

# COVID-19 RECOVERY COMMITTEE

## 1st Meeting, 2021 (Session 6), Wednesday, 23 June 2021

### Developing a work programme

#### Introduction

1. This agenda item is to enable Members to have a brief discussion about how the COVID-19 Recovery Committee's ('the Committee') work programme will be developed. At this stage, the discussion is not intended to get into the detail of specific scrutiny priorities. Those detailed discussions, leading to agreeing a work programme, will take place at a future meeting.

#### For consideration

##### Remit overview

2. The Committee's remit is set out in [Motion S6M-00393](#), as follows –

“To consider and report on matters relating to COVID-19 falling within the responsibility of the Cabinet Secretary for COVID Recovery and other Scottish Ministers where relevant, including—

- (a) Cross government coordination of COVID-19 recovery policies and strategic review;
  - (b) the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19;
  - (c) any secondary legislation arising from the Coronavirus (Scotland) Act; and
  - (d) and any other legislation or policy in relation to the response to COVID-19.”
3. In summary, the Committee's remit means that it will play a lead role in scrutinising Scotland's ongoing response to the pandemic. This may include scrutinising relevant legislation, as well as undertaking inquiries into policy issues of interest to the Committee.
  4. The Committee's remit includes scrutiny of the Scottish Government's overarching policy framework for responding to COVID-19, which is set out in the [COVID-19 Strategic](#)

[Framework](#) (‘the Strategic Framework’). The Strategic Framework highlights the main policy tools that the Scottish Government is using in its response to COVID-19, as follows–

- vaccination
- testing and contact tracing
- protective measures and the levels system
- travel restrictions
- ensuring we all continue to follow the rules and guidance
- support for people and businesses

5. The Scottish Parliament Information Centre (‘SPICe’) has provided a briefing for Members on key terminology and policy measures that are being used to respond to COVID-19 (see **Annexe A**).

### Legislative scrutiny

6. The Committee will take the lead on scrutinising the implementation of the Coronavirus (Scotland) Act and the Coronavirus Act, as well as any other legislation related to the response to COVID-19. The clerks have produced a briefing on relevant legislation and parliamentary procedure, although it should be noted that some details about the Committee’s legislative remit are still to be determined (see **Annexe B**). SPICe will also produce an analysis of the secondary legislation that has been made using the emergency powers, which will follow as a late paper.
7. A key part of the Strategic Framework highlighted above is the management of public health restrictions through the ‘[Covid-19 protection levels](#)’, or ‘the levels system’ for short. The Scottish Government gives effect to the levels system through secondary legislation and guidance, which the Committee will take the lead on scrutinising. A SPICe briefing on the levels system is provided in **Annexe C**.
8. The Scottish Government has brought forward a high volume of secondary legislation to implement the current levels system since it was introduced in October 2020. The volume of legislation reflects the changing course of the pandemic and a requirement on the Scottish Government to legislate each time a local authority is moved in or out of a level. The Scottish Government may also choose to legislate if it decides to introduce new health protection measures, or to tweak the rules that inform existing measures (such as social distancing requirements).
9. The Scottish Government has continued legislating in this policy area throughout the pre-election recess period, up to the present sitting period. Much of this secondary legislation has been considered by MSPs in the Chamber without committee scrutiny due to the procedural timescales involved. SPICe has produced a briefing outlining the relevant secondary legislation that has been made during this period for Members’ information (see **Annexe D**). The Scottish Government has also written to Members to inform them of these decisions and this correspondence is available from the clerks upon request.

## Emergency Bill

10. Members will be aware that parliament will be scrutinising an emergency bill, the Coronavirus Extension and Expiry (Scotland) Bill ('the Bill'), in the week commencing 21 June 2021. The Bill will be considered at all three stages in the Chamber. Whilst the Committee will not play a role in scrutinising the passage of the Bill, it is likely to take the lead on scrutinising its implementation, should parliament agree to enact it. Once the Bill has been published, SPICe will produce a Bill briefing that will be available on the [Scottish Parliament's website](#).

## Ministerial evidence session

11. It is likely that the Committee will be required to consider and report on secondary legislation when it resumes sitting after the summer recess. The Cabinet Secretary for COVID Recovery ('the Cabinet Secretary'), John Swinney MSP, would usually be expected to attend meetings at which the Committee is considering secondary legislation for procedural reasons.
12. As such, the Committee may wish to use one of these existing opportunities after the summer recess to also take evidence from the Cabinet Secretary on the Scottish Government's priorities for responding to COVID-19. This may include an update on the Scottish Government's progress in meeting relevant priorities set out by the First Minister, including to establish a public inquiry; an independent standing committee on pandemics; and a cross-party steering group on COVID-19.<sup>1</sup>

## Business planning session(s)

13. The Committee's work programme is likely to require some flexibility in order to be reactive to developments in the pandemic. The Committee may also wish to take account of the work programmes and priorities of other subject committees before deciding its priorities and approach to the 'recovery' aspect of its remit. For this reason, the Committee may wish to delay making decisions about its priorities for scrutiny or its wider work programme until nearer the end of the summer recess, or once it resumes sitting in the autumn.
14. At the start of previous sessions, committees have found it useful to get together for an informal business planning event during summer recess. The purpose of this event is to enable Members to get to know each other and to receive briefings on key aspects of the Committee's remit, including cross-cutting issues. The Committee will be able to use the planning event to take preliminary decisions on its work programme, which will then be endorsed and recorded by the Committee at its next formal meeting.
15. Given current restrictions, a modified approach will be required. It is suggested that one option would be for the Committee to get together in a socially distanced way in the Parliament building. This would allow any other attendees to attend either in-

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<sup>1</sup> [Scottish Parliament. Official Report, 26 May 2021, Col 9.](#)

person or remotely. Alternatively, such a session could be conducted entirely virtually or in a hybrid format if preferred by Members.

16. In the meantime, the Session 5 COVID-19 Committee's Legacy Report is provided for Members' information (see **Annexe E**).

## **For decision**

17. The Committee is invited to agree the following –

- To hold a business planning session in late August (with the clerks to canvass availability for a suitable date by e-mail);
- To invite the Cabinet Secretary for COVID Recovery to give evidence on the Scottish Government's strategic priorities for responding to COVID-19 when the Parliament resumes sitting after the summer recess;

**Sigrid Robinson**  
**Clerk to the Committee**  
**June 2021**

## COVID-19: Information for new and returning MSPs

This briefing aims to provide new Members with general information on COVID-19. It covers information on key terms and bodies as well as information on testing and vaccination.

SPICe has produced many [detailed briefings](#) and [blogs on COVID-19](#) covering subjects such as testing, vaccinations and new variants. You can also listen to our podcast on [COVID-19: The Road to Recovery](#). You can listen to our podcast on [COVID-19 recovery and health harms](#).

### Legislation

What legislation is being used to help stop the spread of COVID-19?

The Scottish Government has used emergency powers to put in place measures to help control the spread of COVID-19. The powers come from three main sources:

- The UK [Coronavirus Act 2020](#).
- The two Scottish Coronavirus Acts – the [Coronavirus \(Scotland\) Act](#) and the [Coronavirus \(Scotland\) \(No 2\) Act](#).
- A wide range of other Acts, including the [Public Health etc \(Scotland\) Act 2008](#).

You can read more about these in the blog [COVID-19 emergency powers: a short explainer](#).

When does this legislation expire?

- The UK [Coronavirus Act 2020](#)

[Section 89 of the UK Act](#) sets up a “sunset provision”, meaning the Act expires two years after the day it was passed, on **25 March 2022**, though this is subject to some exceptions which are set out in the legislation.

- The [Coronavirus \(Scotland\) Act](#) and the [Coronavirus \(Scotland\) \(No 2\) Act](#)

Both the Scottish Acts were originally due to expire on 30 September 2020 but were extended to 30 September 2021, by regulation. However, under the terms of the two Acts, this was the Scottish Government’s last opportunity to extend the regulations

and if the measures in these Acts are still needed, new primary legislation will need to be passed by the Parliament.

## **Characteristics of the virus**

What is the difference between coronavirus, COVID-19 and SARS-CoV-2?

Each of these terms are often used interchangeably but they are actually quite distinct. Coronaviruses are a family of viruses that range from the common cold to MERS (Middle East Respiratory Syndrome) and SARS (Severe Acute Respiratory Syndrome).

SARS-CoV-2 stands for [Severe Acute Respiratory Syndrome Coronavirus 2](#) and is a new type of coronavirus. It is this specific virus which causes COVID-19, the name given to the resulting disease.

How transmissible is SARS-CoV-2?

The transmissibility of a virus is measured by the reproduction number, R. This measures the average number of new infections generated by each infected person. When R is greater than 1, an outbreak is self-sustaining unless control measures are introduced to slow or stop transmission. When R is less than 1, the number of new cases decreases and eventually the outbreak will stop.

Some variants of the virus are more transmissible than others and can influence the R number.

The Scottish Government regularly publishes reports on [modelling the COVID-19 epidemic](#).

What are variants of SARS-CoV-2?

The SARS-CoV-2 virus that causes COVID-19 carries its genetic information (genome) in the form of a single strand of ribonucleic acid (RNA) containing around 30,000 letters of genetic code. The process by which viruses replicate their genetic material is prone to errors, [leading to mutations in the genetic code](#).

Most mutations are harmful to the virus and will not persist in the viral population. However, any mutation that provides a benefit to the virus may allow the new variant to out-compete other forms of the virus.

How are variants being monitored?

The UK has a comprehensive system for monitoring mutations in the virus. This is done through [genomic sequencing](#) of a proportion of all positive cases by COVID-19 Genomics UK (COG-UK).

A variant will be classed as a 'variant under investigation' (VUI) if it is thought to differ in terms of:

- its transmissibility
- the severity of the disease it causes
- its ability to evade immunity or testing
- its responsiveness to treatment.

If classified as a VUI it will undergo a risk assessment and if it is found to demonstrate any of the above characteristics it will be classed as a 'variant of concern' (VOC).

#### What variants are in circulation in Scotland?

A number of new variants of the virus have been detected in many countries around the world, including the UK, South Africa, Brazil and India. Some of these variants have been found to be more transmissible than earlier forms of the virus.

Public Health England publishes information on current [variants of concern and those under investigation](#). This includes information on the number of confirmed cases, broken down by country.

You can read more in our blog [Variants of SARS-CoV-2](#) and in the Parliamentary Office of Science and Technology (POST) blog [SARS-CoV-2 virus variants](#).

#### How much COVID-19 is there in Scotland?

Public Health Scotland publishes daily information on the [number of reported COVID-19 cases, and rate per 100,000 population, in Scotland](#) and by Health Board area. We also publish a blog on the "[latest data](#)" covering the number of COVID-19 positive tests, deaths and hospital admissions.

#### What is long COVID?

[Long COVID](#) is a syndrome associated with COVID-19 infection that can persist for 12 weeks or more. The signs and symptoms of long COVID are variable and wide ranging and can include breathlessness, chest pain, fever, headache, nausea, symptoms of depression and anxiety, dizziness, skin rashes, among other symptoms. You can read more in our [blog](#).

