

EQUALITY IMPACT ASSESSMENT

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 6) Regulations 2020

Introduction

1. The COVID-19 pandemic has led to unprecedented calls on the health system as well as policy and financial decisions that have made fundamental changes to everyday life for people in Scotland. While it has been necessary to take these extraordinary measures to respond to the pandemic, the protection of equalities for Scotland's population, and the proportionality of the measures taken, have also been at the forefront of consideration of these actions during this emergency situation.
2. The [Coronavirus \(COVID-19\): Framework for Decision-Making](#) and *Scotland's route map through and out of the crisis* ("the Route Map") make clear that COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The *Framework for Decision-Making* identified four main categories of harm: direct health impacts, non-COVID-19 health harms, societal impacts and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing. The Route Map sets out the range and phasing of measures proposed for Scotland as it moves out of lockdown. Like the initial response to the crisis, navigating the right course out of lockdown involves taking difficult decisions that seek to balance these inter-related harms and risks.
3. The Framework and the Route Map documents also note that the pandemic, and the measures to respond to it, can have the most negative impacts on people least able to withstand them.
4. Some harms will be felt over different time horizons: short, medium and long-term. Some harm may not be fully understood for many months or even years, such as the long term impacts on mental health and school attainment. However, even in these initial stages, it is clear that impacts have not been equally felt across the population. Consideration of the continued but differential impacts as lockdown is lifted in careful phases is therefore critical to the decision making process.

Legislative background

5. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government immediately used powers conferred by that Act to bring forward the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ("the Principal Regulations"), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. The Principal Regulations came into force on Thursday 26 March.
6. Recognising the extraordinary impact of the measures, Scottish Ministers have put in place a statutory requirement to review the restrictions every three weeks to ensure they remain proportionate and necessary.
7. As soon as the Scottish Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must revoke that restriction or requirement. Following the review

required by 18 June 2020, Scottish Ministers decided to make the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 5) Regulations 2020.

8. The Framework for Decision Making makes clear that the reviews will be informed by assessments of options for relaxation under their impact on the 'four harms', their viability, and broader considerations including equality impacts and consideration of measures, for example, for specific geographies and sectors.
9. The Scottish Government considered from the outset whether the lockdown provisions were consistent with the Equality Act 2010 and also considered whether the provisions could constitute indirect discrimination. In many cases, the provisions have applied to all persons irrespective of protected characteristic. Equality Impact Assessments (EQIAs) have been carried out to consider the impact of the measures contained in the Coronavirus (Scotland) Act 2020 and for the respective legislation thereafter. Where some possible impacts have been identified, the Scottish Government has considered these to be justified as both a necessary and proportionate means of achieving the legitimate aim of protecting the general public from the threats posed by the outbreak of the Coronavirus pandemic and, therefore, the threat to human life in Scotland. However, from the beginning measures were put in place to support people as they complied with lockdown guidance, such as the £350 million of community funding announced on the 18 March.
10. As Scotland emerges from the lockdown, following the Route Map, some changes are delivered through regulations, such as the opportunity to take part in outdoor recreation. Other measures are delivered through changes to guidance, such as the opportunity to take part in some non-contact sporting activities. However, all measures are given thorough consideration on the basis of their impact, including on equality and human rights.

Policy Objectives

11. On 21 May 2020 the Scottish Government published a route map setting out a phased approach to easing lockdown restrictions while still suppressing coronavirus (COVID-19). The route map recognises that the restrictions and requirements in place have a negative impact on some aspects of people's lives, such as increasing loneliness and social isolation and have potential to deepen inequalities and damage our economy. The route map also stated that, subject to the available data and evidence in support of such proposals, some of the restrictions and requirements may be eased at this time.
12. Some changes to the lockdown measures are made by this instrument and are described below. The Scottish Government's guidance has been updated to reflect these changes and to make other changes for the purpose of implementing proposals in the route map. The revised guidance is available at www.gov.scot/collections/coronavirus-covid-19-guidance.

Selling food and drink for consumption on the premises

13. Regulation 3(1) of the principal regulations requires businesses to close any premises, or part of the premises, where food or drink are sold for consumption on those premises. Regulation 2(2) of these Regulations amends that requirement so that businesses are only required to close any place on the premises which is indoors, and which is used for the consumption of food or drink. In practice this means businesses can sell food and drink to people for consumption on outdoor parts of their premises,

as long as other physical distancing measures are maintained as far as practicably possible.

14. For the purposes of this regulation, a place is indoors if it would be considered to be wholly or substantially enclosed for the purposes of section 4(2) of the Smoking, Health and Social Care (Scotland) Act 2005 (1) under the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.

Providing self-catering accommodation

15. Regulation 4(4) of the principal regulations requires accommodation providers to cease carrying on their business of providing holiday accommodation, except in the circumstances described in paragraph (5) of that regulation. Regulation 2(3) of these Regulations adds a further exception to that list, with the effect that accommodation providers may provide self-catering accommodation to the general public. This is subject to certain restrictions relating to shared access and facilities.

