

CVDR/S6/21/15/3

COVID-19 Recovery Committee

**15th Meeting, 2021 (Session 6), Thursday
16 December 2021**

Ministerial statements on COVID-19 and Subordinate legislation

Introduction

1. At this meeting, the Deputy First Minister and Cabinet Secretary for COVID Recovery (“the Cabinet Secretary”), will give evidence under agenda item 2.
2. The Committee will take evidence under this agenda item on the policy announcements arising from the latest Ministerial statements on COVID-19 (7 December and 14 December), and on the following subordinate legislation before it considers the corresponding motions, under agenda item 3—
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/440);
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/441);
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/443);
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454);
 - The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455).

Background

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

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

Ministerial statements on COVID-19: Tuesday, 7 and 14 December 2021

4. The Scottish Government delivers a weekly statement to parliament setting out its latest actions for responding to COVID-19 on Tuesday afternoons. The main public health measures being used to respond to COVID-19 are contained within the [principal health protection regulations](#). The Committee takes evidence from Scottish Ministers on any policy announcements arising from the statement and any changes to the regulations every fortnight.
5. The First Minister delivered the most recent statement on 7 December 2021. The written transcript of the statement is available on the [parliament's website](#).
6. The next statement will take place on 14 December 2021. Members will take evidence on any policy announcements arising from these statements under agenda item 2.

SPICe COVID-19 Update

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

Subordinate legislation

Overview

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

Policy Background: (SSI 2021/440)

9. On 26 November 2021, the Scottish Government made [SSI 2021/440](#) and the regulations came into force on the same day. The regulations were subsequently laid on 29 November 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 12 January 2022 to remain in force beyond this date.

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

“The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections and the threat this poses to vaccine efficacy.

This instrument adds Botswana, Eswatini, Lesotho, Namibia, South Africa and Zimbabwe to the “red list countries” contained in schedule 1, effective from 11.59 a.m. on 26 November 2021. These countries have been added in recognition of the existence and prevalence within these countries of variant b.1.1.529 which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through these countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on day 2 and 8 after their arrival and to possess a managed quarantine package.

However, due to the urgency with which the changes have been made, interim measures will be in place from 11.59 a.m. on 26 November 2021 until 04:00 a.m. on 27 November 2021.

These interim measures preclude individual travellers who have departed from or transited through schedule 1 countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland being classed as an eligible vaccinated arrival and so requires them take a pre-departure test, to purchase and take day 2 and day 8 PCR tests and to self-isolate at a specified address upon arrival in Scotland.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.”

11. The policy note to SSI 2021/440 states that “We have previously assessed the impact of adding countries to the red list and these can be found at www.legislation.gov.uk.”

12. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/440 at its meeting on 7 December 2021 and had [no points to raise](#).

Policy Background: (SSI 2021/441)

13. On 27 November 2021, the Scottish Government made [SSI 2021/441](#) and the regulations came into force on 28 November 2021. The regulations were subsequently laid on 29 November 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 12 January 2022 to remain in force beyond this date.

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

“The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections and the threat this poses to vaccine efficacy.

This instrument adds Angola, Malawi, Mozambique and Zambia to the “red list countries” contained in schedule 1. These countries have been added in recognition of the existence and prevalence within these counties of variant b.1.1.529 which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through these countries and territories, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on day 2 and 8 after their arrival and to possess a managed quarantine package.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so.”

15. The policy note to SSI 2021/441 states that “We have previously assessed the impact of adding countries to the red list and these can be found at www.legislation.gov.uk.”

16. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/441 at its meeting on 7 December 2021 and had [no points to raise](#).

Policy Background: (SSI 2021/443)

17. On 29 November 2021, the Scottish Government made [SSI 2021/443](#) and the regulations came into force on 30 November 2022. The regulations were laid on 30 November 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 13 January 2022 to remain in force beyond this date.

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

“The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument requires that all passengers deemed to be eligible vaccinated travellers from non-red list countries arriving into Scotland purchase and take a Polymerase Chain Reaction (“PCR”) COVID-19 test by the end of day two following their arrival as opposed to using a Lateral Flow Device (“LFD”) test. Tests purchased via private providers are acceptable.

The requirement to take a PCR test applies to all people who are currently eligible for testing and upholds any existing exemptions including on the grounds of age and medical reasons.

If the individual receives a positive result from the PCR test, then they must isolate for a full 10 days from the date which they received positive test result. If the individual receives a negative result, then they are not required to continue to self-isolate. If the individual receives an inconclusive result, they are required to take a further PCR test and isolate until the results are known.