A recent [estimate of prevalence by the Office for National Statistics](#), found 87,000 people in Scotland reporting symptoms of long COVID.

[Public Health Scotland and the University of Glasgow are undertaking a study](#) into the long-term health effects of COVID-19 infection. All adults who have had a

positive test will be invited to take part in the study over two years. It hopes to gain a better understanding of the scale and nature of long COVID.

## **Key Organisations and Groups**

What is SAGE?

[The Scientific Advisory Group for Emergencies \(SAGE\)](#) provides scientific and technical advice to support government decision makers during emergencies. The [UK Government publishes the latest available evidence](#) provided to SAGE. This includes information on current understanding of COVID-19, behavioural and social interventions, behavioural science, self-isolation and household isolation, mass gatherings and modelling on the virus.

What is the Scottish Government's COVID-19 advisory group?

A [COVID-19 Advisory Group](#) has been set up by the Scottish Government to provide scientific analysis of the impact of COVID-19 in Scotland. The Group is chaired by Professor Andrew Morris, Professor of Medicine at the University of Edinburgh and Director of Health Data Research UK.

A number of subgroups have also been established including the [Advisory Sub-Group on Public Health Threat Assessment](#), [Advisory Sub-Group on Education and Children's Issues](#) and the [COVID-19 Nosocomial \(hospital associated and onset\) transmission Review Group](#).

What is the WHO?

The [World Health Organisation](#) (WHO) directs international health and leads global health responses. It has an [interactive dashboard](#) which provides information on the global numbers of COVID-19 infection and cases by country on a daily basis.

The WHO has published [considerations for implementing public health and social measures in](#) light of COVID-19. Noting that decisions introduce, adapt or lift measures to help stop the spread of COVID-19 should be based primarily on an assessment of the intensity of transmission and the capacity of the health system to respond, but the impact on the general welfare of society and individuals must also be considered.



### What is the MHRA?

The [Medicines and Healthcare Products Regulatory Agency](#) (MHRA) is the UK's licensing and regulatory authority for medicines and other health care products. Its functions are reserved to the UK Parliament but it operates on behalf of the four UK countries. The MHRA is primarily concerned with safety and quality assurance and it issues marketing authorisations (also referred to as a 'licence') for medicines and medical products, including vaccines.

A marketing authorisation can only be issued following the completion of clinical trials that show:

- the medicine treats the condition it was developed for
- the medicine meets safety and quality standards
- the medicine does not cause unacceptable side effects.

The MHRA is responsible for [approving COVID-19 vaccines for use in the UK](#). Approval for the first COVID-19 vaccination developed by Pfizer/BioNTech was given in December 2020.

### What is the JCVI?

Once a vaccine has been authorised for use by the MHRA, it is then considered by the [Joint Committee on Vaccinations and Immunisations](#) (JCVI).

The JCVI is a UK advisory committee which makes recommendations to the four UK health departments on the use of vaccines in the NHS. It is an independent Departmental Expert Committee and a statutory body in England and Wales.

Just because a product has a marketing authorisation from the MHRA, does not mean it will automatically be used in the NHS. This is because the MHRA's role is essentially limited to ensuring a product is safe to use and has the effect the company claims it has.

The wider consideration of the cost-effectiveness of a vaccine and who is likely to benefit from it then falls to the JCVI. As a result, the JCVI is more concerned with determining the broader value and effectiveness of a vaccine and advising on strategies for how it should be deployed. Scottish Ministers are not bound by its advice.

## **COVID-19 Testing**

### What types of test are used?

There are two types tests used in Scotland to test if people have COVID-19. These are:

- **PCR (Polymerise Chain Reaction) tests.** These work by detecting the genetic material of the actual SARS-CoV-2 virus. It usually takes up to 48 hours to get the results. People with COVID-19 symptoms should get a PCR test.
- **Lateral flow tests.** These are rapid turnaround tests that can be processed without laboratory equipment. They aren't as accurate as PCR tests and are mainly used in people who don't have symptoms. People in Scotland can do this type of test twice a week.

More information can be found on the [NHS inform website](#) and in the [SPICe FAQ blog on COVID-19 testing](#).

#### What is antibody testing?

An antibody test looks at whether someone has previously had COVID-19 by detecting a person's immune response to the SARS-CoV-2 virus. These tests are being used in surveillance and research programmes to find out how many people have had the infection or to study the immune response to infection.

[Antibody testing is being used in Scotland for population research and, where appropriate, clinical management of patients](#). People can request an antibody test but this will be at the discretion of your clinician, and will depend on whether this will affect your treatment or clinical management.

#### What is Test and Protect?

[Test and Protect](#) puts in place the test, trace, isolate, support strategy in Scotland. It aims to prevent the spread of coronavirus by:

- identifying cases of coronavirus through testing
- tracing the people who may have become infected by spending time in close contact with them
- supporting those close contacts to self-isolate, so that if they have the virus they are less likely transmit it to others.

Contact tracing is a process for identifying people who are at risk of coronavirus infection because they've had enough contact with a person who has tested positive. People who have been in close contact with someone who has tested positive for COVID-19 will be asked to self-isolate at home for 10 days.

#### What is test positivity?

Test positivity is the percentage of COVID-19 PCR tests that are positive. The Scottish Government reports on test positivity including providing information on [trends in the data](#). More information can be found in our blog on the "[latest data](#)".

Test positivity is one of the indicators that the Scottish Government uses to assess which restriction level a local authority is placed in. It is useful because it can provide a more reliable indication of transmission in a community. This is because the number of cases in an area can be very dependent on the level of testing taking place, whereas test positivity gives a more reliable indication of transmission.

## **Vaccines**

### What vaccines are licensed for use in the UK?

To date, four vaccines have been approved for use in the UK by the MHRA. These are:

- [Pfizer/BioNTech](#)
- [Oxford/AstraZenca](#)
- [Moderna](#)
- [Janssen](#)

Pfizer/BioNtech were the first to reach the UK market but they were closely followed by Oxford/AstraZeneca and, more recently, Moderna and Janssen. Janssen is the first single dose vaccine to be approved.

### How have the vaccines been made available so quickly?

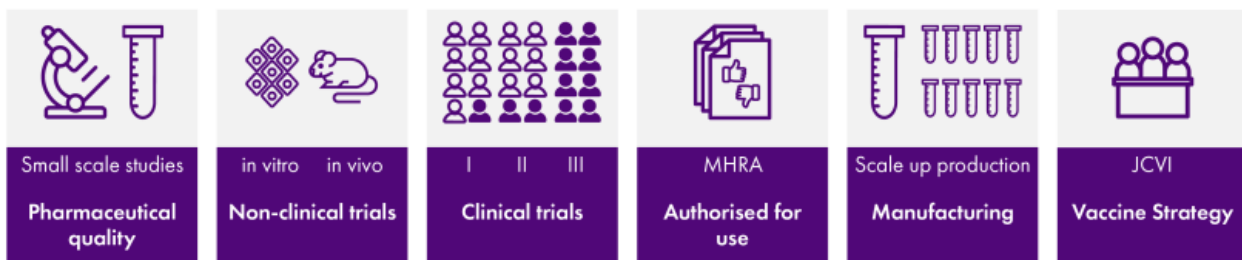
In order to achieve a marketing authorisation (often referred to as a 'licence') vaccines must undergo certain processes (see figure below).

Prior to Brexit, the UK usually waited for the authorisation to be granted by the European Medicines Authority but each EU nation also has its own authorising body. In the UK, this is the Medicines and Healthcare Products Regulatory Authority (MHRA).

The authorisation process for COVID-19 vaccines is being fast-tracked globally and many countries have adopted a 'rolling review' approach. This means that instead of each part of the process taking place one after the other, the stages are being compressed and overlap, with data being reviewed as it becomes available.

The different stages are shown in the figure below.

### Overview of vaccine development and approval stages

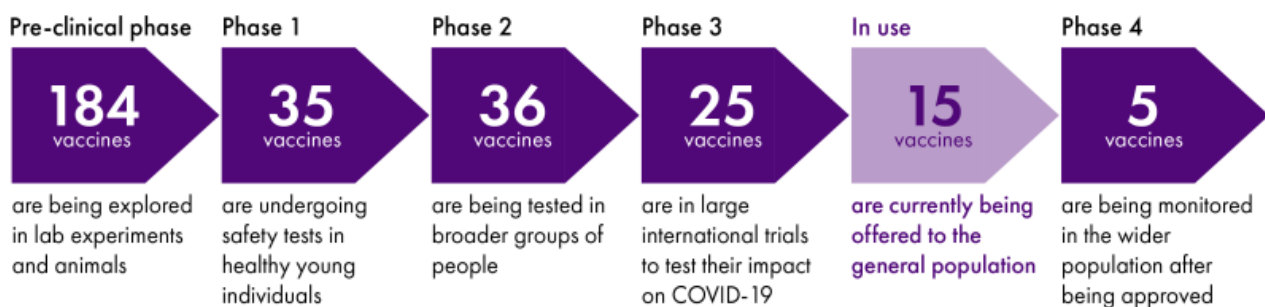


The rolling review process has allowed the vaccines to come to market much more quickly than normal, but they have still undergone the usual stages of development.

### What vaccines are being used globally?

There are currently 300 vaccines at different stages of development worldwide.

### Vaccines by stage of development



Source: GAVI

Source: [GAVI](#) [accessed 9 June 2021]

The World Health Organisation [operates a global vaccine tracker](#) which is updated frequently to reflect progress in the development of each vaccine candidate.

Once a medicine has a marketing authorisation and is being used in patients, it is closely monitored. In the UK, the MHRA is responsible for this monitoring, sometimes referred to as ‘pharmacovigilance’. Ongoing monitoring is important as the marketing authorisation is usually only assessed on the basis of clinical trial data, as opposed to real-world experiences.

UK monitoring happens via the ‘[yellow card scheme](#)’. This scheme allows side effects to be reported to the MHRA and these are considered alongside clinical trial data, data from other international regulators and emerging medical literature.

If a new side effect is identified, the drug is assessed by safety experts and the MHRA can take action such as issuing new guidance for use or, more rarely, withdrawing its marketing authorisation.

Is there a preference for which vaccine(s) should be used?

The JCVI has not recommended a general preference for any particular vaccine. However, each vaccine has different characteristics which may make them more or less suitable for certain people.

For example, the Pfizer/BioNTech vaccine may be given to those at greatest risk of illness and death because of its higher efficacy. However, it is not advised for those with a history of severe allergic reactions.

Similarly, the JCVI has advised that the Oxford/AstraZeneca should not be the first choice in those under 30 due to a [slightly higher incidence of rare blood clots in younger adults](#).

Practical considerations also need to be taken into account. For example, the requirement to store Pfizer/BioNTech at extremely low temperatures can render it an impractical choice for some settings.

How is Scotland obtaining its supply of COVID vaccines?