Assessing the impacts and identifying opportunities to promote equality

16. It is necessary to make and lay this instrument urgently to make necessary adjustments to the current arrangements which facilitate self-isolation and minimise the risks to public health arising from Covid-19. On that basis, there has been a welcome opportunity to gather evidence on the possible impacts of the Regulations. Evidence was also gathered as part of the development of the Scottish Government's COVID route map and the review of the Principal Regulations.
17. Given the importance of assessing the impact of policy change on each of the protected characteristics, the following table sets out an assessment of the impact of the changes made in the Regulations on each of the protected characteristics.

- Providing self-catering accommodation with no shared facilities or communal areas

Impact	<p>Allowing self-catering accommodation including holiday homes to reopen will be seen as a positive move by many people who are keen to responsibly enjoy the benefits of being out of their main accommodation.</p> <p>Opening both self-catering accommodation and holiday homes will benefit businesses and individuals in various ways from financially to mental health and physical wellbeing.</p> <p>Shielded people may feel even more isolated when compared to the general population.</p> <p>The availability of only self-catering accommodation may impede/reduce ability and willingness of some population groups from venturing out. Such groups may include, pregnant women, older people, disabled people, parents with children and those with existing health conditions that would require assistance unavailable in a self-catering setting.</p> <p>Reopening of self-catering accommodation may negatively impact on homeless people that were temporarily accommodated in these settings for the outbreak period.</p>	
Differential impacts	<p>Age: Older People</p>	<p>Older people may benefit from the holiday homes as they are more likely to own these type of properties.</p> <p>Older people may also come under increased risk of infection while possibly interacting with others on their way to / during attendance to a holiday home.</p>
	<p>Sex: Women</p>	<p>Women are more likely than men to work in the accommodation industry and reopening of the sector would have a positive impact both financially and from a mental health perspective.</p> <p>As primary carers, some women's return to work could be challenging if appropriate formal care is not in place (e.g. schools).</p>
	<p>Sex: Men</p>	<p>It is unlikely that these measures will have a further differential impact</p>
	<p>Race</p>	<p>No impact identified.</p>
	<p>Religion & Faith</p>	<p>No impact identified.</p>
	<p>Disability</p>	<p>No impact identified.</p>

		Wheelchair users, or other disabled people, who require assistance while attending a self-catering accommodation may be affected.
	Socio-economic disadvantage	People who are socio-economically disadvantaged are less likely to own a second home so will see less beneficial impact from the opening of self-catering accommodation and holiday homes. Owners of self-catering accommodation in flats and stairwells will be unable to open until 15 July. This may mean a loss of income for those intending to let this type of accommodation prior to this date. However, it may provide reassurance to vulnerable residents in tenements or flats that are mainly residential but used for Airbnb / short-term lets.
<p>Mitigating actions: Risk of infection to local residents and guests will be minimised by permitting the opening of only self-catering holiday accommodation without shared facilities between households. From 15 July all accommodation will be permitted. Shared facilities means any internal space which is used by more than one household, including kitchens, bathrooms, other living areas and shared hallways. Self-catering accommodation opening before 15 July must be accessible without entering or moving across communal areas. For the avoidance of doubt, flats and tenements only accessible through communal stairs and passages should not be used as holiday accommodation until 15 July.</p>		

- Selling food and drink for consumption on the premises.

Impact	<p>As with Phase 1, opening further shops, markets, pubs and restaurants will have positive financial impacts for businesses and for people returning to work in those businesses. But, the risk of COVID-19 infection and transmission in the community will also increase being particularly detrimental to those more susceptible to severe illness.</p> <p>It will also have positive impacts for people who are consoled by a return towards normal life and opening of pubs and restaurants will allow elements of social life to resume. On the other hand, this could further raise anxiety for people who are less sure about leaving their homes and may increase anxiety if they feel they should acceptance invitations to meet friends and family.</p>	
Differential impacts	Age: Children and Young People	Young workers are more likely to work in both the food and non-food retail sectors. Reopening will therefore positively increase their income while negatively increasing their health risk; although risks are low for this group.
	Age: Older People	No impact identified.
	Sex: Women	Women are more likely to work in sectors such as retail, accommodation and food services. Returning to work will be financially positive. However, many women will be primary carers so returning to work could be challenging if appropriate formal care is not in place (e.g. schools and day care).
	Sex: Men	It is unlikely that these measures will have a further differential impact although parents will need to juggle work and childcare.
	Race	Ethnic minority individuals are overrepresented in the distribution, hotels and restaurant industry (which encompasses food and retail sectors). Increasing opening will increase risk of transmission and infection for this group where susceptibility to serious illness could be more prevalent.
	Religion & Faith	It is not known if there are differential impacts depending on religious or faith group in terms of employment in these sectors. Community food provision based in religious building may now be able to offer take-away provision which will be of benefit to the wider community.
	Disability	Individuals with disabilities are also slightly overrepresented in the distribution, hotels and restaurant industry as a whole (which includes food and retail sectors). Physical distancing may be more

		difficult in small shops and markets and could be a particular challenge for disabled people.
	Pregnancy and maternity	Women tend to do the majority of unpaid care for children and staggered start times and flexible working may impact their ability to return to work, particularly if schools have not reopened or childcare arrangements cannot be made yet.
	Socio-economic disadvantage	No impact identified.
Mitigating actions: Guidance on physical distance.		