

## **UK COVID-19 INQUIRY**

### **MODULE 2A**

#### **WITNESS STATEMENT OF RT HON ALISON JOHNSTONE MSP**

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##### **A. BACKGROUND**

1. I am responding to the Inquiry in my capacity as Presiding Officer of the Scottish Parliament. I was elected Presiding Officer on 13 May 2021. For the purposes of this statement, I am addressing the period from 13 May 2021 until 30 April 2022 (i.e., the end of the specified period being examined in Module 2A). I will refer to this period as the specified period, unless otherwise stated.
2. The Scotland Act 1998 requires the Parliament to elect a Presiding Officer and two deputies (known as Deputy Presiding Officers) from among the Members of the Scottish Parliament ('MSPs').<sup>1</sup> Elements of the role of the Presiding Officer (particularly in relation to the Parliament's power to legislate) are set out in the Scotland Act 1998, with further duties and detail provided in the Parliament's Standing Orders. My role as Presiding Officer includes chairing the Parliamentary Bureau and the Scottish Parliamentary Corporate Body ('SPCB'), and representing the Parliament in the UK and abroad. My role includes responsibility for chairing plenary sessions of the Scottish Parliament, deciding which members to call to speak from among those whose names are put forward and, where a vote is tied, for exercising a casting vote. It includes determining any question as to the interpretation or application of the Standing Orders.
3. In addition, my role includes various responsibilities in relation to the process and management of parliamentary business. The Scotland Act 1998 requires that I make a

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<sup>1</sup> Scotland Act 1998 (c. 46), s 19.

statement on the legislative competence of bills that are introduced in the Scottish Parliament<sup>2</sup> and determine whether a bill contains subject-matter that would require it to be passed by a two-thirds majority.<sup>3</sup> The Parliament's Standing Orders give me authority to select from among questions submitted by Members for the weekly Topical question times and the weekly First Minister's Question Time, to select from among any Urgent Questions submitted, and to decide whether amendments should be selected for motions for debate. In all of my responsibilities, I am required by the Standing Orders to act impartially and to take account of the interests of all MSPs equally.<sup>4</sup> I may delegate any of my functions to a Deputy Presiding Officer, except my membership of the SPCB.<sup>5</sup>

4. The Parliamentary Bureau comprises MSPs representing each political party or grouping which has five or more MSPs elected to the Parliament. The MSPs who sit on the Parliamentary Bureau are usually the Business Managers for their parties (for opposition parties, business managers fulfil the role also known as chief whip in other legislatures). In the current session of the Parliament, the parties represented on the Parliamentary Bureau are the Scottish National Party, the Scottish Conservative and Unionist Party, the Scottish Labour Party and the Scottish Green Party. The other party represented in the Parliament this session, the Scottish Liberal Democrats, has fewer than five MSPs and is, therefore, not represented on the Parliamentary Bureau. The two Deputy Presiding Officers currently in post (Annabelle Ewing MSP and Liam McArthur MSP) also attend meetings of the Parliamentary Bureau but do not have a vote (unless they are chairing in my absence, in which case they would have a casting vote if required). Relevant parliamentary and Scottish Government officials also attend Bureau meetings as required.
5. The primary role of the Parliamentary Bureau is to propose the business of the Parliament, to be put to the Parliament by motion for debate and agreement. The Parliamentary Bureau meets weekly during sitting periods to draw up a proposed agenda, known as the business programme, for the Parliament. This programme includes proposals for the subject matter of, and time to be allocated to, forthcoming Ministerial statements and debates. The programme of business is proposed to the Parliamentary Bureau by the Minister for Parliamentary Business (the Scottish

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<sup>2</sup> Scotland Act 1998 (c. 46), s 31(2).

<sup>3</sup> Scotland Act 1998 (c. 46), s 31(2A).

<sup>4</sup> Standing Orders, Rule 3.1.3.

<sup>5</sup> Standing Orders, Rule 3.1.5.

Government's representative on the Bureau), following consultation with other business managers in regards to allocation of days that are reserved for opposition business.<sup>6</sup> The Parliament is invited to agree the proposed business programme in a motion by the Parliamentary Bureau. The agreed timetable of future business is then published in the Business Bulletin.

6. The Parliamentary Bureau proposes to the Parliament the establishment, remit, membership and duration of any committee or sub-committee. It also proposes procedural matters, such as deadlines for stages of the consideration of legislation, and any proposal to vary or suspend an aspect of Standing Orders for the purpose of managing consideration of any item of business.
7. The Parliamentary Bureau meets in private, as provided in Standing Orders. Minutes of each meeting are agreed at the subsequent meeting and then published on the Parliament's website. Many of the decisions of the Bureau are also made public before the publication of the minutes by them being expressed in the terms of motions to be agreed by the Parliament. Where a decision of the Parliamentary Bureau is subject to a vote, each party's representative on the Bureau carries one vote for each MSP they represent out of the overall total of 124 MSPs (not including the Presiding Officer and the Scottish Liberal Democrats). In this Session, this means that the Scottish National Party has 64 votes, the Scottish Conservative and Unionist Party has 31, the Scottish Labour Party has 22, and the Scottish Green Party has seven. Influence in the Parliamentary Bureau is, therefore, reflective of the relative strength of the parties in the Parliament. If any matter was subject to a vote in the Bureau, the SNP would be able to carry to vote in the Bureau on its own but would need the support or abstention of at least one other party if a Bureau decision was subject to a vote in the Chamber. In late August 2021, the SNP and Scottish Greens entered a co-operation agreement as a result of which the two parties can have a majority in both the Bureau and the Chamber. As Presiding Officer, I have a casting vote if a vote is tied. Votes are relatively rare in the Bureau. Where a member of the Parliamentary Bureau does not wish a vote to be taken in the Bureau, but wishes to indicate that their party may speak on or oppose any matter in the Chamber, they may indicate that they 'reserve their party's position' on that matter.

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<sup>6</sup> Rule 5.6.1(b) requires that on 16 half sitting days in each parliamentary year, meetings of the Parliament consider business chosen by political parties which are not represented in the Scottish Government. These half days are allocated among opposition parties in proportion to the relative number of MSPs each has.

8. The SPCB is a statutory body provided for by the Scotland Act 1998. The SPCB is required to provide the property, staff, and services needed by the Parliament to carry out its functions. It consists of at least five members.<sup>7</sup> In addition to myself as chair, there are at least four MSPs elected by the Parliament to sit on the SPCB. Members are elected as individuals to represent the interests of all the MSPs and not as party representatives. The SPCB meets approximately fortnightly. Its meetings are held in private. Minutes of each meeting are agreed at the subsequent meeting and then published on the Parliament's website.
9. My role as chair of the Parliamentary Bureau and SPCB means that I am involved in all decision-making about how the Parliament responds to a civil emergency, with operational matters appropriately delegated to the Parliament's staff organisation. Relevant decisions that the Parliamentary Bureau may take in any emergency include whether to recommend to the Parliament that Standing Orders are varied or suspended in regard to consideration of a particular item of business, or amended on a temporary basis,<sup>8</sup> what matters to include in the business programme and when the Parliament will sit and in what format. The SPCB's role in a civil emergency is to take decisions on the Parliament's services and facilities, such as: the resources required to support hybrid or remote proceedings of the Parliament; how to manage the building, including any restriction on access to it by staff and the public; and whether to implement other requirements for building users, such as social distancing, working from home etc.
10. I have powers under Standing Orders to make decisions about meetings of the Parliament in the event of an emergency. These include the power to suspend a meeting of the Parliament;<sup>9</sup> to make amendments to the daily business list;<sup>10</sup> and to convene meetings of the Parliament outside normal sitting times.<sup>11</sup> Standing Orders give me authority to convene a meeting of the Parliament on days and times on which it would not otherwise be scheduled to meet (i.e., to 'recall' the Parliament during, for example, a recess period).

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<sup>7</sup> Scotland Act 1998 (c. 46), s 21.

<sup>8</sup> Standing Orders, Rule 17.1.A(3).

<sup>9</sup> Standing Orders, Rule 7.4.1(a).

<sup>10</sup> Standing Orders, Rules 5.5.4; 7.4.4.

<sup>11</sup> Standing Orders, Rule 2.2.10.

11. In order to give the Parliament certainty about appropriate opportunities for scrutiny being available, I discussed with the Parliamentary Bureau the need for planned meetings of the Parliament during both the summer recess of 2021 and the recess of the 2021/22 Christmas/New Year period. In both cases, I considered that the level of concern about COVID-19, and the need for the Parliament to have a structured opportunity to scrutinise the Scottish Government on its decision-making, necessitated scheduling meetings of the Parliament during the recesses. This was discussed by the Parliamentary Bureau at its meetings on 22 June 2021 (**AJ/001-INQ000329013**; **AJ/002-INQ000329012**; **AJ/003-INQ000329105**; **AJ/004-INQ000329106**) and the Parliamentary Bureau subsequently agreed to propose that the Parliament agree to alter its recess dates to hold meetings in a wholly virtual format on specified days, by deciding that the days of the scheduled meetings were not classed as recess days. As a result, the Parliament met on 13 July (**AJ/005-INQ000329063**), 3 August (**AJ/006-INQ000329064**) and 29 December 2021 (**AJ/007-INQ000329075**) and 5 January 2022 (**AJ/008-INQ000329076**). Consequential procedural and administrative changes were made to ensure that MSPs could lodge appropriate motions etc. for business on those days. On each of those four occasions, the First Minister made a statement and answered questions from MSPs on a COVID-19 update. Parliamentary business normally operates according to an agreed timetable in order to maintain family-friendly working practices. However, in these virtual sessions, we often sat markedly longer than planned in order to maximise scrutiny by making every effort to call all Members who wanted to ask a question.
12. My main liaison with the Scottish Government and representatives of opposition parties during the specified period was in my role as chair of the Parliamentary Bureau, which met weekly when the Parliament was sitting. It also met at other times when required (for example, meeting on each of Thursday 9, Friday 10, Saturday 11 and Monday 13 December 2021 to consider the requirements for Parliamentary scrutiny in response to emerging concern about the Omicron variant). The focus of Bureau discussions is agreeing proposals for the Parliament's business programme for plenary sittings. The matters discussed and agreed in these meetings are recorded in the minutes, which are published on the Scottish Parliament's website. I have addressed the matters discussed in these meetings further in my statement below.
13. In addition to Parliamentary Bureau meetings, I have a weekly meeting with the Minister for Parliamentary Business, and a fortnightly meeting with each of the other

party business managers. These meetings provide an opportunity to discuss individually with the Minister and with business managers matters of relevance to our shared responsibility for managing parliamentary business. These meetings are informal and private, and are not minuted.