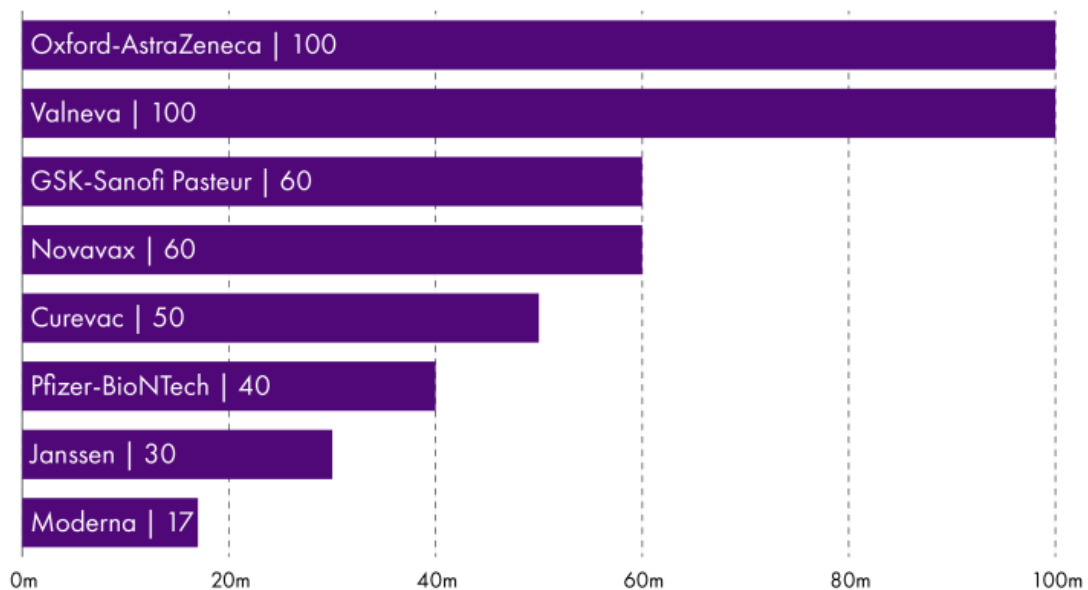
COVID vaccines are being procured for the four UK nations by the UK Vaccines Taskforce (VTF).

The VTF was set up by the UK Government to drive forward the development and production of a coronavirus vaccine as quickly as possible, bringing together government, academia and industry.

Decisions on all vaccine supply contracts and major investments in manufacturing and clinical opportunities are taken by UK government Ministers. Procurement decisions and contracting are handled by the civil service.

The UK has struck agreements to access eight different vaccines with a total of 457 million doses secured. The number of vaccine doses procured by the UK is shown in figure 3.

### Vaccine doses ordered by the UK Government, as of April 13



Source: Statista

Source: <https://www.statista.com/statistics/1193154/covid-19-vaccine-doses-ordered-by-the-uk/>

The devolved nations' share is based on population, so for Scotland this equates to approximately 8.2% of the doses secured.

Details of supply are commercially sensitive but once a week the [Scottish Government publishes cumulative data](#) on supplies allocated and delivered to Scotland.

#### Vaccine uptake

At the time of writing, 75.4% of the Scottish adult population had received their first dose of a vaccine, and 50.9% had received both doses.

For up to date data on vaccination roll out then see our blog [Vaccinations in Scotland – latest data](#).

Public Health Scotland also publishes data on the proportion of each key group that has been vaccinated. This is available on its [daily dashboard](#).

#### Can vaccinated people transmit SARS-CoV-2?

Initial research has found that the vaccine significantly cuts the risk of transmission but may not eliminate it entirely.

This is because the vaccine is not 100% effective and so, for those who subsequently become infected despite being vaccinated, there is still a chance they can infect others. Nevertheless, [findings from a Public Health England study](#), found that those who had been given one dose of the vaccine but went on to be infected, were between 38% and 49% less likely to pass on the virus to others in their household.

#### Are vaccines effective against the new variants?

How effective vaccines are against new variants is an area under close consideration. [Public Health England undertakes analysis of vaccine effectiveness](#) against symptomatic disease using national genomic and immunisation datasets. It has [reported](#) that while there is a reduction in vaccine effectiveness against the Delta variant (sometimes known as the “Indian variant” or VOC-21APR-02 (B.1.617.2)) after one dose, any reduction in vaccine effectiveness after two doses of vaccine is likely to be small.

#### Are there plans for ‘vaccine passports’?

Vaccine passport is a term used to refer to proof of vaccination which may then be required to travel or to access certain services or venues. This has proved to be a contentious topic and the [Scottish Government has previously stated](#) that:

“We need to know more about the efficacy of the vaccines, their impact on transmission and the length of immunity before it would be safe to introduce a vaccine certificate.”

However, recently several countries announced their intention to allow travellers with proof of vaccination to enter without the need for a negative PCR test or the need to quarantine.

In response to this, the [Scottish Government announced](#) that people will be able to download a ‘vaccination status’ letter from the NHS Inform patient portal. This is intended to ease pressure on GPs having to provide such confirmation. However, the same press release also stated that eventually it will be replaced by ‘digital COVID Status Certificates’.

#### What is COVAX?

COVAX is an initiative led by [Gavi](#), an organisation which aims to improve access to vaccines in low-income countries. COVAX includes the collaboration of the World Health Organisation and UNICEF and is a financial platform which will enable access to donor-funded doses of COVID-19 vaccines. It is aiming to secure 2 billion doses by the end of 2021.

## Protection Levels

In May 2020, the Scottish Government published [Coronavirus \(COVID-19\): framework for decision making – Scotland’s route map through and out of the crisis](#), which set out a phased approach to lifting COVID-19 restrictions. An [updated strategic framework](#) was published in February 2021.

There are five protection levels in Scotland with associated restrictions. The Scottish Government has published [guidance on what you can and can’t do at each level](#) and a [postcode checker can be used to find out what level an area is in](#).

We have published a blog on [protection levels](#).

## Travel Restrictions and Quarantine

What travel restrictions are in place?

On 11 May 2020, the First Minister announced [changes to international travel restrictions](#). The Scottish Government has published [guidance on international travel and managed isolation \(quarantine\)](#) this explains the traffic light system which is in use.

- Entry from red list countries requires the completion of a [passenger location form](#), [a pre arrival COVID-19 test](#), 10 day isolation in a managed isolation hotel, and two PCR tests taken on day two and day eight.
- Entry from amber list countries requires the completion of a [passenger location form](#), [a pre arrival COVID-19 test](#), self-isolation at home for 10 days and two PCR tests taken on day two and day eight.
- Entry from green list countries require a [passenger location form](#), [a pre arrival COVID-19 test](#) and one PCR tests taken within two days of arrival in Scotland.

## Public Inquiries

Are there going to be public inquiries into the COVID-19 pandemic?

The UK Government has [announced that an independent public inquiry](#) into the handling of the COVID-19 pandemic will be held in Spring 2022.

The [SNP manifesto](#) committed to commission a statutory public inquiry into the handling of the COVID-19 pandemic in Scotland.

**Lizzy Burgess and Kathleen Robson**  
Senior Researchers  
SPICe



# Legislation overview

## Primary and secondary legislation overview

1. The statutory powers being used by the Scottish Government to respond to COVID-19 stem from three main sources—
  - The [Coronavirus Act 2020](#) (referred to as “the UK Act”);
  - The [Coronavirus \(Scotland\) Act 2020](#) and the [Coronavirus \(Scotland\) \(No 2\) Act 2020](#) (referred to as “the Coronavirus Scotland Acts”); and
  - Other existing legislation that predated the pandemic, including the [Public Health etc \(Scotland\) Act 2008](#) (referred to as “the Public Health Act”).
2. Many Acts (also known as “primary legislation”) enable Scottish Ministers to make secondary legislation. Secondary legislation is also referred to as “delegated legislation”, “Scottish statutory instruments”, “SSIs”, “instruments” or “regulations”.
3. The Committee’s legislative remit includes scrutiny of secondary legislation arising from the Acts highlighted above. The most common secondary legislation that the Committee will consider are updates to the following regulations—
  - [The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#): These regulations stem from the UK Act and are referred to in this briefing as “the health protection regulations”. The UK Act gives the Scottish Government power to make a wide range of regulations related to ‘health protection’. The measures introduced by these regulations are those that impact on everyone, including the wearing of face masks; social distancing; lockdowns; closure of non-essential retail, schools etc.
  - [The Health Protection \(Coronavirus\) \(International Travel\) \(Scotland\) Regulations 2020](#): These regulations stem from the Public Health Act and are referred to in this briefing as “the international travel regulations”. The Public Health Act gives the Scottish Government power to make regulations about public health measures directed at international travellers. The measures introduced by these regulations include travel corridors and the traffic light system for international travel destinations and arrivals; testing; the provision of contact information for test and protect; and hotel quarantine.

## Parliamentary procedure overview

4. Committees’ scrutiny of secondary legislation is guided by the parliamentary procedure that applies to each instrument. The [Interpretation and Legislative Reform \(Scotland\) Act 2010](#) sets out the different types of parliamentary procedure in Scottish legislation. The type of procedure that applies to an instrument informs the timescales for parliamentary scrutiny; the reporting requirements of the lead policy committee; and the voting process. The parliament determines what type of procedure should apply to

secondary legislation when it scrutinises the parent (primary) legislation during its passage as a bill.

5. This paper provides information about the following types of procedure, which you are most likely to encounter on this committee:
  - Made affirmative
  - Affirmative
  - Negative
  - Laid only
6. The most common types of instrument considered by the COVID-19 Recovery Committee will be updates to the health protection regulations and the international travel regulations. The parent Acts for these regulations specify that any regulations should be subject to the “affirmative” procedure of parliamentary scrutiny. In “urgent” circumstances, however, the Acts allow the Scottish Government to use the “made affirmative” procedure. In practice, Scottish Ministers have relied upon the made affirmative procedure to introduce changes to these regulations. By way of illustration, the Session 5 COVID-19 Committee considered 56 instruments in just under 12 months. Of these, 47 were made affirmative; 6 were negative; 2 were affirmative; and 1 was laid only.
7. Prior to the pandemic, the use of the made affirmative procedure was very rare. It is therefore unlikely that you will consider made affirmative instruments during your tenure on other committees. The most common type of procedure considered by other committees are negative instruments, followed by affirmative instruments.

## **Two-monthly reporting requirements**

8. The Scottish Government reviews and reports on the use of its powers in Coronavirus Scotland Acts, and those powers in the UK Act for which the Scottish Parliament gave legislative consent, every two months. These reports are commonly referred to as the “two-monthly reports”. The rationale behind this statutory reporting requirement is to ensure that the emergency powers are used for no longer than is necessary. The responsible minister will usually make a ministerial statement to parliament when each two-monthly report is published and the Committee will take the lead on scrutinising each report.
9. The Scottish Government has published seven reports to date—
  - [Coronavirus Acts: first report to Scottish Parliament](#) published on 9 June 2020
  - [Coronavirus Acts: second report to Scottish Parliament](#) published on 11 August 2020
  - [Coronavirus Acts: third report to Scottish Parliament](#) published on 6 October 2020
  - [Coronavirus Acts: fourth report to Scottish Parliament](#) published on 9 December 2020
  - [Coronavirus Acts: fifth report to Scottish Parliament](#) published on 11 February 2021

- [Coronavirus Acts: sixth report to Scottish Parliament](#) published on 14 April 2021
- [Coronavirus Acts: seventh report to Scottish Parliament](#) published on June 2021

10. The Coronavirus (Scotland) (No.2) Act 2020 provides that while the temporary modifications to existing FOI legislation made by the first Act are in force, Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to FOI requests. These reports are commonly referred to as the “FOI reports” and are published every two months. The responsible minister will update parliament on the publication of these reports as part of the ministerial statement on the two-monthly reports highlighted above. The Committee will also take the lead on scrutinising each FOI report.

