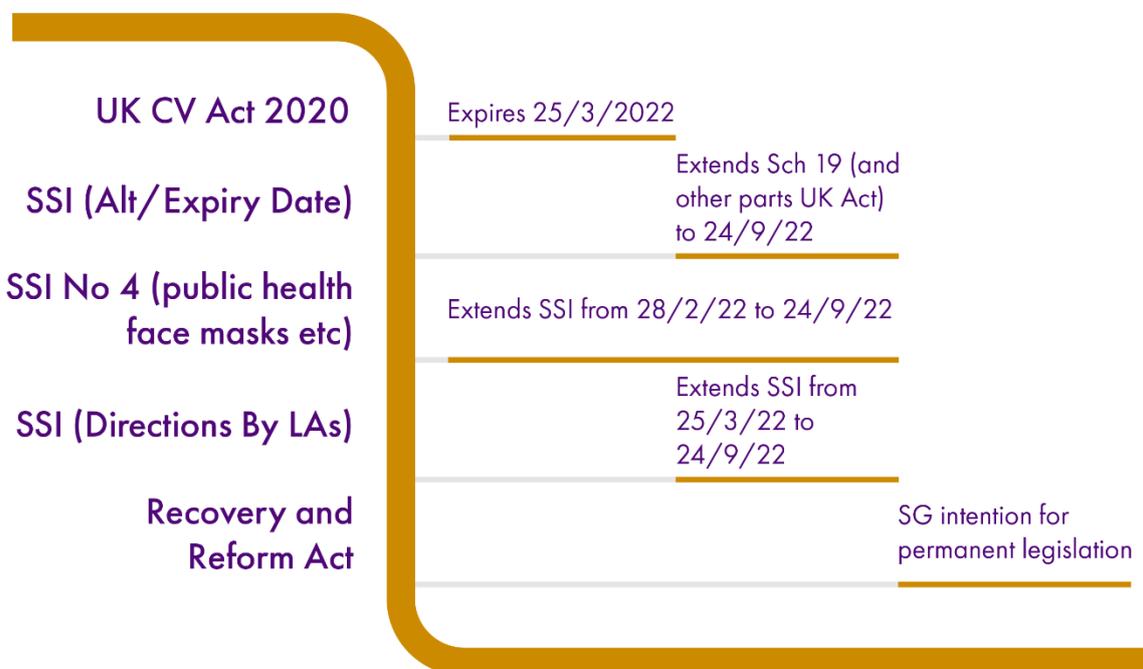
The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2022 amend the expiry date of the 2020 Directions by Local Authorities Regulations (SSI 2020/262) from 25 March 2022 to 24 September 2022. It would remain the case that Scottish Ministers would be required to review these 2020 Directions by Local Authorities Regulations at least every 42 days.

The Policy note for this second SSI says that the regulations will mean local authorities retain the “powers to take direct measures where necessary and proportionate in relation to premises, events, and public outdoor spaces”.

If SSI 2022/40 is not approved, the power in schedule 19 will expire on 24 March 2022. This would mean it would not be possible to make further health protection regulations, either setting out requirements (whether increased or reduced from the current requirements) or permitting directions to local authorities, from after that date. Any regulations made under the power in schedule 19 would also fall on expiry of the power.

Timelines

The timelines for these various regulations are illustrated in the diagram below



Simon Wakefield, SPICe Research,

21 February 2022

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

ANNEXE B

Letter to the Convener from the Deputy First Minister and Cabinet Secretary for COVID Recovery – 3 February 2022

CORONAVIRUS ACT 2020, CORONAVIRUS (SCOTLAND) ACT 2020 AND CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020 – TEMPORARY EXTENSION OF PROVISIONS

I am writing to inform you of the Scottish Ministers' proposals to extend provisions within the Coronavirus Act 2020 ("the UK Act"), the Coronavirus (Scotland) Act 2020 ("the First Scottish Act") and the Coronavirus (Scotland) (No.2) Act 2020 ("the Second Scottish Act") on a temporary basis until September 2022, which would otherwise expire next month.

The purpose of these Acts was to enable the response to, and manage the effects of, the COVID-19 pandemic. The Acts contain temporary measures to either amend existing legislation or to introduce new powers and provisions designed to mitigate the impacts of COVID-19. The UK and Scottish Acts were intended to respond to the COVID-19 pandemic, and are therefore time limited.