## **B. DECISIONS IN RELATION TO NON-PHARMACEUTICAL INTERVENTIONS ("NPIs")**

14. As noted earlier in my statement, my main liaison with the Scottish Government and representatives of opposition parties was in my role as chair of the Parliamentary Bureau. The focus of our discussion was on agreeing proposals for the Parliament's business programme. This included consideration of how the Parliamentary business programme would allow opportunities for scrutiny of decision-making by the Scottish Government. I have included details of these meetings in Section C of my statement below (see Figure 1).
15. I was invited by the First Minister to attend a specially convened briefing on 9 December 2021 with the Chief Medical Officer and the National Clinical Director. Also attending were party leaders and members of the Parliamentary Bureau. The purpose of this meeting was to receive a briefing on concerns arising from the speed of spread of the emerging Omicron variant and the possible decisions that might have to be taken in response. This online meeting was not minuted. There were no decisions relating to parliamentary business taken at this meeting. However, the briefing helped inform subsequent discussions at the Parliamentary Bureau.
16. Through the Office of the Presiding Officer, we had previously issued "Good practice guidance on announcements by the Scottish Government" (**AJ/009-INQ000329052**) to ensure that the Scottish Government's accountability remains first to the Scottish Parliament. The guidance is intended to ensure that matters of importance do not enter the public domain before they are announced to the Parliament, in order to maintain the principle that elected members should have the first opportunity to scrutinise the Scottish Government on significant matters. The guidance sets out five methods by which major announcements can be made to the Parliament: a Ministerial statement to the Parliament; an answer to a Parliamentary question lodged for written answer (known as a 'Government Initiated Question' or GIQ); an answer in the Chamber to a Parliamentary question lodged for oral answer; a Ministerial announcement during a debate; and a Ministerial statement to a committee of the

Parliament, but not a letter or other method which does not form part of the Parliament's Official Report. Which of these methods should be chosen to make an announcement will depend on the significance of the announcement and the extent to which the chosen method will best reflect the principle of accountability to the Parliament and the right of the Parliament to scrutinise policy decisions. The guidance predates the pandemic and addresses ongoing issues about the balance between executive decision-making and parliamentary accountability that are a matter of concern to the Parliament regardless of the pandemic.

17. This guidance does not cover access to medical or scientific evidence or advice, or other evidence or advice that may inform government decision-making or announcements. However, it is common practice for the Scottish Government to publish any relevant supporting materials accompanying a statement when a major announcement is made. This material is published on its website and may sometimes be deposited with the Scottish Parliament's Information Service (SPICe) - the Parliament's research and reference service (roughly equivalent to the House of Commons Library). Examples of when the Scottish Government published materials on its website to accompany a Ministerial statement during the pandemic include the publication of the Scottish Government's Strategic Framework on 23 October 2020. When the Scottish Government has relevant materials to produce in relation to an announcement, the expectation is that the information will not be put into the public domain until after the announcement is shared with MSPs, usually in a plenary session or in the course of a Minister giving evidence to a committee.
18. Examples of when the Scottish Government published medical and scientific evidence to accompany a major announcement during my tenure as Presiding Officer include the evidence papers it published in relation to the COVID vaccination scheme in September and November 2021. I have addressed the timing of the publication of these papers in more detail in Section D of my statement (relating to the use of the made affirmative procedure).
19. The Scottish Government routinely produced other relevant scientific materials during this period, such as the State of the Epidemic reports. These materials were published on the Scottish Government's website and often referenced in the First Minister's Ministerial Statements to the Chamber on COVID-19. As the materials were produced on a routine basis, their publication was not in itself subject to the guidance on major announcements.

20. In some cases, major announcements in relation to decision-making on the response to COVID-19 were made in ways that I considered not in keeping with the good practice guidance (i.e., they were made outside the Parliament or to the media before being made to the Parliament and giving elected representatives the opportunity for scrutiny). For example, I raised this issue with business managers and the Minister for Parliamentary Business at the Parliamentary Bureau's meeting on 8 June 2021 (**AJ/010-INQ000328969, AJ/011-INQ000329051, AJ/012-INQ000329099, AJ/013-INQ000329102**), reiterating my expectation that the guidance should be followed. This arose in relation to a statement made by the First Minister to the media on Friday 4 June, in advance of a statement in the Parliament due for 8 June. In response to points of order raised by the Scottish Conservative and Scottish Labour business managers in the chamber on 8 June, I reiterated this expectation. I also made a statement to the Parliament about this at its meeting on 22 June 2021 (**AJ/014-INQ000329060**). This example related to a significant announcement about the addition of Salford and Manchester to the list of areas where common travel restrictions applied, which was made by GIQ on the afternoon of Thursday 17 June – a day on which the Parliament was sitting. I considered that a GIQ, while an accepted method of making an announcement, did not provide a sufficient opportunity for scrutiny and should have been made by Ministerial statement when the Parliament was sitting. I, therefore, used my power to select a Topical Question on the matter to be answered on Tuesday 22 June, to mitigate the situation as best possible by providing MSPs with the earliest opportunity to question Ministers directly on the announcement (**AJ/014-INQ000329060**).
21. Throughout this period, the Scottish Government made Ministerial Statements on COVID-19 to the Scottish Parliament. Some of these were updates on specific developments and others were provided in line with the protocol on the use of the made affirmative procedure (which is described further later in this statement). The procedure for Ministerial Statements in the Parliament is that where the Scottish Government wishes to make a Ministerial Statement, it informs the Presiding Officer who notifies the Parliamentary Bureau. The Bureau is required to include the statement in the proposed business programme.<sup>12</sup> Standing Orders require that a Ministerial Statement can be debated. The form this takes is that a statement is followed by an opportunity for MSPs to ask questions on matters raised in the statement. The process for managing

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<sup>12</sup> Standing Orders, Rule 13.2.1.



questions on Ministerial Statement is covered by the guidance on announcements by the Scottish Government. This explains that the normal ratio of the length of time given to questions compared to a Minister's statement is 2:1 (e.g., 20 minutes for questions for a 10-minute statement; 30 minutes for questions for a 15-minute statement etc.). This time allocation is not fixed, and for a particularly significant statement I may encourage consideration of any departure from this allocation of time in consultation with the Parliamentary Bureau. This process provides some assurance that the Parliament can scrutinise announcements when they are made by the Scottish Government. As previously noted, in chairing proceedings I sought continually to accommodate the need for scrutiny by ensuring that, wherever possible, all Members who wanted to ask a question could be called.

22. There were three major revisions to the Scottish Government's Strategic Framework in the specified period - on 22 June 2021 (**AJ/014-INQ000329060**),<sup>13</sup> 16 November 2021 (**AJ/015-INQ000329072**),<sup>14</sup> and 22 February 2022 (**AJ/016-INQ000329082**).<sup>15</sup> The publication of these revisions to the Strategic Framework aligned with the Ministerial Statements on COVID-19 on the relevant dates. This meant that the Parliament was informed about these announcements, and had an opportunity to scrutinise the Scottish Government's decision-making, in the manner I would expect.
23. On these dates, the First Minister provided information that was relevant to the Scottish Government's decision-making. On 22 June 2021 (**AJ/014-INQ000329060**), the First Minister announced the publication of two accompanying papers, a revised Strategic Framework for tackling Covid and a review of physical distancing.<sup>16</sup> On 16 November 2021, the First Minister announced the publication of a revised Strategic Framework and noted that the Scottish Government planned to publish an evidence paper on the COVID vaccination certification programme later that week before making any further decisions on this policy (**AJ/015-INQ000329072**).<sup>17</sup> On 22 February 2022, the First Minister announced the publication of the revised Strategic Framework and set out a

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<sup>13</sup> Scottish Government (22 June 2021) Coronavirus (COVID-19): Scotland's Strategic Framework update - June 2021.

<sup>14</sup> Scottish Government (16 November 2021) Coronavirus (COVID-19): Scotland's Strategic Framework update - November 2021.

<sup>15</sup> Scottish Government (22 February 2022) Coronavirus (COVID-19): Scotland's Strategic Framework update - February 2022.

<sup>16</sup> Official Report, 22 June 2022, Col 24.

<sup>17</sup> Official Report, 16 November 2021, Cols 15, 16.

timescale for publishing other relevant material, such as a transition plan for the Scottish Government's test and protect policy (**AJ/016-INQ000329082**).<sup>18</sup>

24. The Scottish Parliament debated motion S6M-03617, in the name of John Swinney MSP, then Cabinet Secretary for COVID Recovery and Deputy First Minister, on the Strategic Framework, on 15 March 2022 (**AJ/017-INQ000329086**). This debate followed an announcement by the First Minister during a Ministerial Statement on COVID-19 earlier that afternoon. In this statement, the First Minister announced that, from Monday 21 March 2022, the remaining domestic legal measures, with the exception of the requirement to wear face coverings on public transport and in certain indoor settings, would be lifted and replaced with appropriate guidance.

### **C. PUBLIC HEALTH AND CORONAVIRUS LEGISLATION AND REGULATIONS**

#### Engagement with the legislative response as Presiding Officer

25. The Parliamentary Bureau considered COVID-19 legislation and regulations as part of its role in recommending a business programme to the Parliament. I have listed the Bureau meetings that I consider are relevant to the Inquiry's terms of reference below, with an indication of the relevant topics that were discussed. I have provided the minutes of these meetings with my statement. The minutes record the decisions taken.
26. There were instances in this period when additional meetings took place outside the usual weekly meeting cycle that may be relevant to the issues under examination in Module 2A (i.e., 10 June 2021, 14 June 2021, 9 December 2021, 10 December 2021, 11 December 2021, 13 December 2021). Decisions taken at these meeting are recorded in the minutes of the next regular meeting or may be evidenced in the subsequent Business Bulletin. I have indicated in Figure 1 below where this is the case.
27. Figure 1 below shows a summary of relevant agenda items considered at select meetings of the Parliamentary Bureau during the specified period. I have included the minutes of each meeting listed below where this is available with my statement. I have also included the meeting documents that accompany the relevant agenda items.