11. The Scottish Government has published six FOI reports to date —

- [Report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 7 August 2020
- [Second report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 9 October 2020
- [Third report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 10 December 2020
- [Fourth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 9 February 2021
- [Fifth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 9 April 2021
- [Sixth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#) published on 9 June 2021

**Committee Clerks  
June 2021**

## Coronavirus (COVID-19): Protection levels

In February 2021, the Scottish Government published an updated [COVID-19 Strategic Framework](#). This outlines its approach to protective levels and the conditions for easing restrictions. This blog provides a high-level summary of the protection levels and the current restrictions across Scotland, together with some maps and charts to aid understanding for MSPs and their constituents.

### What do the protection levels mean?

The Scottish Government has outlined a five-level approach, which is intended to allow restrictions based on [specific indicators](#) for an area, instead of a 'one size fits all' national approach. The five protection levels start at level 0, which is [Phase 3](#) of the Scottish Government's Coronavirus (COVID-19) route map.

There are four levels above this which each contain a number of restrictions across a range of areas including socialising, hospitality, accommodation, travel, retail, education and leisure, which are intended to suppress the virus.

#### Level 0 (baseline) and Level 1

**Low incidence of the virus with isolated clusters and low community transmission.**

These levels still include some restrictions but are considered to be the closest to normality that will be possible without a vaccine or effective treatment in place.

#### Levels 2-3

**Increased incidence of the virus with multiple clusters and increased community transmission.**

Under these levels, there will be several measures focusing on potential areas of risk. This includes indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations. The measures would be intended to be in place for relatively short periods (2-4 weeks), and only for as long as required to get the virus down to a low, sustainable level.

## Level 4

**Very high or rapidly increasing incidence and widespread community transmission which may pose a threat to the NHS to cope.**

This level will see the introduction of measures close to a return to full lockdown

The following table shows the restrictions on socialising in each level. More information on the Protection Levels Framework can be found on the [Scottish Government website](#).

Level	Indoors – in public	Indoors – households	Outdoors
Level 0	10 people from up to 4 households	8 people from 4 households	15 people from 15 households
Level 1	8 people from up to 3 households	6 people from 3 households	12 people from 12 households
Level 2	6 people from up to 3 households	6 people from 3 households	8 people from 8 households outdoors and in public place
Level 3	6 people from up to 2 households	No in-home socialising	6 people from 6 households outdoors and in public place
Level 4	4 people from up to 2 households	No in-home socialising	4 people from 2 households outdoors and in public place

## What do the current protection levels look like across Scotland?

The Scottish Government set the initial levels for each local authority area on 29 October 2020. It has since reviewed the [indicators it uses to determine protection levels](#).

When making decisions about protection levels the Scottish Government uses [five core indicators alongside secondary indicators and broader considerations](#). The core indicators are:

- Weekly new positive cases per 100,000 people

- Percentage of tests that are positive over the past week
- Projected weekly cases per 100,000 people
- Projected Covid Hospital Demand
- Projected Covid Intensive Care Unit (ICU) Demand

The levels will be reviewed regularly based on the latest evidence and a decision will be made on whether to maintain, increase, or reduce the level of an area.

### **Latest announced change to protection levels**

Key changes from 5 June 2021:

- The Islands, with the exception of Skye, will move to level 0
- Remain at level 2: Edinburgh, Clackmannanshire, Dundee City, East Ayrshire, East Dunbartonshire, East Renfrewshire, Midlothian, North Ayrshire, North Lanarkshire, Renfrewshire, South Ayrshire, South Lanarkshire and Stirling
- Glasgow will move to level 2
- Move to level 1 Aberdeen City, Aberdeenshire, Angus, Argyll and Bute, Dumfries and Galloway, East Lothian, Falkirk, Fife, Highland, Inverclyde, Moray, Perth and Kinross, Scottish Borders, West Dunbartonshire and West Lothian

Latest update: 4 June 2021

### **Protection level by local authority area in Scotland, 5 June**

#### **How have the protection levels changed?**

The following interactive chart tracks how protection levels have changed in Scotland. It is based on what the protection level was at on Friday of each week, apart from the first week which uses the date that the protections level first came into effect.

Tips on using the tool:

- You can **click** on a protection level in the legend above the chart and this will remove all areas on that level.
- You can **double click** on a protection level in the legend above the chart and this will highlight all areas on that level. Double click again to reset.

Updated: 17 May 2021

## Change in protection levels

The following table shows the threshold the Scottish Government uses for these two indicators and compares it to the WHO range. More information can be found in [Coronavirus \(COVID-19\): Strategic Framework update - February 2021](#).

You can find more information on the latest data on testing, hospital admissions and deaths in [Coronavirus \(COVID-19\) in Scotland – latest data](#).

Level	Weekly cases/100k	Test positivity
Level 0	Close to 0	Close to 0
Level 1	<20	<2%
Level 2	20-50	2-5%
Level 3	50-150	5-20%
Level 4	150+	20%+

**Andrew Aiton**  
**Data Visualisation Manager**  
**SPICe**

## Tracking COVID-19 related legislation in the campaign recess, and in the first days of the new parliament

This note provides a summary of Covid-19 related Scottish Statutory Instruments that have been brought forward just before, or during, the campaign recess (dissolution) period, which began on 25<sup>th</sup> March 2021. This note also includes those SSIs brought forward in the early days of the parliament, up to 15 June 2021<sup>2</sup>.

Twenty three SSIs have been identified. In brief, this includes:

- Nine separate SSIs making changes to the regulations relating to international travel (under the Public Health etc. (Scotland) Act 2008) including:
  - for aviation and maritime crew, a new exemption category of “specified competitions”, and additions to the list of acute risk countries
  - to some of the regulations relating to children travelling, and exemptions for some marine staff
  - to testing, some exemptions for self-isolation, additions to acute risk countries, and banning aircraft arriving directly from United Arab Emirates
  - to passenger information, to specified competitions, exemptions for people transporting human cells or blood, and the addition of India to the list of acute risk countries
  - The addition of Maldives, Nepal and Turkey to the list of acute risk countries
  - to testing and self-isolation for arrivals from exempt, non-exempt and acute risk countries, and the addition of a number of countries to the list of exempt countries and territories and to the list of exempt United Kingdom Overseas Territories
  - to exemptions for seafarers and inspectors and surveyors of ships
  - removing Portugal from the list of exempt countries, and adding others to the list of acute risk countries
  - extending the definition of elite sport

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<sup>2</sup> (As at 15 June 2021) it is not currently known which committees will scrutinise which regulations. For example, the international travel regulations (whose parent Act is the Public Health etc. (Scotland) Act 2008 were scrutinised by the Health and Sport committee in session 5.



- Ten further SSIs under the (UK's) Coronavirus Act 2020, including:
  - one relating to reopening of places of worship
  - one revoking the “stay at home guidance” and some other restrictions
  - one allowing more outdoor gatherings, and travel within Scotland
  - one moving all parts of Scotland currently in Level 4 down to Level 3
  - one adjusting restrictions on casinos, and teen socialising rules
  - one moving all areas of Scotland (except Moray and Glasgow) to Level 2 and islands (except Skye) to Level 1; adjusting requirements placed on those responsible for businesses, services and places of worship, and allowing increased in-home socialising in Level 2 areas.
  - one moving Moray to Level 2 and adjusting travel restrictions between Scotland and parts of the Common Travel Area
  - one adjusting restrictions on wearing face coverings for close contact services and permitting indoor organised activity in Level 2 for all ages.
  - one providing power of entry to enforce restrictions relating to stadia/events and reducing the required distances to be maintained between persons in Hampden Park and the Glasgow Green Event Zone during the UEFA EURO 2020 Championship period
  - one moving parts of Scotland down to levels 2,1 and 0, and also changing restrictions for funfairs, marriages and civil partnerships
  
- Two further SSIs under the Coronavirus (Scotland) Act 2020, including:
  - one allowing early expiry of provisions in the Coronavirus (Scotland) Act 2020 relating to Business Improvement District partnerships, and to protected advance notices in conveyancing
  - one allowing early expiry of provisions in the Coronavirus (Scotland) Act 2020 relating to Parole Board Rules for extended sentence prisoners
  
- One SSI under the Local Government etc. (Scotland) Act 1994, and one under the Housing (Scotland) Act 1987.

Further details are provided in the tables below, and in the linked Policy Notes. The SSIs are provided in chronological order

## 1. Non-Domestic Rates

Reliefs <https://www.legislation.gov.uk/ssi/2021/151/contents/made>

Title	Non-Domestic Rates (Coronavirus Reliefs) (Scotland) regulations 2021 (SSI 2021/151)
Enabling Act	section 153 of the Local Government etc. (Scotland) Act 1994
Made	18 March 2021

Coming into force	1 April 2021
Laid before the Scottish Parliament	18 March 2021
What the SSI aims to do (Policy note)	The purpose of these Regulations is to provide temporary reliefs intended to counter the adverse economic impact of COVID-19 for the 2021-22 financial year only. The measures provided are as follows: a 100% non-domestic rates (NDR) relief for properties with specified uses in the retail, hospitality and leisure (RHL) sectors as well as properties used for newspaper publishing; and a 100% relief for airports and handling service providers, and for lands and heritages occupied by Loganair Ltd. Details are set out in the SSI <a href="#">Policy Note</a>

## 2. International travel

Title	Health Protection (Coronavirus) (International Travel etc.) (Scotland) Amendment Regulations 2021: SSI 2021/158
Enabling Act	Sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008
Made	19 March 2021
Coming into force	20 March 2021
Laid before the Scottish Parliament	22 March 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169) (“the principal Regulations”). Resultant changes to travel restrictions regarding testing and isolation; exemptions from isolation in managed accommodation for aviation and maritime crew; the addition of a new category of ‘specified competitions’ to exemptions for participating persons; additions to the list of acute risk countries, and amendments to the expiry provisions of the principal Regulations are detailed fully in the SSI <a href="#">Policy Note</a> .

