

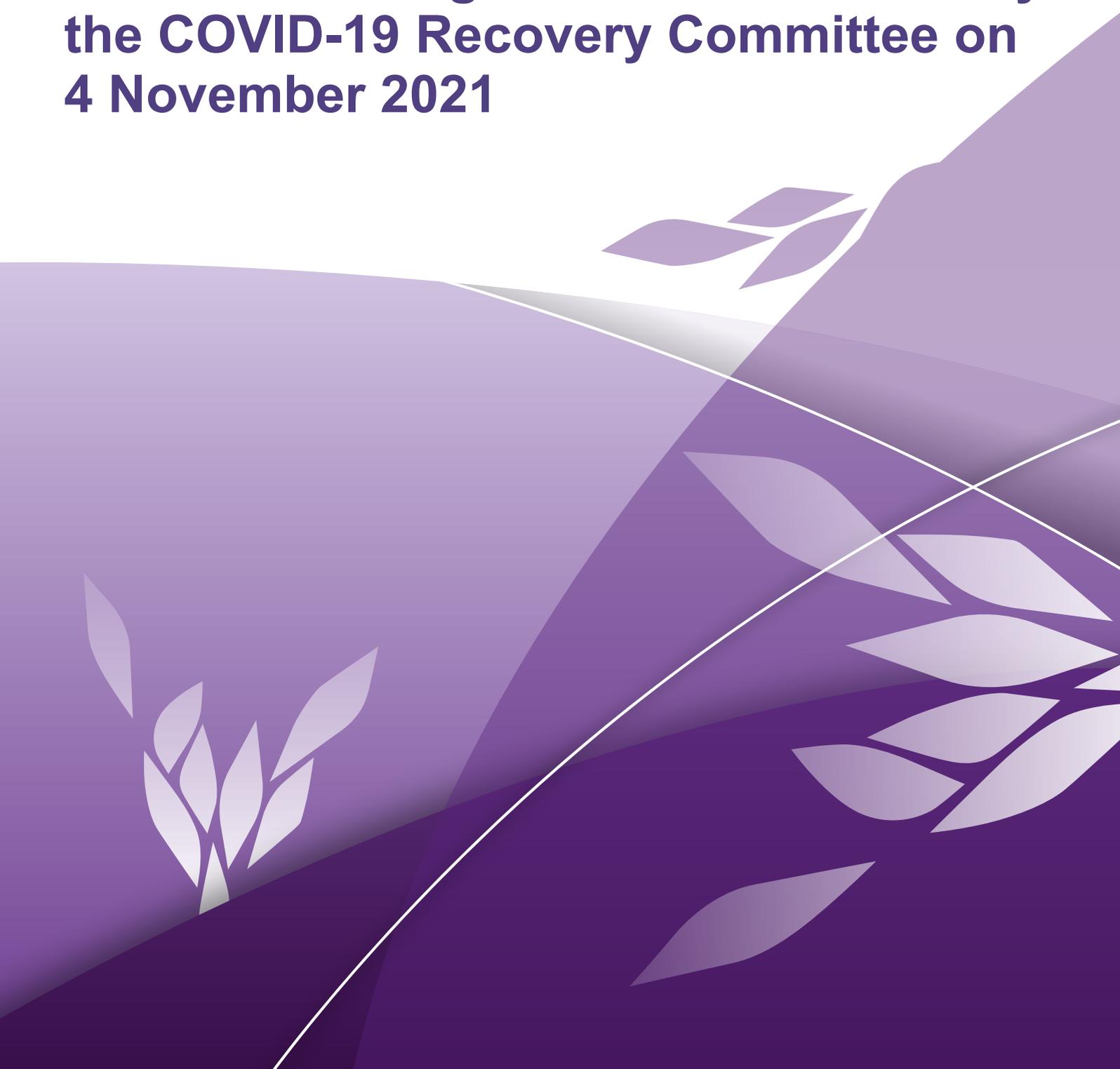


The Scottish Parliament
Pàrlamaid na h-Alba

Published 4 November 2021
SP Paper 37
6th Report, 2021 (Session 6)

COVID-19 Recovery Committee

Subordinate Legislation Considered by the COVID-19 Recovery Committee on 4 November 2021



Published in Scotland by the Scottish Parliamentary Corporate Body.

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COVID-19 Recovery Committee

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.



covid19.committee@parliament.scot

Committee Membership



Convener
Siobhian Brown
Scottish National Party



Deputy Convener
Murdo Fraser
Scottish Conservative
and Unionist Party



Jim Fairlie
Scottish National Party



John Mason
Scottish National Party



Alex Rowley
Scottish Labour



Brian Whittle
Scottish Conservative
and Unionist Party

Introduction

1. This report sets out the COVID-19 Recovery Committee's consideration of Scottish Statutory Instruments (SSIs) at its meeting on 4 November 2021. The minutes of the meeting have been published on the Committee's [webpages](#). The Official Report of the meeting will be published on the Committee's [webpages](#) in due course.