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<sup>18</sup> Official Report, 22 February 2022, Col 19.

Should the Inquiry find it helpful, I can provide any further papers sought for the meetings listed below.

28. Further meetings of the Parliamentary Bureau took place in the specified period. Should the Inquiry find it helpful, I can provide further information on the regular meetings held during the specified period, including the full list of meetings that took place and any accompanying meeting papers sought.

**Figure 1: Key meetings of the Parliamentary Bureau (13 May 2021–30 April 2022)**

Date	25/05/21
Topics discussed	<ul style="list-style-type: none"> <li>• Approval of SSIs: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 17) Regulations 2021 (SSI 2021/136)</li> <li>• Establishment of Committees</li> </ul>
Attendance	Alison Johnstone MSP (chair), Annabelle Ewing MSP, George Adam MSP, Stephen Kerr MSP, Neil Bibby MSP, Patrick Harvie MSP, Gordon MacDonald MSP, Liam McArthur MSP (apologies), Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/018-INQ000329018, AJ/020-INQ000329097, AJ/021-INQ000329101</b> )
Date	01/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Approval of SSIs: The Health Protection (Coronavirus) (International Travel etc.) (Scotland) Amendment Regulations 2021 (SSI 2021/158); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 18) Regulations 2021 (SSI 2021/166); and the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 18) Amendment Regulations 2021 (SSI 2021/168).</li> <li>• Establishment of Committees</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Patrick Harvie MSP;

	Gordon MacDonald MSP; Liam McArthur MSP (apologies); Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/022-INQ000328962, AJ/023-INQ000329098, AJ/024-INQ000329141; AJ/019-INQ000328963,</b> )
Date	08/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Future business programme (3. announcements in relation to Covid-19)</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/179); Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 19) Regulations 2021 (SSI 2021/180); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/181); Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 20) Regulations 2021 (SSI 2021/186); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/191); Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 (SSI 2021/193); Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 22) Regulations 2021 (SSI 2021/202); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/204); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/208); Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 (SSI 2021/209).</li> <li>• Establishment of Committees</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Patrick Harvie MSP; Rona

	Mackay MSP; Liam McArthur MSP (apologies); Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting minutes ( <b>AJ/010-INQ000328969, AJ/011-INQ000329051, AJ/012-INQ000329099, AJ/013-INQ000329102</b> )
Date	10/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Establishment of committees</li> </ul>
Attendance	Not available
Materials	See details for meeting on 15/06/21
Date	14/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Establishment of committees</li> </ul>
Attendance	Not available
Materials	See details for meeting on 15/06/21
Date	15/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Matters arising: establishment of committees</li> <li>• Future business programme: (5. COVID-19 related announcements during summer recess.)</li> <li>• Coronavirus (Extension and Expiry) (Scotland) Bill: emergency bill procedure</li> <li>• Approval of SSIs: the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 24) Regulations 2021 (SSI 2021/211); the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/212); Coronavirus (Scotland) Act 2020 (Early Expiry of Provisions) Regulations 2021 (SSI 2021/214)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Patrick Harvie MSP; Gordon MacDonald MSP; Gillian Mackay MSP (see amendment agreed on 22/06/21); Scottish Parliament officials, Minister for Parliamentary Business' officials.

Materials	Meeting papers and minutes ( <b>AJ/025-INQ000328980, AJ/026-INQ000328981, AJ/027-INQ000329050, AJ/028-INQ000329100, AJ/029-INQ000329103, AJ/030-INQ000329104</b> )
Date	22/06/21
Topics discussed	<ul style="list-style-type: none"> <li>• Future business programme: (7. Scrutiny of COVID-19 related business during summer recess.)</li> <li>• Consideration of SSIs: the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 25) Regulations 2021 (SSI 2021/224); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.26) Regulations 2021 (SSI 2021/227); and the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/230)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Patrick Harvie MSP; Gordon MacDonald MSP; Gillian Mackay MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/002-INQ000329012, AJ/001-INQ000329013, AJ/003-INQ000329105, AJ/004-INQ000329106</b> )
Date	07/09/21
Topics discussed	<ul style="list-style-type: none"> <li>• Approval of SSIs: the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 27) Regulations 2021 (SSI 2021/238); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland); Amendment (No. 28) Regulations 2021 (SSI 2021/242); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 29) Regulations 2021 (SSI 2021/252); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 30) Regulations 2021 (SSI 2021/255); the Health Protection (Coronavirus) (Restrictions and</li> </ul>

	Requirements) (Local Levels) (Scotland) Amendment (No. 31) Regulations 2021 (SSI 2021/262); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 32) Regulations 2021 (SSI 2021/263); the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.13) Regulations 2021 (SSI 2021/237)
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/031-INQ000328967, AJ/032-INQ000328966, AJ/033-INQ000329107</b> )
Date	14/09/21
Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: (4. vaccine passports)</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (SSI 2021/254); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 14) Regulations 2021 (SSI 2021/256); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 4) Regulations 2021 (SSI 2021/261); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 5) Regulations 2021 (SSI 2021/264); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 6) Regulations 2021 (SSI 2021/265); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 15) Regulations 2021 (SSI 2021/275); Health Protection (Coronavirus) (International Travel etc.) (Miscellaneous Amendments) (Scotland) (No. 7) Regulations 2021 (SSI 2021/278); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 16) Regulations 2021 (SSI 2021/290)</li> </ul>

Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/034-INQ000328974, AJ/035-INQ000328975, AJ/036-INQ000329108, AJ/037-INQ000329109</b> )
Date	21/09/21
Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: (6. vaccine passports)</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2021 (SSI 2021/299)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; George Adam MSP; Stephen Kerr MSP; Neil Bibby MSP; Gillian Mackay MSP; Liam McArthur MSP (apologies); Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/038-INQ000329008, AJ/039-INQ000329007, AJ/040-INQ000329110, AJ/041-INQ000329111</b> )
Date	28/09/21
Topics discussed	<ul style="list-style-type: none"> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2021 (SSI 2021/301); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2021 (SSI 2021/307); Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 19) Regulations 2021 (SSI 2021/319)</li> </ul> <p>Request for Committee adviser</p>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; George Adam MSP; Stephen Kerr MSP; Gillian Mackay MSP; Neil Bibby MSP (apologies); Rhoda Grant MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/042-INQ000329024, AJ/043-INQ000329023, AJ/044-INQ000329112</b> )
Date	26/10/21



Topics discussed	<ul style="list-style-type: none"> <li>Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Liam McArthur MSP; Annabelle Ewing MSP; George Adam MSP; Tess White MSP; Gillian Mackay MSP; Neil Bibby MSP; Gordon MacDonald MSP; Stephen Kerr MSP (apologies); Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/045-INQ000329022, AJ/046-INQ000329021, AJ/047-INQ000329113</b> )
Date	02/11/21
Topics discussed	<ul style="list-style-type: none"> <li>Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/343); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/350); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/357); Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Liam McArthur MSP; Annabelle Ewing MSP; George Adam MSP; Stephen Kerr MSP; Gillian Mackay MSP; Neil Bibby MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/048-INQ000328965, AJ/049-INQ000328964, AJ/050-INQ000329114</b> )
Date	09/11/21
	<ul style="list-style-type: none"> <li>Approval of SSIs: Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349)</li> </ul>

Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/051-INQ000328971, AJ/052-INQ000328970, AJ/053-INQ000329115</b> )
Date	16/11/21
Topics discussed	<ul style="list-style-type: none"> <li>Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) (Amendment) (No.5) Regulations 2021 (SSI 2021/359)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/054-INQ000328983, AJ/055-INQ000328982, AJ/056-INQ000329116</b> )
Date	23/11/21
Topics discussed	<ul style="list-style-type: none"> <li>Referral and timetabling of Bills at Stage 1: Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill</li> <li>Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/382); Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2021 (SSI 2021/384); Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 (Draft/2021); Valuation and Rating (Coronavirus) (Scotland) Order 2021 (SSI 2021/draft)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/057-INQ000329015, AJ/058-INQ000329014, AJ/059-INQ000329117, AJ/060-INQ000329118</b> )

Date	30/11/21
Topics discussed	<ul style="list-style-type: none"> <li>• Timetabling of Bills at Stage 1: Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill</li> <li>• Approval of SSIs: the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2021 [draft]</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/061-INQ000329026, AJ/062-INQ000329025, AJ/063-INQ000329119, AJ/064-INQ000329120</b> )
Date	9/12/21
Topics discussed	<ul style="list-style-type: none"> <li>• Omicron variant</li> </ul>
Attendance	Not available
Materials	See details for meeting on 14/12/21
Date	10/12/21
Topics discussed	<ul style="list-style-type: none"> <li>• Omicron variant</li> </ul>
Attendance	Not available
Materials	See details for meeting on 14/12/21
Date	11/12/21
Topics discussed	<ul style="list-style-type: none"> <li>• Omicron variant</li> </ul>
Attendance	Not available
Materials	See details for meeting on 14/12/21
Date	13/12/21

Topics discussed	<ul style="list-style-type: none"> <li>• Omicron variant</li> </ul>
Attendance	Not available
Materials	See details for meeting on 14/12/21
Date	14/12/21
Topics discussed	<ul style="list-style-type: none"> <li>• Matters arising: additional meetings on 9/12/21; 10/12/21; 11/12/21; 13/12/21</li> <li>• Business programme: (Motion S6M-02360: Sarah Boyack: Ending Pharmaceutical Monopolies of Covid-19 Vaccines)</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/425)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Tess White MSP; Stephen Kerr MSP for items 1 and 2 only; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/065-INQ000328977, AJ/066-INQ000328976, AJ/067-INQ000329121, AJ/068-INQ000329122, AJ/069-INQ000329140</b> )
Date	21/12/21
Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: meetings of the Parliament on 29 December 2021 and 5 January 2022 to enable coronavirus updates.</li> <li>• Bill referral: Designation of lead Committee at Stage 1: Non-Domestic Rates (Coronavirus) (Scotland) Bill</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/440); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 9) Regulations 2021 (SSI 2021/441); Health Protection (Coronavirus) (International Travel and Operator</li> </ul>