## 3. Local protection levels - places of worship

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 18) Amendment Regulations 2021: SSI 2021/168
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(a)
Made	24 March 2021
Coming into force	25 March 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local

	Levels) (Scotland) Amendment (No. 18) Regulations 2021 to bring forward the coming into force date of the relevant provisions which allow places of worship to reopen in Level 4. The new date for reopening is 25 March. Resultant changes to restrictions are detailed fully in the SSI <a href="#">Policy Note</a> .
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#### 4. International travel

Title	The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2021: SSI 2021/179
Enabling Act	Sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008
Made	26 March 2021
Coming into force	27 March 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169) (“the principal Regulations”). Resultant changes to travel restrictions regarding responsibility for unaccompanied children; child self-isolation; under 18 asylum-seekers’ accommodation; and exemptions for seamen and masters, shipping pilots and inspectors and surveyors of ships are detailed fully in the SSI <a href="#">Policy Note</a> .

#### 5. Local protection levels – stay at home

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 19) Regulations 2021: SSI 2021/180
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”)
Made	1 April 2021
Coming into force	2 April 2021, apart from Regulation 9(2)(a) and (c), (3) and (5) which come into force on 5 April 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to revoke the requirement to stay at home in a Level 4 area from Friday, 2 April 2021. The Regulations also provide that a person who lives in a Level 4 area must not leave or remain away from that area. Resultant changes to restrictions regarding public gatherings in a Level 4 area; retailers that are allowed to

	open in Level 4 areas; the definition of “relevant sporting body” and “senior representative”; requirements for face coverings in polling stations/vote counting premises; and the collection of visitor information in a venue used as a polling station are detailed fully in the SSI <a href="#">Policy Note</a> .
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## 6. International travel

Title	The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) Regulations 2021: SSI 2021/181
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	8 April 2021
Coming into force	9 April 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	This instrument makes further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169, “the principal Regulations”). Resultant changes to restrictions regarding the scope of the testing requirements; sectoral exemptions for self-isolation, the addition of Bangladesh, Kenya, Pakistan and the Philippines to the “acute risk countries and territories; and the prohibition on the arrival of aircraft travelling directly from the United Arab Emirates are detailed fully in the SSI <a href="#">Policy Note</a> .

## 7. Local protection levels – outdoor gatherings

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 20) Regulations 2021: SSI 2021/186
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	15 April 2021
Coming into force	16 April 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the limit on outdoor gatherings, both in public places and private gardens. The limit is being relaxed from a maximum of 4 people from 2 households to a maximum of 6 people from 6 households; those under 12 continue to be excluded from these limits. These Regulations also provide that a person who lives in a Level 3 or 4 area may leave that area and enter

	another Level 3 or 4 area of Scotland in order to undertake outdoor recreation or informal exercise. Resultant changes to restrictions are detailed fully in the SSI <a href="#">Policy Note</a> .
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## 8. International travel

Title	The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 9) Regulations 2021: SSI 2021/191
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	21 April 2021
Coming into force	23 April 2021, apart from Regulation 5 which comes into force on 26 April 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	<p>This instrument makes further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169, “the principal Regulations”).</p> <p>Resultant changes to restrictions regarding passenger information; sportspersons taking part in specified competitions (addition of “Curling- World Mixed Doubles Championship”; self-isolation for persons transporting material containing human cells or blood for use by a healthcare provider; and adding India to the “acute risk countries and territories” are detailed fully in the SSI <a href="#">Policy Note</a>.</p>

## 9. Local protection levels – new protection levels

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021: SSI 2021/193
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	22 April 2021
Coming into force	26 April 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to implement the new <a href="#">local protection levels table</a> that was published on 13 April 2021, and move all parts of Scotland currently in Level 4 down to Level 3.</p> <p>Resultant changes to the restrictions on social gatherings; travel within the Common Travel Area (CTA) to Level 3 areas; hospitality curfews; stadia,</p>

	events and entertainment venues; close contact services; and removal of the legal limit on marriage and civil partnership ceremony attendance in Level 4 areas are detailed fully in the <a href="#">SSI Policy Note</a> .
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#### 10. Local protection levels – casinos and teen socialising

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 22) Regulations 2021: SSI 2021/202
Enabling Act	Paragraph 1 (1) of schedule 19 of the Coronavirus Act 2020
Made	4 May 2021
Coming into force	5 May 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the restrictions on casinos, allowing them to open in Level 2 and applying a curfew in Level 1 and 2. These Regulations also make some further adjustments to remove redundant references and align with teen socialising rules with adults in Level 2. Further detail is available in the SSI <a href="#">Policy Note</a>

#### 11. International travel

Title	The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 10) Regulations 2021: SSI 2021/204
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	10 May 2021
Coming into force	12 May 2021
Laid before the Scottish Parliament	13 May 2021
What the SSI aims to do (Policy note)	This instrument makes further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169, “the principal Regulations”). This instrument adds Maldives, Nepal, and Turkey to the “acute risk countries and territories” in schedule A2. Further detail is available in the SSI <a href="#">Policy Note</a>

#### 12. International travel

Title	The Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021: SSI 2021/208
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	14 May 2021

Coming into force	17 May 2021
Laid before the Scottish Parliament	14 May 2021
What the SSI aims to do (Policy note)	<p>This instrument makes further amendments to the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169, “the principal Regulations”). Resultant changes to restrictions regarding testing for arrivals in Scotland from exempt countries/territories; isolation in specified premises for arrivals in Scotland from non-exempt or acute risk countries/territories, and requirements to possess a managed self-isolation package and to stay in managed accommodation are detailed fully in the SSI <a href="#">Policy Note</a>.</p> <p>This instrument also adds Australia, Brunei, Faroe Islands, Iceland, Israel and Jerusalem, New Zealand, Portugal and Singapore to the list of exempt countries and territories and Falkland Islands, Gibraltar, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands to the list of exempt United Kingdom Overseas Territories.</p> <p>This instrument also amends the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170) to update the passenger notices in schedule 2 to reflect the latest requirements on travellers.</p>

### **13. Local protection levels – new protection levels**

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021: SSI 2021/209
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	14 May 2021
Coming into force	17 May 2021
Laid before the Scottish Parliament	17 May 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the Levels allocation across Scotland as a result of the most recent data, moving all areas of Scotland previously at Level 3 to Level 2 (with the exceptions of Moray and Glasgow) and moving some Scottish islands to Level 1. These Regulations also make some adjustments in relation to powers of entry, hotels and to the requirements placed on those responsible for businesses, services and places of worship. The Regulations permit snooker &amp; pool halls and bowling alleys to reopen in Level 2 and allow increased in-home socialising in Level 2 areas. The Regulations future proof the travel restrictions in place for Level 3 and 4 by reintroducing a 5 mile limit for outdoor exercise and recreation. Finally, the Regulations adjust the restrictions relating to capacity limits on stadia and live events and for public processions in some levels.</p>

Further detail is available in the SSI [Policy Note](#).

#### 14. Local protection levels – new protection levels

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 24) Regulations 2021: SSI 2021/211
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	21 May 2021
Coming into force	22 May 2021 (except regulation 4) Regulation 4 comes into force on 24 May 2021
Laid before the Scottish Parliament	21 May 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the Levels allocation across Scotland as a result of the most recent data, moving Moray to Level 2.</p> <p>These Regulations also adjust the travel restrictions between Scotland and parts of the Common Travel Area to address increased prevalence in some areas.</p> <p>Further detail is available in the SSI <a href="#">Policy Note</a></p>

#### 15. International travel

Title	The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.11) Regulations 2021: SSI 2021/212
Enabling Act	Sections 94(1)(b)(i) and 122(2)(a) and (b) of the Public Health etc. (Scotland) Act 2008
Made	24 May 2021
Coming into force	25 May 2021
Laid before the Scottish Parliament	24 May 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169) (“the principal Regulations”).</p> <p>Resultant changes to travel restrictions regarding exemptions for seafarers and inspectors and surveyors of ships, where they have entered the UK in order to work on a cruise ship or after having worked on a cruise ship, are detailed fully in the SSI <a href="#">Policy Note</a>.</p>

#### 16. Homeless Persons – Unsuitable Accommodation

Title	<a href="#">Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Amendment Order 2021 (SSI 2021/222)</a>
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Enabling Act	section 29(3) and (4) of the Housing (Scotland) Act 1987
Made	26 May 2021
Coming into force	29 June 2021
Laid before the Scottish Parliament	27 May 2021
What the SSI aims to do (Policy note)	The purpose of this Order is to extend the coronavirus related exceptions to the definition of unsuitable accommodation in the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014. These exceptions were initially created via the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020, then were extended in the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 and were further extended in the Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) 2021. The Order will extend these exceptions for a further three months (until 30 September 2021), given the continuing impact and repercussions to the housing and homelessness system of the continuing pandemic. Further information is provided in the SSI's <a href="#">Policy Note</a>

**17. Local protection levels – face coverings and indoor organised activity**

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 25) Regulations 2021: SSI 2021/224
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	27 May 2021
Coming into force	31 May 2021
Laid before the Scottish Parliament	27 May 2021
What the SSI aims to do (Policy note)	These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to make an adjustment in relation to the requirement to wear a face covering in certain settings. The Regulations now allow the temporary removal of face coverings by a person receiving treatments around the mouth and nose. The Regulations also permit indoor organised activity in Level 2 for all ages. Resultant changes to restrictions are detailed fully in the SSI <a href="#">Policy Note</a> .

**18. Business Improvement Districts; early expiry**

Title	The Coronavirus (Scotland) Act 2020 (Early Expiry of Provisions) Regulations 2021: SSI 2021/214
Enabling Act	Section 13(1) of the Coronavirus (Scotland) Act 2020
Made	24 May 2021

Coming into force	30 June 2021
Laid before the Scottish Parliament	26 May 2021
What the SSI aims to do (Policy note)	<p>The purpose of the instrument is to expire early certain provisions in the Coronavirus (Scotland) Act 2020 on 30 June 2021, relating to Business Improvement District partnerships, and to protected advance notices in conveyancing while the Land Register of Scotland and the Register of Sasines were not fully open.</p> <p>Further detail is available in the SSI <a href="#">Policy Note</a>.</p>

### 19. Local Protection levels, plus funfairs, marriages and civil partnerships

Title	Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.26) Regulations 2021 (SSI 2021/227)
Enabling Act	schedule 19 of the Coronavirus Act 2020
Made	3 June 2021
Coming into force	5 June 2021
Laid before the Scottish Parliament	3 June 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to adjust the Levels allocation across Scotland as a result of the most recent data.</p> <p>The Regulations also permit funfairs to reopen in Level 2 areas and adjust the rules on physical distancing and face coverings at marriage and civil partnerships</p> <p>Further detail available in the SSI <a href="#">Policy Note</a></p>

### 20. International travel

Title	<a href="#">Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/230)</a>
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	4 June 2021
Coming into force	8 June 2021
Laid before the Scottish Parliament	4 June 2021
What the SSI aims to do (Policy note)	<p>This instrument removes Portugal from the list of exempt countries, territories and parts of countries or territories in Part 1 of schedule A1 of the principal Regulations. Afghanistan, Bahrain, Costa Rica, Egypt, Sri Lanka, Sudan, and Trinidad and Tobago are added to the list of acute risk countries, territories and parts of countries or territories in schedule A2 of the principal Regulations.</p> <p>Further information in the SSI <a href="#">Policy Note</a></p>