Stringent testing measures, including a pre-departure test, day 2 PCR test and day 8 PCR test when arriving in Scotland, are retained for non-vaccinated travellers returning from non-red list countries and those arriving from red list countries.”

19. An [Equality Impact Assessment](#) has been published alongside SSI 2021/443.
20. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/443 at its meeting on 7 December 2021 and had [no points to raise](#).

Policy Background: (SSI 2021/454)

21. On 5 December 2021, the Scottish Government made [SSI 2021/454 and](#) the regulations were laid and came into force on 6 December 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 18 January 2022 to remain in force beyond this date.
22. According to the [policy note](#), the purpose of the instrument is as follows—

“The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument adds Nigeria to the “red list countries” contained in schedule 1 of the International Travel Regulations. Nigeria has been added in recognition of the existence and potential prevalence of variant b.1.1.529 (Omicron) which is deemed by clinicians as posing a very serious threat to public health in the UK due to the specific mutations identified.

This means persons who have departed from or transited through this country and territory, or parts thereof, in the previous 10 days immediate to their arrival into Scotland, will be required to take a pre-departure test, take further PCR tests on days 2 and 8 after their arrival and to possess a managed quarantine package.

The list of countries and territories in schedule 1 of the principal Regulations will be subject to on-going review and further countries and territories will be added or removed, informed by their risk status, when it is appropriate and proportionate to do so. “

23. The policy note to SSI 2021/454 states that “We have previously assessed the impact of adding countries to the red list and these can be found at www.legislation.gov.uk.”

24. The Delegated Powers and Law Reform (DPLR) Committee will consider SSI 2021/454 at its meeting on 14 December 2021 and will publish its report shortly after that meeting. A copy of the DPLR Committee’s report will be provided to Members when it becomes available.

Policy Background: (SSI 2021/455)

25. On 6 December 2021, the Scottish Government made SSI 2021/455 and the regulations were laid and came into force on 7 December 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 19 January 2022 to remain in force beyond this date.

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

“The overarching policy aim of this instrument is to ensure that proportionate restrictions are introduced in recognition of an increased risk of imported infections of COVID-19 resulting from the Omicron variant, and the potential impact this could have on public health within the UK.

This instrument re-introduces pre-departure testing in respect of non-red list arrivals to Scotland. Pre-departure testing was introduced on 15 January 2021 by the Health Protection (Coronavirus) (Pre-departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20). It was then removed in respect of eligible vaccinated arrivals by the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 3) Regulations 2021 (SSI 2021/350). The effect of this was that pre-departure testing applied only to red list arrivals, to non-eligible vaccinated and unvaccinated arrivals.

In light of the recognition of increased risk of imported infections this instrument re-introduces it. It also amends the timing the test sample is taken from a person.

Currently the provision states that the test sample must be taken no more than 3 days before:- for a person travelling to Scotland on a commercial transport service, the service's scheduled time of departure; or, in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Scotland.

This instrument provides for the test sample to be taken within 2 days before departure to Scotland. If the journey is a multi-leg journey it must be taken within 2 days before the start of the first leg. Timing pre-departure testing as close as possible to the time of departure increases the probability of discovering infection that would enter the travel corridor and the UK.

Children aged 12 and over will require to possess notification of a negative test result. This is a change from the previous position. Previously, children (defined as under 18) were exempt from the requirement to possess a negative test notification unless they were travelling with an adult. For those travelling with a responsible adult the adult had to possess valid notification of a negative test result taken by the child. There is no duty on an operator to ensure that a child who is travelling without a responsible adult possesses notification of a negative test result. In light of the current increased risk of imported infections this change places a duty on children aged 12 and over or a responsible adult to possess the notification. However, children will not be penalised for failure to possess the notification as they are exempted from the penalty provisions.

The instrument updates the passenger information provided by operators in line with this amendment. “

27. The policy note to SSI 2021/455 states that “impact assessments will be published on the Legislation.gov website.”

28. The Delegated Powers and Law Reform (DPLR) Committee will consider SSI 2021/455 at its meeting on 14 December 2021 and will publish its report shortly after that meeting. A copy of the DPLR Committee's report will be provided to Members when it becomes available.

Agenda item 3: Subordinate legislation

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

- [S6M-02339](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/440) be approved.
- [S6M-02340](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/441) be approved.

- [S6M-02341](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/443) be approved.
- [S6M-02436](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454) be approved.
- [S6M-02454](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455) be approved.

Next steps

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

Committee Clerks
December 2021