	Liability) (Scotland) Amendment (No. 10) Regulations 2021 (SSI 2021/443); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455)
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/070-INQ000329123, AJ/071-INQ000329009, AJ/072-<span style="border: 1px dashed black; padding: 0 5px;">INQ000383491</span> AJ/073-INQ000329125</b> )
Date	11/01/22
Topics discussed	<ul style="list-style-type: none"> <li>• Matters arising: meeting of Parliament on 5 January 2022</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/470)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/074-INQ000328973, AJ/075-INQ000328972, AJ/076-INQ000329126, AJ/077-INQ000329139</b> )
Date	25/01/22
Topics discussed	<ul style="list-style-type: none"> <li>• Approval of SSIs: Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/475); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/478); Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021 (SSI 2021/476); Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021 (SSI 2021/497);</li> </ul>

	Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021 (SSI 2021/498); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2022 (SSI 2022/2); Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2021 (SSI 2022/6)
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/078-INQ000329017, AJ/079-INQ000329016, AJ/080-INQ000329127</b> )
Date	01/02/22
Topics discussed	<ul style="list-style-type: none"> <li>Coronavirus (Recovery and Reform) (Scotland) Bill: designation of lead and secondary committees</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/081-INQ000328961, AJ/082-INQ000328960, AJ/083-INQ000329128</b> )
Date	08/02/22
Topics discussed	<ul style="list-style-type: none"> <li>Approval of SSIs: Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/13); Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/25); Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 3) Regulations 2022 (SSI 2022/29)</li> <li>Temporary Standing Orders: committee substitutes</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP;

	Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/084-INQ000329129, AJ/085-INQ000328968, AJ/086-INQ000329130</b> )
Date	22/02/22
Topics discussed	<ul style="list-style-type: none"> <li>• Timetabling of Bill at Stage 1: Coronavirus (Recovery and Reform) (Scotland) Bill</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 (SSI 2022/Draft).</li> </ul>
Attendance	Alison Johnstone MSP (chair); George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Annabelle Ewing MSP (apologies); Liam McArthur (apologies); Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/087-INQ000329010, AJ/088-INQ000329131, AJ/089-INQ000329132</b> )
Date	15/03/22
Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: request for ministerial statement on Covid vaccine certification scheme</li> <li>• Approval of SSIs: Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No.3) Regulations 2022 (SSI 2022/53)</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/090-INQ000328979, AJ/091-INQ000328978, AJ/092-INQ000329133, AJ/093-INQ000329134</b> )
Date	22/03/22

Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: request for ministerial statement on the Covid vaccine certification scheme</li> <li>• Approval of SSIs: Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40); Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 (SSI 2022/Draft); Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2022 (SSI 2022/Draft); the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2022 (SSI 2022/74); Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2022 (SSI 2022/Draft).</li> </ul>
Attendance	Alison Johnstone MSP (chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/094-INQ000329011, AJ/095-INQ000329135, AJ/096-INQ000329136</b> )
Date	19/04/22
Topics discussed	<ul style="list-style-type: none"> <li>• Business programme: debate on Long Covid scheduled for Thursday 21 April</li> </ul>
Attendance	Alison Johnstone MSP (Chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Neil Bibby MSP; Stephen Kerr MSP; Gillian Mackay MSP; Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials.
Materials	Meeting papers and minutes ( <b>AJ/097-INQ000328984, AJ/098-INQ000329137</b> )
Date	26/04/22
Topics discussed	Timetabling of Bill at Stage 1: Coronavirus (Recovery and Reform) (Scotland) Bill
Attendance	Alison Johnstone MSP (Chair); Annabelle Ewing MSP; Liam McArthur MSP; George Adam MSP; Rhoda Grant MSP; Stephen Kerr MSP;



	Gillian Mackay MSP; Neil Bibby MSP (apologies); Gordon MacDonald MSP; Scottish Parliament officials, Minister for Parliamentary Business' officials
Materials	Meeting papers and minutes ( <b>AJ/099-INQ000329020, AJ/100-INQ000329019, AJ/101-</b> <span style="border: 1px dashed black; padding: 0 5px;">INQ000383492</span> <b>)</b>

29. As Presiding Officer, I have responsibility for various aspects of the Parliament's scrutiny of legislation. The level of involvement I had in the Parliament's scrutiny of the legislative response to the pandemic was what I would have expected in relation to my responsibilities as Presiding Officer.
30. When a Bill is introduced, I am required to make a decision in the form of a statement on whether or not, in my view, the provisions it contains would be within the legislative competence of the Scottish Parliament.<sup>19</sup> This statement sits alongside confirmation from the promoter of the Bill that, in their view, the Bill is within legislative competence. My role is to provide an independent opinion on this question of law. It is not a view on the policy approach, which is a matter for the parliamentary scrutiny that follows. After the final amendments have been made to a Bill, I am required to state whether or not, in my view, a "supermajority" is required for it to pass its final stage.<sup>20</sup> A supermajority only applies where the Bill relates to a protected subject matter.<sup>21</sup> There were four bills introduced in the specified period that related to the pandemic, namely the Coronavirus (Extension and Expiry) (Scotland) Bill, the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill, the Coronavirus (Recovery and Reform) (Scotland) Bill and the Non-Domestic Rates (Coronavirus) (Scotland) Bill. In each case, I made a statement on legislative competence and protected subject matter.
31. My responsibilities as Presiding Officer also include the power to select, from among amendments lodged, those that may be debated during Stage 3 scrutiny of a bill.<sup>22</sup> In making this decision, I apply criteria that are set out in the Guidance on Public Bills.<sup>23</sup>

<sup>19</sup> Scotland Act 1998 (c. 46), s 31(2). The boundaries of legislative competence are set out in s29.

<sup>20</sup> Scotland Act 1998, s31(2A).

<sup>21</sup> See Scotland Act 1998, s31(5).

<sup>22</sup> Standing Orders, Rule 9.8.4.

<sup>23</sup> Guidance on Public Bills: Session 6 Edition.

32. As chair of the Parliamentary Bureau, I chair discussions about matters relevant to the Parliament's business programme, including decisions about how much time to allocate to the different stages of scrutiny of bills and when motions to agree primary and secondary legislation will be taken in the Chamber. The Parliamentary Bureau also makes recommendations to the Parliament on the timetabling of bills and relevant procedural deadlines. These discussions may also include consideration of the approach to scrutiny of a bill that the Scottish Government wishes to propose be subject to the emergency bill procedure, as was the case for the Coronavirus (Extension and Expiry) (Scotland) Bill.

#### Scrutiny of the legislation/regulations

##### *The post-election period (May 2021-June 2021)*

33. Following a Scottish election, certain matters must be decided before the usual programme of chamber and committee business can begin. All Members of the Parliament must first take an oath or affirmation and the Parliament must then elect parliamentarians to key positions, including the Presiding Officer, Deputy Presiding Officers, First Minister and the SPCB. The First Minister will then seek the Parliament's approval to nominations for appointment as Scottish Ministers and junior Scottish Ministers and Scottish Law Officers. Once these elections and appointments are complete, the Parliament considers a recommendation from the Parliamentary Bureau on the establishment of its mandatory and subject committees. Standing Orders requires the Parliamentary Bureau to propose the establishment of the Standards, Procedures and Public Appointments Committee and the Finance Committee within 21 sitting days of a Scottish election; and the other mandatory committees within 42 sitting days of a Scottish election.<sup>24</sup> A "sitting day" is defined as a day when the office of the Clerk is open, except during recess or when the Parliament is dissolved (in effect, weekdays during the Parliament's term time, excluding public holidays).<sup>25</sup>
34. The Scottish General Election (Coronavirus) Act 2021 made special provision for the holding of the 2021 Scottish general election in light of the pandemic. As a result, instead of dissolution taking place six weeks before the election, it took place on 5 May 2021 (per section 6 of the Act) before the election was held on 6 May 2021. The

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<sup>24</sup> Standing Orders, Rule 6.1.6. The mandatory committees include Standards, Procedures and Public Appointments; Finance; Public Audit; Europe and External Relations; Equalities and Human Rights; Public Petitions; Delegated Powers and Law Reform.

<sup>25</sup> Standing Orders, Rule 2.1.3

Parliament entered a period of recess on 25 March 2021 until 4 May 2021. This presented an unusual situation in which some Scottish Statutory Instruments ("SSIs") which were made and laid during the pre-election recess period under powers to deal with aspects of the pandemic were in force but had not yet been approved by the Parliament in the immediate period after the general election. These were SSIs subject to what is known as the "made affirmative procedure", which meant they could be made into law without prior parliamentary scrutiny or approval, but would expire after 28 days of being made unless they were approved by the Parliament.<sup>26</sup> The relevant period for calculating the 28-day deadline for these SSIs included any day other than a day when the Parliament was dissolved or was in recess for more than four days.<sup>27</sup> This meant that, as soon as the Parliament was in session after the election, it had 28 days to consider SSIs that had already been made before they expired. This situation had the potential to exacerbate concerns that some MSPs had expressed in the previous session about significant regulations relating to the pandemic response coming into force before the Parliament had the opportunity to scrutinise them.

35. The specific requirements for the scrutiny of secondary legislation differ depending on the procedure that applies to each SSI. However, broadly speaking, the usual process for scrutinising secondary legislation subject to the "made affirmative procedure" involves scrutiny and a report by the Delegated Powers and Law Reform Committee ("DPLRC"). This scrutiny includes reviewing subordinate legislation in respect of the reporting grounds set out in Standing Orders Rule 10.3.1(a)-(j), or on any other ground which does not impinge on its substance or on the policy behind the instrument. The lead policy committee will then scrutinise the legislation and report to the Parliament setting out its recommendations and taking into account any recommendations made by any other committee.<sup>28</sup> If the lead committee recommends that the instrument or draft instrument be approved, the Parliamentary Bureau proposes by motion that the Parliament agrees to approve the instrument or draft instrument in a plenary session.<sup>29</sup>
36. The difficulty presented by the pandemic was that regulations required to be made during the pre-election recess period and thereafter scrutinised during the first 28 days of the Parliament being back in session. However, the Parliament's committee

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<sup>26</sup> Coronavirus Act 2020 (c. 7), sch 19, para 6(3)(b).

<sup>27</sup> Coronavirus Act 2020 (c. 7), sch 19, para 6(5).

<sup>28</sup> Standing Orders, Rule 10.6.4.