**21. Local protection levels – stadia/events and physical distancing for EURO 2020 fanzone**

Title	The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 27) Regulations 2021: SSI 2021/238
Enabling Act	Paragraph 1(1) of schedule 19 of the Coronavirus Act 2020
Made	10 June 2021
Coming into force	11 June 2021
Laid before the Scottish Parliament	11 June 2021
What the SSI aims to do (Policy note)	<p>These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to provide a person designated by a Local Authority with a power of entry to enforce restrictions relating to stadia and events in Part 4 of the principal regulations.</p> <p>The Regulations also reduce the required distances to be maintained between persons to 1.2 metres in Hampden Park, Glasgow and to 1.5 metres in the Glasgow Green Event Zone during the UEFA EURO 2020 Championship period.</p> <p>Resultant changes to restrictions are detailed fully in the SSI <a href="#">Policy Note</a>.</p>

**22. Parole Boards; early expiry**

Title	The Coronavirus (Scotland) Act 2020 (Early Expiry of Provisions) (No. 2) Regulations 2021: SSI 2021/236
Enabling Act	Section 13(1) of the Coronavirus (Scotland) Act 2020
Made	10 June 2021
Coming into force	14 June 2021
Laid before the Scottish Parliament	10 June 2021
What the SSI aims to do (Policy note)	<p>The purpose of this instrument is to expire early certain provisions in Part 1 of the Coronavirus (Scotland) Act 2020 relating to Parole Board Rules for hearings (and oral hearings by video or teleconference) for extended sentence prisoners.</p> <p>Further detail is available in the SSI <a href="#">Policy Note</a>.</p>

**23. International Travel**

Title	Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (N.13) Regulations 2021 (SSI 2021/237)
Enabling Act	Sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008
Made	10 June 2021

Coming into force	14 June 2021
Laid before the Scottish Parliament	10 June 2021
What the SSI aims to do (Policy note)	This instrument amends schedule 2 of the principal Regulations to extend definitions for elite sport to include all events at which specified persons compete to qualify for the Commonwealth Games to be held in Birmingham. It also adds events to competitions that are specified in schedule 3A of the principal Regulations for the purposes of elite sport Further detail on the SSI <a href="#">Policy note</a>

**Simon Wakefield and Kirsty Millar**  
**SPICe**



The Scottish Parliament  
Pàrlamaid na h-Alba

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## COVID-19 Committee

# Legacy Report



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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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# Committee Membership



**Convener**  
**Donald Cameron**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Monica Lennon**  
Scottish Labour



**Willie Coffey**  
Scottish National Party



**Maurice Corry**  
Scottish Conservative  
and Unionist Party



**Annabelle Ewing**  
Scottish National Party



**John Mason**  
Scottish National Party



**Stuart McMillan**  
Scottish National Party



**Mark Ruskell**  
Scottish Green Party



**Beatrice Wishart**  
Scottish Liberal  
Democrats

# Introduction

1. The COVID-19 Committee ('the Committee') was established as a subject committee on 21 April 2020.<sup>i</sup> Its remit was to consider and report on the Scottish Government's response to COVID-19 and specifically the use of powers under the Coronavirus Act 2020, the Coronavirus (Scotland) Act and the Coronavirus (Scotland) No. 2 Act. The Committee has also scrutinised any secondary legislation arising from these Acts as the lead policy committee. Secondary legislation relating to COVID-19 that was made using existing, pre-pandemic powers, was scrutinised by other subject committees according to their respective remits.
2. This legacy report sets out the Committee's reflections on the Scottish Government's use of the emergency powers and the scrutiny arrangements that were implemented to monitor their use. It then outlines what role the Committee has played in supporting the scrutiny of emergency legislation and Scotland's response to the pandemic. The Committee's report concludes by highlighting the policy challenges and scrutiny issues arising from COVID-19 that the new parliament may wish to consider in session 6.

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<sup>i</sup> [S5M-21506](#) Liz Smith, on behalf of the Parliamentary Bureau: Establishment of a Committee.

# Legislating for an emergency

## Background

3. The first confirmed case of coronavirus (COVID-19) in Scotland was reported on 1 March 2020.<sup>ii</sup> The Scottish Parliament gave legislative consent to emergency powers contained in the Coronavirus Act 2020 on 23 March 2020,<sup>iii</sup> before passing the Coronavirus (Scotland) Act in the following week, on 1 April 2020.<sup>iv</sup> The Scottish Government brought forward further emergency legislation soon afterwards, the Coronavirus (Scotland) (No. 2) Act, which was passed on 26 May 2020.<sup>v</sup> Together, these Acts gave extraordinary, time-limited powers to the Scottish Government to respond to COVID-19.<sup>vi</sup>
4. The emergency legislation passed by the Scottish Parliament in this session reflects the fact that the COVID-19 pandemic has required the government to make wide-ranging public health interventions in society and the economy on a scale that is unprecedented in peace time. This challenge has been faced by all four administrations in the UK, as well as governments around the world. In the debate on the Legislative Consent Memorandum for the UK Coronavirus Bill, the Convener of the Finance and Constitution Committee highlighted how extraordinary the emergency powers were—  

” We all know that governments would normally seek such powers only in times of war. We also know that, right now, we are in a war against an unseen and deadly enemy.<sup>vii</sup>
5. The Scottish Government has emphasised throughout the pandemic that the use of the emergency powers to respond to COVID-19 must be "proportionate to the challenge" and must "only last as long as is required".<sup>viii</sup> The Scottish Parliament, and particularly the Committee, has therefore played an essential scrutiny role in ensuring that the measures used are lawful and effective in meeting their policy aims.

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ii [Scottish Government. \(1 March 2020\) Coronavirus \(COVID-19\) confirmed in Scotland .](#)

iii [S5M-21322 Michael Russell: UK Legislation - Coronavirus Bill.](#)

iv [Coronavirus \(Scotland\) Act 2020 \(asp 7\). S5M-21371 Michael Russell: Coronavirus \(Scotland\) Bill.](#)

v [Coronavirus \(Scotland\) \(No. 2\) Act \(asp 10\). S5M-21791 Michael Russell: Coronavirus \(Scotland\) \(No.2\) Bill.](#)

vi For a full timeline of events, please see this blog: [Scottish Parliament Information Centre. \(2021\) Timeline of Coronavirus \(COVID-19\) in Scotland .](#)

vii [Scottish Parliament. Official Report, 24 March 2020, Col 57.](#)

viii [Scottish Government. \(9 June 2020\) The Coronavirus Acts: Two Monthly Report to Scottish Parliament, p. 2.](#)

## COVID-19 legislation

6. This pandemic has arguably highlighted more so than at any other time the important role that parliament plays both in delivering rigorous scrutiny of government policy and decision-making, and passing "good quality, effective and accessible legislation".<sup>ix</sup> COVID-19 has also created particularly challenging circumstances in which to deliver these aims. The challenges for the parliament have included the unprecedented scope of government powers to intervene in society and the economy; the volume of legislation that has been laid by the government; and the exceptional parliamentary procedure that has been used to implement secondary legislation with immediate effect and under compressed timescales for parliamentary scrutiny.
7. The government has relied upon secondary legislation, particularly the "health protection" powers derived from Section 49 of the Coronavirus Act 2020,<sup>x</sup> to drive its policy response to COVID-19. These powers enable Scottish Ministers to make regulations—  
  

” imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.<sup>xi</sup>
8. In total, the government has laid 41 instruments using the health protection powers in the past twelve months.<sup>xii</sup> The extensive use of secondary, rather than primary, legislation to implement policy is unusual. For context, between 1 March 2020 and 1 March 2021, a total of 412 instruments were laid in the Scottish Parliament. 137 of these (or one in every three) were COVID-related.<sup>xiii</sup>
9. These powers are also exceptional in their scope. They have enabled the government to make unprecedented emergency interventions in society and the economy, creating restrictions on our liberty, movement and social activity, as well as the delivery of public services and the operation of businesses. The scope of these measures has also enabled significant restrictions to be placed on public spaces and institutional settings, including the closure of schools and places of worship. The impact of the measures has been extraordinary and wide-ranging, which has created challenges for scrutiny in determining whether measures have been proportionate, as well as identifying issues where further measures are required to protect and support individuals, organisations and businesses.
10. The health protection powers are also notable for the parliamentary procedure that applies to their use. Paragraph 6(3) of schedule 19 of the Act enables Scottish Ministers to use 'made affirmative' procedure where they consider that the

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<sup>ix</sup> [Scottish Parliamentary Corporate Body. \(21 December 2020\) \*Strategic Plan\* .](#)

<sup>x</sup> [Coronavirus Act 2020 \(c.7\), section 49.](#)

<sup>xi</sup> [Coronavirus Act 2020 \(c.7\), schedule 19, paragraph 1\(3\)\(c\).](#)

<sup>xii</sup> The timeframe for this figure covers the period 1 March 2020-1 March 2021. [Coronavirus Act 2020 \(c.7\), schedule 19, paragraph 6\(3\)\(b\).](#)

<sup>xiii</sup> COVID-19-related is defined as any instrument with the word 'Coronavirus' in the title. Delegated Powers and Law Reform Committee, information provided to the Scottish Parliament Information Centre.

regulations need to be made urgently. This means that the regulations can be made immediately and remain in force for up to 28 days without parliamentary approval. To remain in force for longer than 28 days, parliamentary approval of the regulations must be obtained within this initial 28-day period.<sup>xiv</sup> In practice, this means that each regulation must be scrutinised by the Delegated Powers and Law Reform Committee, the Covid-19 Committee and finally the Chamber within 28 days of being made.

11. Prior to the pandemic, the use of made affirmative procedure was rare, with only three made affirmative instruments being laid in 2019-2020. During the pandemic, Scottish Ministers have relied upon this procedure heavily to bring forward policy changes at short notice. 47 of the 56 SSIs considered by the Committee were made using the made affirmative procedure.
12. The sheer speed and volume of legislation has created challenges for parliamentary scrutiny, in terms of enabling public consultation on these measures; scrutinising the detail of the drafting and cross-checking updates to regulations against the existing statute book; as well as creating sufficient time to take evidence on and debate new legislation.

## Scrutiny arrangements

13. The scope and scale of the emergency legislation has therefore meant that additional checks and balances were put in place to scrutinise its use and impact. The Committee has played a leading oversight role in this respect. From the outset, the emergency legislation was passed with inbuilt requirements for the government to review and report on the use and continued necessity of provisions under the Scottish Coronavirus Acts. Further measures were subsequently put in place in the latter part of 2020, when the parliament and government agreed additional arrangements to enhance parliamentary scrutiny.
14. One of the main checks and balances that was built into the emergency legislation was a two-monthly reporting requirement. The main provisions setting out these requirements are Section 15 of the Coronavirus (Scotland) Act 2020, and section 12 of the Coronavirus (Scotland) (No. 2) Act 2020. These provisions require Scottish Ministers to conduct a review of the provisions in Part 1 of those Acts to consider whether those provisions remain necessary. The reporting requirements include an obligation to take account of any information about the nature and number of incidents of domestic abuse, and to review and report on the status of every Scottish statutory instrument that have been made for the primary purpose of responding to COVID-19. These reports are prepared every two months.
15. The government has gone further than the minimum reporting requirements set out in the Scottish Coronavirus Acts. In its two-monthly reports to parliament, the government has reviewed the provisions of the Coronavirus Act 2020 for which the Scottish Parliament gave legislative consent. The government has also taken steps to provide detailed updates on its reasons for determining the continued necessity of provisions that may have greater impact on certain individuals or groups (in relation to the protected characteristics identified in the Equality Act 2020), or their

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<sup>xiv</sup> [Coronavirus Act 2020 \(c.7\), schedule 19, paragraph 6\(3\)\(b\)](#).

wider implications for equality and human rights.