The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329)

2. The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329) were laid on 22 September 2021. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of paragraph 6(2) and (3) of schedule 19 of the Act.
 3. The [policy note](#) states that—
 - ” These Regulations extend the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (“the principal regulations”) to 25 March 2022.
 4. The policy note to the principal regulations (SSI 2020/262) that are extended by SSI 2021/329 can be accessed on the [legislation.gov.uk website](https://www.legislation.gov.uk).
 5. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/329 at its meeting on [28 September 2021](#) and had no points to raise.
 6. At the COVID-19 Recovery Committee's meeting on 4 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-01399](#) in his name—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329) be approved.
7. **The COVID-19 Recovery Committee agreed Motion S6M-01399.**

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349)

8. The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349) were laid on 30 September 2021. The instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of paragraph 6(2) and (3) of schedule 19 of the Act.
9. These regulations give effect to the vaccination certification scheme. Prior to SSI 2021/349 being laid, the Committee took evidence from stakeholders on the Scottish Government's vaccination certification scheme proposals at its meetings on 16, 23 and 30 September 2021. Background information and links to these sessions can be found on the Committee's [webpages](#).
10. The Scottish Government provided a draft copy of the regulations and an accompanying evidence paper on 29 September 2021. The Committee took evidence from the Deputy First Minister and Cabinet Secretary for COVID Recovery on the draft regulations at its meeting on [30 September 2021](#).
11. Following these evidence sessions, the Committee [wrote](#) to the Scottish Government on 30 September 2021 highlighting a number of issues which should be addressed during the scheme's implementation. The Committee received a response from the Scottish Government on [28 October 2021](#).
12. The [policy note](#) to SSI 2021/349 states that—

” In line with our strategic intent to ‘suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future’, the policy objectives of Covid Vaccine Certification are to:

- Reduce the risk of transmission of Coronavirus
- Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

These Regulations implement the COVID-19 vaccine certification scheme (“the scheme”). These Regulations require late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement.

The winter period ahead will pose the significant risk of increased transmission and related pressure on the National Health Service. These Regulations should be considered alongside the latest State of the Epidemic Report. In light of these risks, urgent action is needed across all sectors to ensure compliance with a range of baseline COVID-19 mitigations. Vaccine certification is a further targeted and proportionate measure that is urgently needed to reduce further the risk posed by coronavirus and in doing so alleviate future pressure on the National Health Service.

Vaccine certification is one of a range of actions that the Government is taking to deliver its strategic intent and policy objectives. There are continuing statutory requirements to wear face coverings in certain settings, subject to exemptions, to collect contact details in hospitality and entertainment venues and to have regard to guidance on minimising exposure to coronavirus. Other key measures include the vaccination programme, now being expanded to 12-15 year-olds and to provide “booster” vaccinations, the ongoing promotion of adherence to the statutory measures, including through engagement with relevant stakeholders and the maintenance of international travel restrictions.

The scheme is being implemented in a targeted and proportionate manner related to higher risk activity. A broader scheme (such as expanding the scheme to apply to all hospitality) would deliver a greater public health benefit. However, the Government’s assessment is that, at this time, a broader application of the scheme would be disproportionate. This will be kept under review. The range of actions that can be taken to reduce risk in these higher risk settings is limited. Scottish Government considers certification to be less intrusive and restrictive than other options, such as mandatory physical distancing, mandatory face coverings, absolute capacity limits, closure or restricted opening hours. This will be kept under review.

13. The policy note also states—

” The diverse feedback received has informed the development of the scheme and the [Equality Impact Assessment](#), [Child Rights and Wellbeing Impact Assessment](#) and [Business and Regulatory Impact Assessment](#) that are published alongside these Regulations. A Data and Privacy Impact Assessment (“DPIA”) has been prepared for the implementation of the scheme, including these Regulations. Officials have consulted with the Information Commissioner’s Office who have agreed a single DPIA is sufficient. The DPIA is being finalised and will be published as soon as possible.

14. The DPLR Committee considered SSI 2021/349 at its meeting on 5 October 2021. The DPLR Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the Regulations. The DPLR Committee made comments on the instrument, which are highlighted in its report, published on [8 October 2021](#), at paragraphs 13 to 21. The DPLR Committee’s report concluded that—

” The Committee agreed to highlight its views to the lead committee and to write to the Minister for Parliamentary Business to ask whether the Scottish Government might reflect on how it determines whether the made affirmative procedure is the appropriate procedure to be used in future.

15. At the COVID-19 Recovery Committee’s meeting on 4 November 2021, the Deputy First Minister and Cabinet Secretary for COVID Recovery, John Swinney MSP, moved Motion [S6M-01529](#) in his name—That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349) be approved.

16. The COVID-19 Recovery Committee agreed Motion S6M-01529 (by division: For 4 (Siobhian Brown MSP, Jim Fairlie MSP, John Mason MSP and Alex Rowley MSP), Against 2 (Murdo Fraser MSP and Brian Whittle MSP), Abstentions 0).