<sup>29</sup> Standing Orders, Rule 10.3; 10.6.

apparatus was not yet in place to scrutinise some of the COVID-19 SSIs before they were due to expire. This meant that the Parliament did not have time to consider technical aspects of the drafting of the instruments, or to take evidence from Scottish Ministers or stakeholders, prior to deciding whether the instruments should remain in force beyond the initial 28-day period.

37. In the circumstances, the Parliamentary Bureau agreed in May and June 2021 to recommend to the Parliament that it consider relevant SSIs without prior committee scrutiny (see Figure 1 above).<sup>30</sup> The Parliament agreed to this arrangement, which involved suspending the requirement in Standing Orders Rule 10.3.2 for DPLRC scrutiny of the regulations before they were considered by the Parliament.<sup>31</sup> In total, 21 COVID SSIs were considered by the Scottish Parliament under this arrangement.<sup>32</sup> By contrast, 10 other non-COVID SSIs were considered under this arrangement in the same period between the Scottish election and start of the summer recess in 2021 (see Figure 1 above).<sup>33</sup>
38. The Scottish Parliament agreed to the establishment of its mandatory and subject committees by agreeing to motion S6M-00393 on 15 June 2021 (**AJ/102-INQ000329029**). The committees established included the COVID Recovery Committee, which became the lead policy committee for Coronavirus legislation in Session 6, unless otherwise agreed by the Parliament.

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<sup>30</sup> See Parliamentary Bureau meeting minutes from 25 May 2021; 1 June 2021; 8 June 2021; 15 June 2021; and 22 June 2021.

<sup>31</sup> Standing Orders, Rule 10.3.3.

<sup>32</sup> COVID SSIs not subject to the made affirmative procedure counted in this list include the Coronavirus (Scotland) Act 2020 (Early Expiry of Provisions) Regulations 2021 (SSI 2021/214); and the Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Amendment Order 2021 (SSI 2021/222).

<sup>33</sup> See Parliamentary Bureau meeting minutes from 15 June 2021 in respect of the Meat Preparations (Import Conditions) (Scotland) Amendment Regulations 2021 (SSI 2021/161); Milk and Healthy Snack Scheme (Scotland) Amendment Regulations 2021 (SSI 206/2021); UEFA European Championship (Scotland) Act 2020 (Championship Period and Transitory Provision etc.) Regulations 2021 (SSI 2021/207); Education (Scotland) Act 1980 (Modification) Regulations 2021 (SSI 2021/210); Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2021 (SSI 2021/220); Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2021 (SSI 2021/221); Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2021 (SSI 2021/225); Scottish Parliament Elections (Returning Officer Fees and Charges) Regulations 2021 (SSI 2021/155); Specified Diseases (Notification and Slaughter) Amendment (Scotland) Order 2021 (SSI 2021/160); and the Elections (Returning Officer Fees and Charges) Amendment Regulations 2021 (SSI 2021/165).

39. Despite the suspension of Standing Orders, the DPLRC convener wrote to the Minister for Parliamentary Business on 10 September 2021 (**AJ/103-INQ000328987**) following the summer recess confirming that the instruments for which the requirement to report had been suspended had been scrutinised in respect of the technical grounds within the Committee's remit. By letter in response dated 24 September 2021 (**AJ/104-INQ000329145**), the Minister for Parliamentary Business responded on issues that had been identified in four such instruments. This included errors previously raised with the Scottish Government in relation to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 (SSI 2021/193), with confirmation that a correcting instrument was made immediately rectifying the errors identified in that instrument.
40. In advance of committees being established, scrutiny of the Scottish Government's decision-making on the pandemic was quickly a feature of chamber business after the 2021 election. A debate on COVID-19 was held on 27 May (**AJ/105-INQ000329058**), and regular statements to the Parliament by the First Minister commenced on 1 June. I also used my power to select urgent and topical questions to ensure that appropriate scrutiny opportunities were provided before the full normal programme of parliamentary business was established. For example, an Urgent Question selected for answer on 14 May (**AJ/106-INQ000329056**) and a Topical Question selected for answer on 26 May (**AJ/107-INQ000329057**). (14 May was the first meeting of the Parliament this Session after the taking of oaths and affirmations and the election of the Presiding Officer and, therefore, was the very earliest point at which a question could have been asked in this Session.)

*The protocol for scrutiny of instruments subject to the made affirmative procedure*

41. Once the committees had been established, the Scottish Parliament and Scottish Government continued to observe the protocol for enhanced scrutiny of Coronavirus regulations that were subject to the made affirmative procedure ("the protocol") (**AJ/108-INQ000329096**). The protocol had been agreed between the Scottish Parliament and Scottish Government in Session 5 and continued to be applied in Session 6.
42. The protocol was a bespoke arrangement that had been agreed by our predecessors in Session 5. It recognised that the Scottish Government was making decisions in a fast-moving cycle of evidence-gathering, analysis and scientific advice, before implementing

decisions as quickly as possible by means of regulations under powers that allowed the made affirmative procedure to be used. This would mean that regulations were in force immediately after they were made and, therefore, before parliamentary scrutiny. The protocol agreed a flow of information to the Parliament by means of Ministerial Statements on the intention to make regulations, and disclosure of supporting information, in the two to three days between Cabinet decisions on measures and them being implemented by made affirmative regulations. This protocol balanced recognition of the Scottish Government's wish to act quickly, with the need for the Parliament to have the opportunity to be able to debate and scrutinise proposed Coronavirus regulations before they were in force.

43. Under the protocol, the Scottish Government committed to make a statement (normally on a Tuesday afternoon, following any decisions made in Cabinet that morning) announcing its intention to use the made affirmative procedure to implement regulations prior to doing so. This allowed questions to be asked of Scottish Ministers in the Chamber. It also provided an opportunity for the lead policy committee to scrutinise a draft version of the instrument in an evidence session with Scottish Ministers before the instrument was made into law. Once the instrument had been made, the usual process for scrutinising an instrument under the made affirmative procedure applied. This involved scrutiny by the DPLRC and the lead policy committee, before the Parliament was formally invited to approve the instrument within the 28-day deadline.
44. The continued use of these powers longer into the pandemic, and therefore the need for the protocol, became the focus of scrutiny by some of the Parliament's committees in Session 6, particularly the DPLRC. As the focus of this scrutiny was the use of the made affirmative procedure, rather than the functioning of the protocol, I shall address this in my statement under the section on 'the use of the made affirmative procedure' below.

*Scrutiny of instruments subject to the draft affirmative procedure in an expedited timescale*

45. The Coronavirus Act 2020 gave the Scottish Ministers a choice of procedure for health protection regulations made under paragraph 1 of schedule 19 to the Act.<sup>34</sup> This included the draft affirmative procedure, but Scottish Ministers could use the made

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<sup>34</sup> Coronavirus Act 2020 (c. 7), sch 19, para 6(1),(2). For other examples of this choice of procedure, see the powers to make public health protection regulations and international travel regulations in sections 86A(1) and 94(1) respectively of the Public Health etc. (Scotland) Act 2008 (per section 122(6) of that Act).

affirmative procedure if they considered that the regulations had to be made “urgently”. The draft affirmative procedure allows the DPLRC up to 22 days from the day a draft instrument is laid to consider and report on the instrument, and the lead committee 40 days from that same date to consider and report on an instrument.<sup>35</sup> This is a longer timeframe than the 28-day period for scrutiny that the made affirmative procedure afforded.

46. There were examples towards the end of 2021 and early in 2022 when the Scottish Government chose to use the draft affirmative procedure, rather than the made affirmative procedure, to introduce regulations using its powers in the Coronavirus Act 2020. The Scottish Government sought to negotiate with committees to consider Coronavirus regulations subject to the draft affirmative procedure under an expedited timescale. Where these arrangements were agreed, they were subject to discussion at the relevant Parliamentary Bureau meeting. This practice was not unprecedented prior to the pandemic (it has been adopted in other instances where the Scottish Government considered there to be an urgent situation and primary legislation did not enable Ministers to use the made affirmative procedure),<sup>36</sup> although the timescales that were negotiated in some cases were exceptionally short.
47. By way of example, in November 2021 an arrangement to follow draft affirmative procedure on an expedited timetable was negotiated between the Scottish Government, the COVID-19 Recovery Committee and the DPLRC and noted in the minutes of the Bureau meeting of 30 November 2021 (**AJ/061-INQ000329026**). On this occasion, the Scottish Government used the draft affirmative procedure in respect of the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2021 (2021/453). This instrument updated the vaccination certification scheme to allow a negative lateral flow test to be provided as an alternative to proof of vaccination from 6 December 2021.
48. It was agreed that the committees would complete their scrutiny within four days, rather than the usual 40 days. The DPLRC considered the instrument at its meeting on 30 November 2021 and agreed to write to the Covid-19 Recovery Committee to highlight points raised during its discussion. The Convener of the DPLRC wrote to the COVID-19

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<sup>35</sup> Standing Orders, Rules 10.3.2, 10.6.4.

<sup>36</sup> Examples include Social Security SSIs which were made in response to emerging situations in Ukraine and Afghanistan.

Recovery Committee on 1 December 2021 to explain that, although this scrutiny arrangement had been agreed for this instrument in preference to using the made affirmative procedure, it was “far from ideal” and it should not become a precedent for the consideration of regulations in the future (**AJ/109-INQ000328997**). The COVID-19 Recovery Committee took evidence on the instrument and agreed a motion to recommend to the Parliament that the instrument be approved at its meeting on 2 December 2021 (**AJ/110-INQ000329074**). The Parliament subsequently agreed motion S6M-02393 to approve the instrument later that day (**AJ/111-INQ000329035**).