16. The Committee has prioritised scrutiny of the two-monthly reports in its work by seeking views on what has been reported and taking evidence from Scottish Ministers on their publication. This has enabled the Committee to highlight stakeholders' concerns about provisions within the emergency legislation, such as those relating to adults with incapacity. It has also enabled the Committee to seek clarification of policy measures where these have been defined in guidance rather than regulation.
17. The Scottish Government published a revised strategic framework on 23 October 2020, which introduced a five-level system for implementing COVID-19 public health measures.<sup>xv</sup> In November 2020, the parliament and government agreed to measures to further enhance parliamentary scrutiny of the implementation of the new levels system and the response to COVID-19 more widely. This included a commitment by the government to make a weekly ministerial statement on COVID-19 on Tuesday afternoons; to provide a draft copy of proposed regulations on Wednesday afternoon; and to make Scottish Ministers available to give evidence to the Committee each week on Thursday morning. The draft regulations were often made into law on Thursday afternoon or on the following day.
18. Once this agreement was put in place, the Committee took evidence from the responsible minister, Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, and Professor Jason Leitch, the National Clinical Director, on a weekly basis. This enabled the Committee to take evidence in a timely manner from the Scottish Government on the latest public health developments as they arose and to consider draft legislative proposals before they were made into law.

19. **The Committee considers that the reporting requirements set out in the Coronavirus Scotland Acts have worked well in supporting parliamentary scrutiny.**
20. **The Committee considers that the enhanced scrutiny arrangements agreed between parliament and government have also worked well, including the ministerial statement on COVID-19; the provision of draft regulations; and the opportunity to take evidence from Scottish Ministers and public health officials at its weekly meetings. The Committee would like to thank Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs and Professor Jason Leitch, National Clinical Director, for their appearances at the Committee.**
21. **The Committee recommends that these enhanced scrutiny arrangements are continued in the early part of the new session. The Committee would expect government ministers and officials to continue to attend regularly at the successor committee in order for effective scrutiny to take place.**

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<sup>xv</sup> [Scottish Government. \(23 October 2020\) \*Scotland's Strategic Framework\* .](#)

# The Committee's scrutiny role

22. COVID-19 has highlighted the valuable role that committees play in achieving the parliament's strategic aims. During this emergency, the committee forum has enabled members to conduct inquiries into emerging issues, facilitate public engagement and draw upon additional academic expertise in the scrutiny of technical areas of policy implementation.

## Inquiries

23. The Committee worked in an innovative way to conduct inquiries in a fast-moving policy environment.<sup>xvi</sup> The first strand of the Committee's inquiry work prioritised scrutiny of the government's use of emergency powers, as reported in the Scottish Government's two-monthly reports to parliament, as well as the government's proposals for extending the emergency legislation to March 2021 and September 2021 respectively. The Committee's evidence sessions with stakeholders highlighted important issues relating to health inequalities and enforcement, which it was able to put to the Scottish Government in weekly meetings.
24. The second strand of the Committee's inquiry work focused on the Scottish Government's preparedness for issues that lay ahead in its response to COVID-19. This included the Committee's early work on options for easing restrictions from the first lockdown in April and June 2020. The Committee continued this approach looking proactively at the social and economic impact of restrictions over winter and the festive period. The Committee also took evidence on the vaccination programme, including the research and development of COVID-19 vaccines; the COVID-19 vaccine safety regulation and approvals process; as well as the delivery of the vaccination programme and the prioritisation of eligible persons in the delivery plan. In this way, the Committee was able to scrutinise important issues that were not otherwise being considered by other subject committees.
25. The Committee's most recent work on Scottish Government's 'preparedness' included a focus on the Scottish Government's long-term strategy for responding to COVID-19 in 2021 and beyond. This work was encapsulated in the Committee's 'next steps' inquiry. The Committee took evidence from experts in epidemiology who had experience from Scotland, Hong Kong and New Zealand. This enabled the Committee to gain international perspectives on approaches to tackling Covid-19; to hear expert opinions on the future course of the pandemic; and to consider what could be learned from previous pandemics.
26. This evidence session and the Committee's other inquiry work highlighted the challenges that lie ahead, such as the impact of new variants on the vaccination programme and the continuing need for some level of public health measures to suppress the virus. This evidence gathering also made clear to the Committee the extent to which a global effort will be required to support the vaccine roll-out in other countries, such as the COVAX initiative,<sup>xvii</sup> and highlighted different health

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<sup>xvi</sup> For more information about the Committee's inquiry work, please see the following report due to be published shortly: COVID-19 Committee. 9th Report, 2021 (Session 5). COVID-19 Committee: Annual Report 2020-21.

protection measures that could be used to support the re-opening of borders and international travel. The Committee was able to raise these issues in evidence sessions with the Scottish Government, including a session with the First Minister on 10 March 2021.<sup>xviii</sup>

27. Due to the fast-moving public health situation, it has not been possible to publish inquiry reports in the traditional way. Instead, the outputs of the Committee's inquiry work have been used to inform its scrutiny of subordinate legislation and have been raised with Scottish Ministers in weekly evidence sessions with the Committee. This legacy report and particularly the Committee's recommendations for session 6 are also informed by the Committee's inquiry work.

## Public engagement and consultation

28. The Committee has played an important role in supporting the Parliament's strategic objective to inform, involve and be accountable to the people of Scotland in its work. The COVID-19 pandemic has had a profound impact on everyone's lives over a sustained period of time, yet there has been little formal public consultation on the measures in place. One respondent to the Committee's 'next steps' inquiry noted in this regard that "This has been the only opportunity for me to voice my views on how this pandemic was handled." The Committee has therefore played a key role in providing means for individuals and stakeholders to provide their views and influence policy scrutiny.
29. The Committee focused its public consultation on major policy decisions facing the Scottish Government, including the government's proposals to extend the emergency legislation beyond September 2020 and March 2021 respectively. The Committee also launched a 'next steps' inquiry to ensure that views from the public and stakeholders informed its scrutiny of the government's revised strategic framework, which was published in February 2021.
30. As part of the next steps inquiry, the Committee commissioned a citizens' panel to consider and provide recommendations on "what priorities should inform the Scottish Government's strategy and approach to restrictions in 2021?". The nineteen participants were broadly representative of Scotland's population and met virtually over four weekends to learn about the topic before making recommendations. The Committee took evidence from five of the participants on the panel's report, which was published on 18 February 2021.<sup>xix</sup>
31. The Committee also published a call for views as part of its 'next steps' inquiry. The call for views received more than 800 responses and highlighted priority issues for the public in the response to COVID-19, such as the easing of lockdown measures and the means by which government decisions are communicated to the public. The Committee used the Citizens' Panel's report and responses to the call for views

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xvii [World Health Organisation. \(2021\) COVAX: Working for global equitable access to COVID-19 vaccines.](#)

xviii [COVID-19 Committee. Official Report, 10 March 2021 .](#)

xix [Scottish Parliament. \(2021\) Scottish Parliament Citizens' Panel on COVID-19 \(SP Paper 938\).](#)



to question the First Minister on the Scottish Government's revised strategy for responding to Covid-19 at its meeting on 10 March 2021.<sup>xx</sup>

- 32. The Committee recommends that the parliament continues to use deliberative democracy initiatives, such as citizens' panels, to inform its work in session 6.**

## Scrutiny support

33. The Committee's scrutiny work has been supported by input from academic experts. In December 2020, the Committee appointed Professor Linda Bauld and Dr Helen Stagg as advisers with expertise in public health and epidemiology.<sup>xxi</sup> The advisers provided the Committee with weekly advice in oral briefings, which was useful in supporting the scrutiny of draft regulations and wider developments in fast-moving policy landscape.
34. The Committee was able to draw upon the Scottish Parliament Research Centre's register of academic experts to seek views on Scotland's overall strategy for tackling the pandemic; any gaps in data and understanding; and finally to identify who is most at risk from COVID-19 and what can be done in the development of future policy-making to protect them. The results of that survey were helpful in informing the Committee's scrutiny of these issues.

- 35. The Committee recommends that a successor committee should appoint advisers to support its scrutiny work.**

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<sup>xx</sup> COVID-19 Committee. *Official Report, 10 March 2021* .

<sup>xxi</sup> Professor Linda Bauld, Bruce and John Usher Professor of Public Health, University of Edinburgh; Dr Helen Stagg, Reader, University of Edinburgh.

# Covid-19 scrutiny in session 6

## Lead scrutiny committee

36. As the parliament rises for the pre-election recess period, it is clear that we need to exercise cautious optimism. The very fact that the parliament has agreed to special measures not to dissolve until the day before the election highlights this very clearly. Although there is much to be optimistic about, including the vaccine roll-out, there are still challenges that lie ahead in this pandemic.
37. At the time of agreeing this report, Scotland remains in a national lockdown with a 'stay-at-home' order in place. A third wave of the virus is underway in Europe, which highlights the extent to which the pandemic can change its course very quickly. We have already witnessed the impact of existing mutations on increased transmission of the disease and the risks posed by further mutations of the virus to the success of the vaccination programme remain to be seen.
38. For these reasons the ongoing handling of the response to the pandemic will need to be carefully managed and it appears likely that a level of health protection measures will be needed for some time to come. Given the current state of the pandemic and the high level of restrictions in place, there may also be a backlog of made affirmative instruments requiring immediate scrutiny when the parliament returns. We also know that restrictions have a considerable impact on society and the economy. If further measures are required, it is essential that we maintain public support for the response to the pandemic and ensure the right support is in place to help people and businesses comply with what is being asked of them.
39. A successor Covid-19 committee could therefore play a key role in continuing the work of the session 5 committee for as long as this is required in the pandemic. A successor committee should seek to complement and add value to the work of other subject committees whilst taking care, as this committee has done, not to duplicate any scrutiny work being done elsewhere. In order to ensure that a successor committee is able to be effective in its role as quickly as possible, it would be helpful for members of a successor committee to be briefed by the Delegated Powers and Law Reform Committee and relevant parliamentary officials at the earliest opportunity.

40. **The Committee considers that a successor COVID-19 committee should be established as a priority in session 6 and that the successor committee should continue to meet in the short-term for as long as is required in the pandemic response.**

## Post-legislative scrutiny

41. The use of emergency legislation to respond to COVID-19 is likely to be an issue that the parliament will need to consider in session 6. This will require some level of post-legislative scrutiny to determine what aspects of the legislative framework

worked well and what could be improved. Government and parliament will also need to consider what legislative framework should be used to respond to COVID-19 beyond September 2021, when the Scottish Coronavirus Acts expire. Due to the short timescales involved, it would be beneficial for the parliament to conduct a post-legislative review of the response to COVID-19 in the past twelve months prior to any new primary legislation being implemented.