The UK Act came into force in March 2020, with the majority of its provisions subject to a two year sunset provision, which means that they automatically expire at the end of 24 March 2022. The UK Act also includes powers to make regulations to bring forward the expiry date of provisions of that Act or delay the expiry of provisions by periods of up to six months at a time.

The Coronavirus (Extension and Expiry) (Scotland) Act 2021 amended the First and Second Scottish Acts to extend Part 1 of each of these Acts until 31 March 2022, with the potential for further extension by secondary legislation to 30 September 2022. The Extension and Expiry Act also expired certain provisions within the Scottish Acts which were no longer needed.

The Scottish Ministers consider that it remains necessary and proportionate to retain a number of powers within the Scottish and UK Acts for a further temporary basis due to the ongoing nature of the pandemic, and the need to mitigate the impact of COVID-19, including the Omicron variant and any other new variant. This includes provisions that feature in the Coronavirus (Recovery and Reform) (Scotland) Bill ("the Recovery and Reform Bill"), which was introduced to Parliament on 25 January 2022.

UK Coronavirus Act amendment of expiry

The Scottish Ministers will be making and laying the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 before Parliament on 3 February, which will alter the expiry date of the following provisions of the UK Act from 24 March to 24 September 2022.

- section 18(2) and Part 2 of schedule 13 (registration of deaths and still-births)

- section 36 (vaccination and immunisation)
- section 37(2) and Part 2 of schedule 16 (except paragraphs 8 and 9) (temporary closure of educational institutions and childcare premises);
- section 38(2) and Part 2 of schedule 17 (temporary continuity – education, training and childcare)
- section 49 and schedule 19 (health protection regulations) .

All of the provisions listed above form the basis of provisions in the Recovery and Reform Bill. It is the Scottish Government's intention that the Bill provisions, if approved by Parliament, will be in force before the new expiry date of the provisions of the UK Act, so that the power to delay the expiry date will only be used on this one occasion.

Details on the rationale for amending the expiry date for these provisions is provided in the Policy Note that accompanies the regulations and which is available on legislation.gov.uk.

This instrument is subject to the made affirmative procedure. The provisions in the Act (section 95) only allow this procedure to be used and not the use of the draft affirmative procedure. However, to enable more time for parliamentary scrutiny, the regulations will follow the timescales for the draft affirmative procedure, allowing 40 days for approval before the instrument comes into force on 24 March 2022. The 40-day period for approval of the instrument will expire before the instrument comes into force.

Scottish Acts

Preparations are being made for an extension SSI to be laid in draft in February 2022 to extend Part 1 of each of the two Scottish Coronavirus Acts to 30 September 2022.

The Scottish Ministers have determined that all of the provisions within the Scottish Acts which feature in the Recovery and Reform Bill should be extended in this way. In addition, there are certain provisions currently in force which the Scottish Ministers also plan to extend for a further temporary period but do not feature in the Recovery and Reform Bill. In addition, as the Scottish Acts can only be extended as a whole, work is also progressing in parallel on regulations to expire provisions within the Scottish Acts that Ministers consider are no longer needed.

The Scottish Acts provide that the parliamentary procedure for the extension SSI is affirmative, while the procedure for the expiry SSI is negative. The Scottish Government will follow the timetabling model of previous extension/expiry milestones, which balances Parliamentary scrutiny time with the time needed to ensure that the proposed extension/expiry of provisions will be appropriate at 31 March 2022. As an illustration of the Government's commitment to to expiring or suspending temporary provisions that are no longer necessary I refer the Committee to [Annex A of the Policy Memorandum for the Recovery and Reform Bill](#) which lists a number of provisions already expired, and to which the additional expiry proposals mentioned above would add to. The review of, and continuing requirement for, the provisions within the UK and Scottish Acts is also undertaken through the bimonthly reports undertaken for the Scottish Parliament, with the next due for publication on 11 February.

I am copying this letter to the Presiding Officer, the Conveners of the Delegated Powers and Law Reform Committee and the Health, Social Care and Sport Committee and to the Scottish Parliament Information Centre.

JOHN SWINNEY

C.c. Presiding Officer

C.c. Convener, Delegated Powers and Law Reform Committee

C.c. Convener, Health, Social Care and Sport Committee