49. A similar arrangement was again negotiated between the Scottish Government, the COVID-19 Recovery Committee and the DPLRC in February 2022. At this time, the Parliament was being invited to consider the extension of the emergency legislation to September 2022. The Coronavirus (Extension and Expiry) (Scotland) Act 2021 enabled this extension to be achieved by secondary legislation. The Scottish Government laid a package of three SSIs to extend emergency legislation to September 2022 accordingly. One of these instruments was subject to the made affirmative procedure, which I will address in the section on that procedure in my statement below.
50. The two extension regulations that were laid using the draft affirmative procedure were the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 (SSI 2022/77) and the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2022 (SSI 2022/109). Using the draft affirmative procedure would normally mean that there was the full 40-day scrutiny period, but the Scottish Government negotiated a shorter timescale for scrutinising these instruments due to what it explained as the high degree of uncertainty that existed prior to Christmas 2021 as a result of the emergence of the Omicron variant (**AJ/112-INQ000329002**).
51. The purpose of these SSIs was to extend the expiry of the principal regulations to which they related. SSI 2022/77 extended the date on which the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the principal health protection regulations) expired from 28 February to 24 September 2022. SSI 2022/109 amended the date on which the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations expired from 25 March 2022 to 24 September 2022. For this reason, the Scottish Government sought to ensure that the



extension regulations were in force when the existing regulations would otherwise expire.

52. It may be helpful to explain for context that the Parliament was invited to extend these regulations prior to concluding its consideration of the Coronavirus (Recovery and Reform) Bill. The Coronavirus (Extension and Expiry) (Scotland) Act 2021 enabled the extension of emergency legislation until September 2022. Beyond that point, further primary legislation would be required to extend the emergency legislation it contained. The Coronavirus (Recovery and Reform) Bill was introduced on 25 January 2022 and set out the powers that the Scottish Government proposed should be made permanent and extended beyond September 2022. It incorporated aspects of the temporary emergency powers contained in the UK Coronavirus Act 2020, such as the health protection powers.
53. At the DPLRC's meeting on 22 February 2022, some concerns were raised in relation to the expedited timetable for scrutiny of these instruments during the Committee's consideration.<sup>37</sup> The outcome was that the DPLRC voted on SSI 2022/77 and agreed, by division (For 3, Against 2, Abstentions 0), that no points arose on the instrument and that it was content not to draw the regulations to the attention of the Parliament (**AJ/113-INQ000329083**). It agreed to defer its consideration of SSI 2022/109 to a future meeting. The COVID-19 Recovery took evidence from the Scottish Government and voted on a motion to recommend to the Parliament that SSI 2022/77 be approved at its meeting on 24 February 2022 (**AJ/114-INQ000329085**). After debate, the motion was agreed to by division. The Parliament considered motion S6M-03341 to approve SSI 2022/77 later that afternoon. The motion was then agreed to, by division (For 84, Against 31, Abstentions 0) (**AJ/115-INQ000329084**).
54. At its meeting on 1 March 2022, the DPLRC took evidence from the Scottish Government on SSI 2022/109 before agreeing, by division (For 3, Against 2, Abstentions 0), that no points arose on SSI 2022/109 (**AJ/116-INQ000329049**). At its meeting on 17 March 2022, the COVID-19 Recovery Committee took evidence on SSI 2022/109 from the Scottish Government before agreeing, by division (For 4, Against 2, Abstentions 0), a motion to recommend to the Parliament that the instrument be approved (**AJ/117-INQ000329044**). The Parliament subsequently agreed, by division

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<sup>37</sup> Delegated Powers and Law Reform Committee, Official Report, 22 February 2022, Cols 4-6.

(For 64, Against 52, Abstentions 0), motion S6M-03738 to approve the instrument on 22 March 2022 (**AJ/118-INQ000329039**).

55. The DPLRC recommended in its report on its "Inquiry into the use the made affirmative procedure during the coronavirus pandemic" that it was content, as an alternative to the use of the made affirmative procedure, to consider on a case-by-case basis going forward the use of the draft affirmative procedure under expedited timescales (**AJ/119-INQ000329047**). The DPLRC's report also noted that it may be helpful to agree the process that should be followed for expediting the timescales under the draft affirmative procedure to aid decision making in such cases. Work is currently being undertaken on a set of principles setting out the expectations on both the Parliament and the Scottish Government should cases such as this arise in the future.

#### *Emergency bill procedure*

56. Some Scottish Government bills in response to the pandemic were designated by the Parliament as emergency bills (see Standing Orders Rule 9.21). The Scotland Act 1998 allows for the Parliament's Standing Orders to make provision to expedite consideration of bills in certain circumstances. The Standing Orders set out an emergency bill procedure. They do not define an 'emergency'. It is a matter for the Parliament to decide, on a motion in the name of the Scottish Government Minister who is the member in charge of the bill, whether to agree to consider a government bill under the emergency procedure.
57. The emergency bill procedure, if agreed by the Parliament, provides for Stages 1 to 3 of the legislative process to be taken on the same day, unless the Parliament decides otherwise on a motion of the Parliamentary Bureau.<sup>38</sup> This differs from the standard procedure for the consideration of public bills in Standing Orders, which provides for minimum periods that must elapse between the day on which Stage 1 is completed and the day on which Stage 2 starts (12 sitting days) and between the day on which Stage 2 is completed and the day on which Stage 3 starts (10 sitting days).
58. At its meeting on 15 June 2021, the Parliamentary Bureau was informed that the Scottish Government expected to introduce the Coronavirus (Extension and Expiry) (Scotland) Bill on Friday 18 June 2021, and that the Scottish Government would

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<sup>38</sup> Standing Orders, Rule 9.2.2.

propose to the Parliament that it be designated as an emergency bill. The Parliamentary Bureau discussed this matter before agreeing to propose to the Parliament that, if the Parliament decided to treat the Coronavirus (Extension and Expiry) (Scotland) Bill as an emergency bill, Stages 1, 2 and 3 would be taken on Tuesday 22 June, Wednesday 23 June and Thursday 24 June 2021 respectively (**AJ/090-INQ000328979**), allowing more time for MSPs to consider the bill than would be permitted by the default emergency bill procedure.

59. The Minister for Parliamentary Business moved the motion in the Chamber on 22 June 2021. Stephen Kerr MSP (then Scottish Conservative and Unionist Party business manager) and Alex-Cole Hamilton MSP (leader of the Scottish Liberal Democrats) spoke against the motion in the short debate that followed (**AJ/014-INQ000329060**). After the debate, the Parliament agreed, by division (For 85, Against 31, Abstained 0, Did Not Vote 13), to the Bureau's proposal as set out in motion S6M-00397.
60. Nine bills were designated as emergency bills prior to the pandemic, sometimes with the default timetable and sometimes with an alternative timetable proposed by the Parliamentary Bureau to allow more time for scrutiny. The Parliament agreed to designate the Cost of Living (Tenant Protection) (Scotland) Bill as an emergency bill during the specified period in Session 6. The decision to use this procedure is debated by the Parliament in each case. It has a significant impact on the Parliament's ability to take evidence from stakeholders on a bill's provisions. Standing Orders provide for three stages of the scrutiny of a government bill. In the standard public bill procedure, Stage 1 would ordinarily be undertaken by a lead policy committee, with consideration of specific aspects also by the DPLRC and Finance Committees. The lead committee usually takes oral and written evidence from stakeholders before reporting on the bill's general principles. The lead committee's report then informs a debate of the Parliament and a vote on whether to agree the bill's general principles, which concludes Stage 1.
61. In the case of an emergency bill, a bill is referred immediately to the Parliament to consider its general principles at Stage 1.<sup>39</sup> The requirement for a lead committee to consider, and report to the Parliament on, the bill's general principles, the Financial Memorandum or the Policy Memorandum, does not apply. Neither does the requirement for the DPLRC to consider any relevant provisions in the bill. In practice, there is often

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<sup>39</sup> Standing Orders, Rule 9.21.5.

little or no time for committees to conduct any scrutiny of an emergency bill at Stage 1 and, therefore, for stakeholders to provide formal written or oral evidence on the record.

62. Unlike standard public bill procedure, emergency bills are considered by a “Committee of the Whole Parliament” at Stage 2.<sup>40</sup> This means the committee within whose remit the subject matter of a bill falls does not consider proposed amendments at Stage 2 (when stakeholders may on occasion be invited to give evidence to the lead committee scrutinising a bill under the standard public bill procedure). A benefit of committee scrutiny at Stages 1 and 2 is the subject expertise that those committee members may bring to scrutiny, particularly where a bill makes provisions on a policy area that the committee has prior experience of scrutinising or involves delegated powers, for example. This level of focused expertise, knowledge or awareness of a policy or technical area is particularly useful at Stage 2, which is the first amendment stage of a bill. Committee expertise can often help to narrow the focus of amendments to a bill before the final amendment stage (i.e., Stage 3).
63. Another impact of the emergency bill procedure is that it significantly reduces the amount of time that Members of the Parliament have to develop and consider amendments. In the case of standard public bill procedure, the timeframe from a bill’s introduction to the end of Stage 3 could be many months or longer. This timeframe can be reduced to as little as a single day in the case of an emergency bill.<sup>41</sup>
64. The Parliament has other means available to it when it deems that standard timescales for scrutinising a bill cannot be observed. This includes agreeing to suspend one or more of the requirements in Standing Orders for the minimum timescales between the stages of public bill scrutiny, or other relevant timescales specified in Standing Orders. The effect of such decisions is to expedite the process of considering a bill, while still retaining the role of a lead committee at Stages 1 and 2 of the process. Examples of when this has been agreed in the specified period in Session 6 include for scrutiny of the Carer’s Allowance Supplement (Scotland) Bill; the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill; and the Fireworks and Pyrotechnic Articles (Scotland) Bill.

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<sup>40</sup> Standing Orders, Rule 9.21.6.

<sup>41</sup> Standing Orders, Rule 9.21.2.