42. A key issue to consider in any post-legislative review is the extent to which our existing public health and civil contingencies legislative framework is fit to deal with pandemics. This is an issue that was raised with the Committee by the Law Society of Scotland, which highlighted that–

” The preference of Government to employ either the Coronavirus specific legislation or Public Health Acts rather than Civil Contingencies legislation raises questions about the legislative framework which applies across the UK and its fitness to deal with future public health crises.<sup>xxii</sup>

43. The question of what gaps the emergency legislation filled in existing legislation was also raised by the Scottish Police Federation, which highlighted the extent to which the enforcement of public health measures was done using common law, rather than provisions within the emergency legislation–

” Under the emergency legislation that was brought in to deal with a particular set of circumstances, individuals who are considered not to have complied with the restrictions that the legislation provides for are finding themselves charged under common law. That suggests that judgements are being made that the provisions of the legislation do not go far enough to cover the examples of behaviour that police officers are encountering.<sup>xxiii</sup>

44. Other stakeholders, such as Inclusion Scotland, highlighted concerns about the extent to which filling perceived gaps in the existing legislative framework using emergency legislation had a disproportionate impact on the human rights of people with disabilities. Inclusion Scotland explained that any post-legislative review of the emergency legislation should include people with disabilities and highlighted specific examples of where this could be improved, noting that–

” ...the working group that is looking at how the provisions relating to adults with incapacity work does not include any representatives of people with learning disabilities. That is because the focus of the legislation has been on those who are charged with delivering services, rather than those who receive services.<sup>xxiv</sup>

- 45. The Committee considers that the parliament should conduct post-legislative scrutiny of the emergency legislation that was used to respond to COVID-19. This review should also consider the fitness of the existing public health and civil contingencies legislative framework to respond to public health emergencies in the future. The review should also consider the impact of emergency public health measures on people who are more**

<sup>xxii</sup> [Law Society of Scotland. Written submission.](#)

<sup>xxiii</sup> [COVID-19 Committee, Official Report, 4 March 2021, Cols 6-7.](#)

<sup>xxiv</sup> [COVID-19 Committee, Official Report, 4 March 2021, Col 3.](#)

**likely to experience social and health inequalities. The Committee considers that it would be beneficial for parliament to conduct this review prior to any new primary legislation being implemented to respond to COVID-19.**

## COVID-19 recovery

46. The unprecedented impact of COVID-19 on society and the economy means that the parliament and government must make Scotland's COVID-19 recovery a priority issue in session 6. The Committee is aware that many other subject committees conducted inquiries into the impact of COVID-19 on the sectors within their remits. The Committee has therefore not examined COVID-19 recovery in any detail, but considers that this is an important issue for the new parliament and relevant subject committees to address.

47. **The Committee considers that the new parliament should draw upon findings and recommendations from all relevant subject committees in relation to COVID-19 to inform priority issues for scrutiny in session 6.**

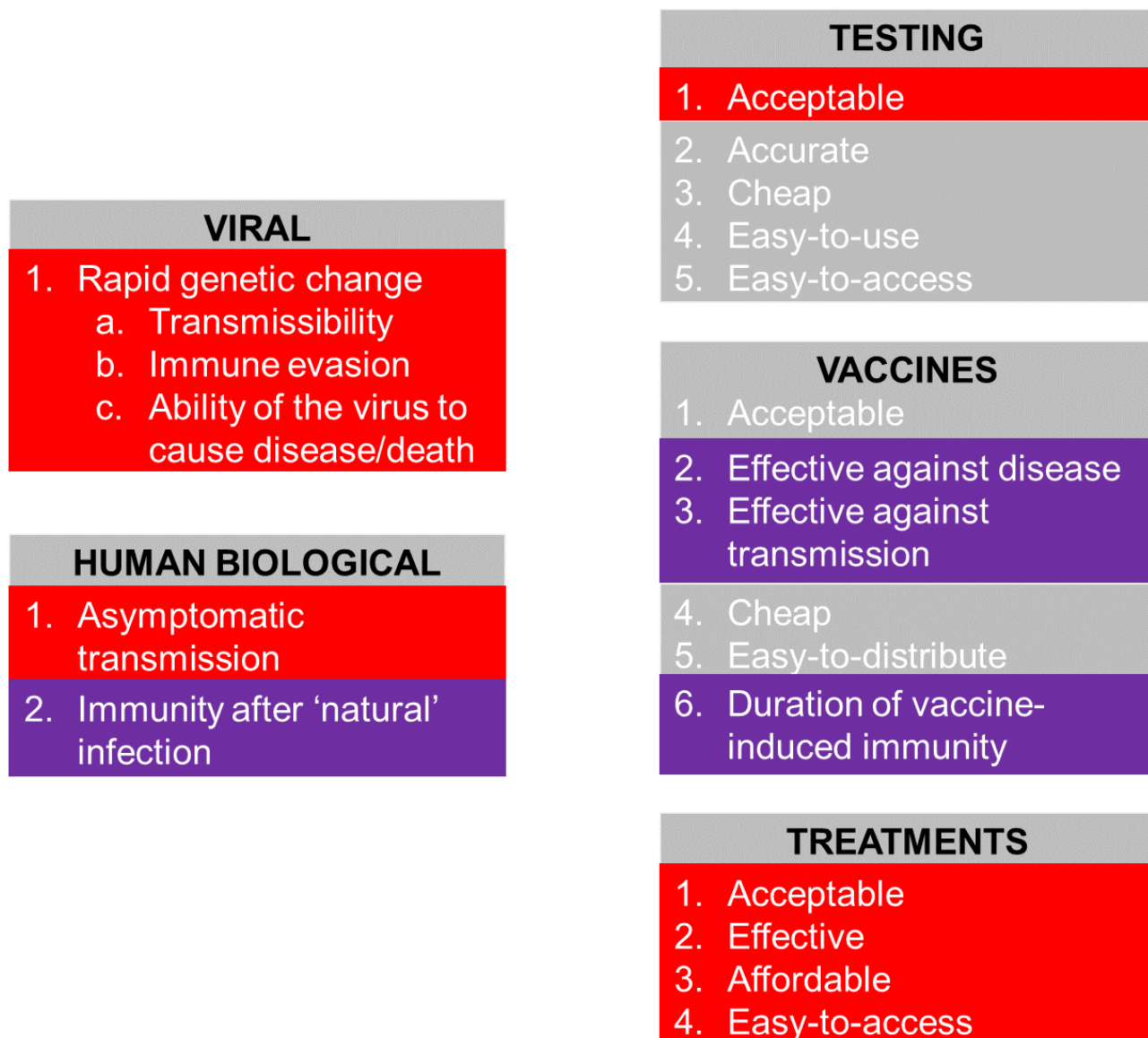
# Addendum

## Addressing COVID-19 in the future: reflections from the Committee's advisers

48. At the start of December 2020 we were appointed by the Scottish Parliament Corporate Body to advise the COVID-19 committee on its scrutiny of Scotland's response to the pandemic. Our role since then has been to provide expert technical advice on epidemiological and wider policy and health protection measures. We have met with committee members in a pre-briefing in thirteen sessions, roughly weekly, before the formal committee meeting.
49. At the time of our appointment, case numbers, test positivity and hospital admissions were at a high level in Scotland and rose throughout December and much of January. Since then due to public health measures and protective behaviours, guidance, regulations and compliance by the public, along with the rapid roll out of the vaccine programme, much progress has been made in reducing the incidence of infection and prevalence of disease in Scotland. But as the current situation in a number of other countries illustrates, including in some countries in Europe, we cannot assume that the pandemic is ending in Scotland.
50. In a recent briefing for the committee we prepared a short paper on next steps and future issues to consider from our perspective. Included in this paper was Figure 1 below that sets out some factors that will be key in the ongoing response to Covid-19 in the coming months and the longer term. These represent factors we can already be confident about/are established (in grey) but also those where there is existing (but not definitive) evidence in purple and those areas that will remain areas of concern or that need further research or development (in red). We also note (not in Figure 1) the currently limited information on the precise nature, duration, and frequency of long Covid.

**Figure 1: Critical factors for the ongoing COVID-19 response**

Red = area of concern. Purple = area of uncertainty.



51. Alongside these issues there will be an ongoing need to maintain, resource and, in some cases improve public health infrastructure and interventions (surveillance, reporting, test and protect, personal protective equipment, quarantine and support for self-isolation, communication with the public) in Scotland. A further area for attention will be preparation for future local outbreaks or even a further national surge in infections which may be more likely this autumn or winter than in the summer. As others have written<sup>xxv</sup>, SARS-CoV-2 may become a recurrent seasonal infection. In that case- alongside monitoring the epidemic and variants, as well as modifying vaccines as appropriate- it will be necessary in Scotland to plan for and manage winter hospital surges, reduce transmission in workplaces and educational settings (by re-establishing mitigating measures), and protect the most vulnerable, including those in care homes and with underlying health conditions. It is important in communicating with the public that it is made clear that these are areas where a longer term strategy is important, and the potential impacts.

<sup>xxv</sup> Murray, C and Piot, P (2021) The potential future of the Covid-19 pandemic: Will SARS-CoV-2 become a recurrent seasonal infection? JAMA, doi:10.1001/ajam.2021.2828

52. The Scottish Government's strategic framework on COVID-19 includes measures to address the range of other harms caused by the pandemic - to education, health and social care services, families, communities and businesses. There are other parliamentary committees responsible for examining these issues but there is inevitable overlap. Our hope is that addressing these wider harms and their long term implications will be an area of growing focus and attention in the months to come.
53. In addition, it will be vital to focus on pandemic preparedness in the future so that critical knowledge and capacity built over the past year is not lost. A Standing Advisory Committee on Pandemics, for example, would go some way to ensuring we are better equipped to face the next global challenge. Such a committee could make key recommendations such as:
- ensuring that data linkage across healthcare and public health systems is rapid, accurate, and publicly acceptable to drive rapid policy responsiveness
  - making the national response more robust to later pandemic events, through addressing particular inequalities that have contributed to some groups in the population being more susceptible
  - maintaining a pool of experts whose time can be leveraged so they can rapidly contribute to pandemic efforts
  - recognising and addressing sources of misinformation, building public confidence in legitimate information sources and people's ability to distinguish between legitimate and more questionable sources, while appreciating the root sources of misinformation in particular communities
54. Any successor to the current COVID-19 committee will have an important role to play in scrutinising and reporting on the Scottish Government's ongoing response to the pandemic. As advisors, we have also benefitted from working together although we come from different disciplinary backgrounds (behavioural science and public health; epidemiology and the laboratory sciences). We are pleased to have contributed to the work of the committee and to this report.

**Professor Linda Bauld and Dr Helen Stagg**

**March 2021**