*Concerns and objections about the level of scrutiny*

65. Members of the Scottish Parliament may raise concerns and objections about the level of scrutiny of Scottish Government policy and legislation through various mechanisms, including writing directly to the Scottish Ministers, via their party business managers who are members of the Parliamentary Bureau, during parliamentary proceedings, or by contacting me directly. For this reason, I may not be aware of all concerns that have been raised in relation to the level of scrutiny of the Scottish Government's proposed COVID-19 legislation or regulations in the specified period during which I have been Presiding Officer.
66. Examples of such concerns being raised include in the meeting of the Parliamentary Bureau on 8 June 2021 (**AJ/010-INQ000328969**). At this meeting, Stephen Kerr MSP (then Scottish Conservative and Unionist Party business manager) and Neil Bibby MSP (then Scottish Labour Party business manager) expressed concerns in relation to policy announcements about Covid-19 being made outwith the Parliament. I reiterated that it is my expectation that all substantial announcements are made first to the Parliament and asked George Adam MSP, Minister for Parliamentary Business, to address this with colleagues in the Scottish Government.
67. During the plenary session on 22 June 2021, I made a short statement to the Parliament regarding the use of Government-initiated questions ("GIQs") to announce changes to the Coronavirus regulations (**AJ/014-INQ000329060**). A GIQ is a process by which written questions can be initiated by the Scottish Government to provide information to the Parliament. In this process, an MSP will ask a written question on behalf of the Scottish Government in order to give a Minister the opportunity to answer it and put information in the public domain. The question and response are circulated by e-mail to members of the Parliament once they have been lodged.
68. I made this statement on 22 June 2021 because I was concerned about the use of a GIQ on 17 June 2021 to announce the addition of Manchester and Salford to the list of areas where common travel restrictions applied (**AJ/014-INQ000329060**).<sup>42</sup> The GIQ was asked and answered on a day when the Parliament was sitting. The guidance on ministerial statements explains that all significant and substantive announcements should be made to the Parliament whenever that is possible. I therefore asked the

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<sup>42</sup> Question reference S6W-00856.

Scottish Government to reflect on whether the use of GIQs, which does not allow for questions to be put to the Government at the time the GIQ is answered, is the best means of making a significant announcement on a day when the Parliament is sitting.

69. In another example, I received a complaint by a point of order that information on the Scottish Government's plans for a COVID vaccination certification scheme had been reported in the media prior to a Ministerial statement being made to the Parliament on 1 September 2021.<sup>43</sup> I agreed to look further into this issue and reiterated my expectation that any and all significant statements should be made in the first instance to the Parliament wherever possible.
70. There have also been occasions where Members have asked in the Parliamentary Bureau for Ministerial statements on COVID policy to enable parliamentary scrutiny. Examples include, business managers asking for a Ministerial statement on the vaccination certification scheme at the meetings of the Parliamentary Bureau on 14 September 2021 (**AJ/035-INQ000328975**), 21 September 2021 (**AJ/038-INQ000329008**), 15 March 2022 (**AJ/090-INQ000328979**) and 22 March 2022 (**AJ/094-INQ000329011**). It is a matter for the Scottish Government to determine the topics on which it wishes to propose that Ministerial statements are made.
71. The Parliament debated motions on the vaccination certification scheme on 9 September 2021 (**AJ/120-INQ000329067**) and 29 September 2021 (**AJ/121-INQ000329069**). Members also had the opportunity to ask questions about the scheme during regular Ministerial statements on COVID-19. The Scottish Government also gave a Ministerial statement on the Autumn and Winter Vaccination Programme on 30 September 2021, during which questions about the scheme were asked. There were other opportunities to ask questions about the scheme, such as by lodging written questions, or by submitting oral questions for answer during general, topical or portfolio questions.

*Use of the "made affirmative" procedure*

72. The made affirmative procedure enables the executive to make regulations that can come into force immediately after being made and, therefore, prior to receiving approval by the Parliament. These regulation-making powers provide for parliamentary review

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<sup>43</sup> Official Report, 1 September 2021, Col 22.

within a short period of time, such that the regulations will expire unless they receive approval by the Parliament within a specified period. In the case of the UK and Scottish Coronavirus Acts of 2020, the regulations made using this procedure can remain in force for 28 days without the Parliament's approval. If the approval of the Parliament is not received by the end of this period, the regulations will cease to have legal effect.

73. The power to make regulations subject to the made affirmative procedure has existed in various Acts for some time. Prior to the pandemic, the made affirmative procedure was rarely used to implement secondary legislation in Scotland – on average one or two times per year, according to a report by the DPLRC.<sup>44</sup> However, it is perhaps worth highlighting that these powers are ordinarily restricted to circumstances in which Ministers consider it is necessary to act 'urgently', meaning their use by government is reactive to situations of substantial risk that it requires to respond to immediately, such as an infectious disease outbreak or civil emergency. Other recent examples of UK legislation that contain powers which may be exercised subject to this procedure include the European Union (Withdrawal) Act 2018 and the Civil Contingencies Act 2004. In Scottish legislation, examples include the Land and Buildings Transaction Tax (Scotland) Act 2013.
74. A report by the DPLRC into the use of the made affirmative procedure during the pandemic highlighted that it had been used more than 120 times by the time the Committee reported on 10 February 2022.<sup>45</sup> The vast majority of these were made using the provisions in schedule 19 of the UK Coronavirus Act 2020 Act (i.e., health protection regulations) and sections 94(1) and 122 of the Public Health etc. (Scotland) Act 2008 (i.e., international travel regulations). These provisions in the Public Health etc. (Scotland) Act 2008 predated the pandemic, but I am not aware of them being used in other circumstances in Session 5.
75. The use of the made affirmative procedure became the focus of increasing scrutiny in the specified period, particularly in relation to the implementation of the COVID vaccination certification scheme in September 2021 and the extension of the emergency powers by regulations that were laid in February 2022. This increasing scrutiny indicated

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<sup>44</sup> Delegated Powers and Law Reform Committee, Inquiry into the use of the made affirmative procedure during the coronavirus pandemic, 12th Report, 10 February 2022 (Session 6), para 15.

<sup>45</sup> Delegated Powers and Law Reform Committee report on the use of the made affirmative inquiry, SP Paper 110, 12th Report, 10 February 2022 (Session 6), para 16.

that, as the length of the pandemic response increased, MSPs increasingly examined the balance between acknowledging the need for the Scottish Government to respond quickly and the need for appropriate parliamentary scrutiny.

76. The Scottish Government used the made affirmative procedure to bring its COVID vaccination certification scheme into force in the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No.2) Regulations 2021 (SSI 2021/349). The instrument was made at 11.39 am on 30 September 2021 and laid before the Parliament at 3.30 pm the same day. It came into force at 5.00am on 1 October 2021. The requirement to implement a reasonable system for checking a person's vaccination status and the requirement to prepare and maintain a compliance plan was enforced from 5.00am on 18 October 2021.
77. Prior to the regulations being made, the Scottish Government had announced its intention to bring forward a vaccination certification scheme in a Ministerial statement on COVID-19 on 1 September 2021 (**AJ/122-INQ000329065**). Individual MSPs raised concerns about the frequent use of the made affirmative procedure at this time. For example, during portfolio questions that day, Alexander Stewart MSP asked "...the Scottish Government whether it will commit to ensuring that any legislation it introduces to support the recovery from the Covid19 pandemic does not seek to allow regulations to be made or changed without being subject to the affirmative parliamentary procedure."<sup>46</sup> The Minister for Parliamentary Business's response to this is recorded in the Official Report.
78. The Scottish Government published information on the scheme on 9 September 2021.<sup>47</sup> The Parliament was invited to agree to the general principles of the scheme in motion S6M-01123 in the name of John Swinney MSP, then Cabinet Secretary for COVID Recovery and Deputy First Minister, later that day (**AJ/120-INQ000329067**). After a debate, the motion was agreed to by division (For 68, Against 55, Abstentions 0).
79. The COVID Recovery Committee also undertook pre-legislative scrutiny of the COVID vaccination certification scheme as a means of enabling Members to take evidence from affected stakeholders and to understand their concerns prior to the Parliament voting on

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<sup>46</sup> S6O-00070.

<sup>47</sup> Scottish Government (2021). Coronavirus (COVID-19): mandatory vaccine certification proposals.



the relevant secondary legislation. The Committee wrote to the Scottish Government at the end of its evidence-taking and received a response (**AJ/123-INQ000328991**; **AJ/124-INQ000328993**).

80. The Scottish Government published a further update on its plans for the scheme on 23 September 2021.<sup>48</sup> It also produced an evidence paper on 29 September 2021,<sup>49</sup> which was later updated on 19 November 2021.<sup>50</sup> The scheme was also debated on 29 September 2021 during which Members expressed concerns regarding the Parliament's ability to effectively scrutinise the proposals (**AJ/121-INQ000329069**).
81. Stephen Kerr MSP (then Scottish Conservative and Unionist Party business manager) and Neil Bibby MSP (then Scottish Labour Party business manager) reserved their parties' positions on SSI 2021/349 at the Parliamentary Bureau meeting on 9 November 2021 (**AJ/051-INQ000328971**). Motion S6M-02048 to approve the instrument was taken in the Chamber later that day and was agreed to by division (For 60, Against 49, Abstentions 0) (**AJ/125-INQ000329033**).
82. The Scottish Government's use of the made affirmative procedure subsequently became the subject of an inquiry by the DPLRC (**AJ/119-INQ000329047**). Its findings and conclusions were debated by the Parliament on 22 February 2022 (**AJ/016-INQ000329082**). In its report, the DPLRC highlighted the instrument used to bring the vaccination certification scheme into force as an example of when it would have been appropriate to use the draft affirmative (rather than the made affirmative) procedure. It highlighted four other examples where it considered it would have been appropriate to use the draft affirmative procedure for Coronavirus regulations in its report (SSIs 2021/475, 2021/496, 2021/497 and 2021/498).<sup>51</sup> I would also draw the Inquiry's attention to the COVID-19 Recovery Committee's evidence to the inquiry (**AJ/126-INQ000328998**), which noted—

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<sup>48</sup> Scottish Government (2021). Coronavirus (COVID-19): vaccine certification update - 23 September 2021.

<sup>49</sup> Scottish Government (2021). Coronavirus (COVID-19) vaccine certification: evidence paper. ISBN 9781802014495

<sup>50</sup> Scottish Government (2021). Coronavirus (COVID-19) vaccine certification: evidence paper update. ISBN 9781802016819

<sup>51</sup> Delegated Powers and Law Reform Committee report on the use of the made affirmative inquiry, SP Paper 110, 12th Report, 10 February 2022 (Session 6), para 36.

“The Committee considers that there must be checks and balances on the use of this power and it should not be used as a mechanism to maximise the period for policy development at the expense of the normal timescales for parliamentary scrutiny. This is best illustrated by the vaccination certification scheme. There was a significant delay between the Scottish Government first highlighting its policy intent and the regulations being laid and subsequently enforced (Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349). The Committee considers that the use of the made affirmative procedure was not appropriate in these circumstances.”<sup>52</sup>

83. The use of the made affirmative procedure also came under scrutiny in relation to the extension of the emergency powers by regulations that were laid in February 2022. For example, some business managers reserved their party’s position on relevant COVID-19 regulations at this time, including at the Parliamentary Bureau meeting on 22 March 2022 in relation to the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40).<sup>53</sup>

84. The DPLRC also examined the use of the made affirmative procedure in relation to the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40). It identified that the Scottish Government appeared to make an omission in not considering the possibility of using the draft affirmative procedure for this instrument. The original policy note explained that, in the Scottish Government’s view, only the made affirmative procedure was available for the instrument. The DPLRC raised a point of clarification with the Scottish Government on this matter and after consideration, the Scottish Government accepted that both the draft affirmative and made affirmative

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<sup>52</sup> COVID-19 Recovery Committee. Written submission dated 15 December 2021.

<sup>53</sup> Business managers reserved their position on other draft affirmative instruments that were part of the package of extension instruments considered around this time. This included the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 4) Regulations 2022 (SSI 2022/77) considered at the Parliamentary Bureau’s meeting on 22 February 2022, as well as the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 (SSI 2022/Draft) and the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2022 (SSI 2022/Draft) on 22 March 2022. Where applicable, I have addressed the scrutiny of instruments subject to the draft affirmative procedure in an expedited timescale earlier in my statement.

procedure was available for the instrument. The Scottish Government subsequently laid an amended policy note (**AJ/116-INQ000329049**).

#### Ministerial statements

85. In Session 6, a Ministerial statement on the two-monthly report to the Scottish Parliament was delivered by John Swinney MSP, then Cabinet Secretary for COVID Recovery and Deputy First Minister, on 9 June 2021 (**AJ/127-INQ000329059**). Subsequent reports were not the subject of requests by the Scottish Government to make Ministerial statements to the Parliament. I am not aware any requests for such statements having been made by opposition parties. However, the COVID-19 Recovery Committee continued to take evidence from the Scottish Government on each of the two-monthly reports published during the specified period. This enabled members of the Committee to ask questions and scrutinise the report. Any MSP who is not a member of a committee may request to attend its meetings and ask questions of Scottish Ministers (or other witnesses who may be listed on the agenda). This means that committee scrutiny is not limited to members of that committee and it is not uncommon for members to take up this opportunity. The Scottish Government also continued to write to me to make me aware when the reports were published, copying this correspondence to the Conveners of the COVID-19 Recovery Committee and DPLRC.
86. Other avenues were available to MSPs to scrutinise the two-monthly reports, such as asking a question in the Chamber or submitting a written question on matters related to the two-monthly reports. For example, Miles Briggs MSP submitted a written question on 23 July 2021 (S6W-01834) and received a response from the Scottish Government that directed the Member to the two-monthly reports (**AJ/128-INQ000329146**).

### Extension of emergency powers

87. The two Scottish Coronavirus Acts 2020, passed in the Parliament's Session 5, were due to expire in September 2021 and could not be extended without further primary legislation. The timing of the Scottish election in May 2021 meant that, if the Scottish Government determined it was necessary to propose to extend those powers for a further period, the Scottish Parliament would have limited time to scrutinise them. The constraints on scrutiny arose from the processes we needed to follow in the post-election period, which I have already described in my statement, and the summer recess period when the Parliament was not sitting (26 June 2021 to 29 August 2021).
88. In the event, the Scottish Government introduced the Coronavirus (Extension and Expiry) (Scotland) Bill on 18 June 2021 and sought the agreement of the Parliament to designate the bill as an emergency bill. The purpose of the Bill was to expire some provisions and extend others contained in the Scottish Coronavirus Acts of 2020. The Parliament agreed, by division, to designate the bill as an emergency bill, as I have described earlier in my statement. The Scottish Government produced a policy note setting out its rationale for the legislation. The necessity and appropriateness of the legislation was debated by the Parliament in the relevant proceedings. Once passed, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 enabled the emergency provisions it contained to be extended by secondary legislation up until 30 September 2022. The Scottish Government introduced regulations to extend provisions within the Act in February 2022, which I have commented on earlier in my statement.
89. The Scottish Government subsequently introduced the Coronavirus (Recovery and Reform) Bill on 25 January 2022. The Bill proposed to retain permanently some of the emergency executive powers and to extend other temporary executive powers. It received significant media attention at the time. The Bill was scrutinised using the standard public bill procedure and numerous committees were involved during Stage 1 and Stage 2 scrutiny of the Bill, reflecting the breadth and significance of the Bill's policy proposals.
90. As Presiding Officer, my role is to ensure that the correct procedures set out in Standing Orders are followed in accordance with the decisions made by the Parliament. I am not able to express a view on the necessity or appropriateness of legislation and must remain impartial in the exercise of my duties. The emergency bill procedure offers some

flexibility for the Parliament to determine whether a situation constitutes an 'emergency' and the length of time over which the three stages of scrutiny must be completed.

#### Scottish Government decision-making

91. There have been occasions, as noted earlier in this statement, where I have raised concerns about specific major announcements not being made first to the Parliament to allow appropriate scrutiny by elected representatives.
92. The Parliament developed specific approaches for scrutinising the Scottish Government's response to the pandemic - including the protocol for the scrutiny of made affirmative instruments and the establishment of a dedicated subject committee to scrutinise COVID policy and legislation. These were unique innovations developed by the Scottish Parliament.
93. Members of the Parliament will have their own views on the level and quality of debate during this period and the effectiveness of the Scottish Parliament's scrutiny. A benefit of the approaches developed was that they created a regular structure around the announcement of major decisions and their scrutiny, which meant the Parliament and Government were clear on how these decisions would be announced and scrutinised by the Parliament. In a fast-moving situation and in the face of a considerable uncertainty at times, it was helpful to have these processes in place, so that Members could focus on the detail of what was being implemented in the time available to scrutinise it.

#### **D. KEY CHALLENGES AND LESSONS LEARNED**

94. As Presiding Officer, I can offer reflections on how the Parliament scrutinised the policy and legislation during this period and the measures we are taking forward to implement learning from this experience.
95. An area of focus for lessons learned has been the procedures and facilities that support the Parliament's business continuity during emergencies to ensure that the Parliament is able to continue to function to scrutinise the Scottish Government effectively. This has been informed by the work of relevant parliamentary bodies, including the SPCB, which has responsibility for the Parliament's facilities; the Parliamentary Bureau, which collects feedback from business managers about the business programme and member

participation; and the Standards, Procedures and Public Appointments Committee, which makes recommendations to the Parliament on procedural and related issues.

96. A key challenge throughout the pandemic has been supporting continuing Member participation in proceedings. The Parliament moved quickly to develop and evolve its capacity to support hybrid and virtual proceedings. The systems for virtual participation have been hugely beneficial in allowing the Parliament to continue to function with all Members able to participate. These systems meant that we were able, for example, to arrange meetings of the Parliament in recess periods to ensure continuity of scrutiny. Other technical solutions developed alongside systems for Chamber participation also allowed us to arrange meetings of the Parliamentary Bureau very quickly and at times when members of the Bureau would not normally be in the Parliament (as was required, for example, for several additional meetings of the Bureau in December 2021).
97. Development and improvement of these systems has continued to further meet the needs of the Parliament. An area of particular focus has been developing processes to support interventions from Members who are participating remotely during proceedings. The SPCB has overseen changes to the software and facilities we have provided to support business continuity to address these issues. I have provided a summary of the measures we introduced to support Parliamentary business in response to the pandemic with my statement (AJ/129-[INQ000274146]; AJ/130-INQ000329142).
98. The Standards, Procedures and Public Appointments Committee conducted an inquiry that examined the procedures that the Parliament should retain or adapt post-COVID. The Committee also reflected on the measures the Parliament implemented during the height of the pandemic, noting:

“The Committee notes that, in comparison to the other legislatures that it heard from, the Scottish Parliament introduced more measures to ensure that its Members were able to participate in parliamentary business, that all types of parliamentary business could continue and that all MSPs were able to vote. While the platforms used to provide hybrid meetings could not replicate in person parliamentary business, and the informal engagement that would normally take place in the building was reduced, the Parliament was able to fulfil its core function of scrutiny of the Scottish Government.”

99. The Committee has reported its findings and conclusions to the Parliament (**AJ/131-INQ000329144**). The Committee's report reflects that the Parliament has embraced many of these new ways of working and will embed them in our working practices going forward. This includes allowing members to participate remotely in chamber and committee proceedings, which was not possible prior to the pandemic. Other issues that the Parliament will give further consideration to include proxy voting, following a pilot scheme that is currently under way.
100. The Scottish Parliament was also unique in establishing a dedicated subject committee to scrutinise COVID-19 policy and legislation. This decision was agreed by the Parliamentary Bureau in Session 5 and again in Session 6. The Committee played an integral role in the implementation of the protocol for scrutinising made affirmative instruments. It also enabled the Parliament to innovate in other ways, such as enabling members of the public to submit suggested questions to ask Scottish Ministers about the Scottish Government's handling of the pandemic. The Committee also played an integral role in co-ordinating the Parliament's scrutiny of the Coronavirus (Recovery and Reform) Bill at Stages 1 and 2.
101. The DPRLC has also made recommendations on the scrutiny of the made affirmative procedure in its inquiry report. This includes recommendations on improving the clarity of emergency secondary legislation in the future through the production of consolidated regulations. It has also made recommendations on improving the way we legislate for the made affirmative procedure in the future, including an explanation of when regulations must be made 'urgently'. Building on the conclusions in its inquiry into the use of the made affirmative procedure, the DPRLC recommended in its Stage 1 report on the Coronavirus (Recovery and Reform) (Scotland) Bill that those powers which could be exercised subject to the made affirmative procedure should be subject to extra requirements. During scrutiny of the Bill, amendments were agreed such that, for any future regulations made using this power: the Scottish Ministers must provide a statement prior to the instrument coming into force explaining why they consider the regulations need to be made urgently; instruments made under such powers are subject to a sunset provision; and the Scottish Ministers must make a public health declaration before regulations can be made under certain powers. These amendments now form part of the Act.





## **E. DOCUMENTS**

102. Please see the exhibits and documents I have provided in the attached index of supporting information.

### **Statement of truth**

I declare that the contents of this statement are true and accurate to the best of my knowledge and belief.

**Personal Data**

22 December 2023

Rt Hon Alison Johnstone MSP  
Presiding Officer  
Scottish Parliament