

Final Business and Regulatory Impact Assessment

Title of Legislation: The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020

Purpose and intended effect:

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 ensure that action to implement physical distancing and impose restrictions on gatherings, events and operation of business activity could be enforced. The Principal Regulations came into force on Thursday 26 March.

The Principal Regulations are reviewed at least once every 21 days and as soon as the Scottish Ministers consider that any restriction or requirement set out in these Regulations are 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.

Policy Objectives:

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 have a negative impact on people’s lives, such as increasing loneliness and social isolation, deepening inequalities and damaging our economy. And that, subject to the available data and evidence, these restrictions should be gradually and carefully eased.

Some changes to the lockdown restrictions are made by this instrument and are described below. Other changes have been made through Scottish Government guidance, available at www.gov.scot/collections/coronavirus-covid-19-guidance.

Title of proposal: Face coverings.

Purpose and intended effect:

Background

The sub-sectors making the largest contribution to retail GVA in 2017 were "Retail sale in non-specialised stores" (49%) (e.g. supermarkets).

An estimate of the number of retail businesses in Scotland is 13,300 businesses. Some of these will have multiple sites (estimate 22,280 units). The Nomis labour force survey database the most recent data for Scotland suggests that there were around 233,000 retail jobs in Scotland. These data include food and drink retailers which are already open. Some other retailers including hardware / homeware / garden centres are permitted to trade also.

COVID 19 has accelerated existing trend for online shopping (e.g. in case of Sainsbury’s, online shopping has doubled in 6 weeks during lockdown.) This is likely to have a corresponding impact on retail jobs (for staff in store). Not all can be repurposed in to warehouse roles. Consumer confidence slump will lead to lower retail sales – month on month dips report as much as 71% drop in trade. Retailers with no or limited online presence have struggled (e.g. Primark). As people become more risk averse / reluctant to visit busier areas due to COVID-19, high street footfall in short to medium term likely to be adversely affected. Reduced footfall / sales may make some high street retail premises unviable (no profit) – leading to a wave of shop closures.

Objective

The objective of this intervention is to ensure that the health risks posed by COVID-19 are minimised as much as possible, protecting employers, employees and the wider society. As more shops reopen, the risk of COVID-19 infection and transmission in the community will also increase being particularly detrimental to those more susceptible to severe illness.

Workers responsible for hygiene and sanitation and customer facing staff may have anxieties about returning to work, risk of infection and transmission within their households.

While it is recognised that face coverings alone cannot protect from COVID-19, the introduction of mandatory face coverings in retail, in conjunction with physical distancing and hand hygiene measures, is likely to significantly reduce the risks of transmission of the virus.

Rationale for Government intervention

This measure is clarified in retail guidance. There is a legal requirement to conduct a review of measures, every three weeks, in accordance with section 2 of the Health Protection (Coronavirus (Restrictions)(Scotland) Regulations 2020. Ongoing reviews of the retail guidance will:

- ensure it reflects any changes required by revised COVID legislation and regulation;
- contains current recommended best practice guidance for safe working;
- give employers and employees the confidence to return to the workplace;
- minimise any divergence in guidance between the SG and UK government whilst ensuring Scottish sector specific guidance is available;
- aide the recovery of the retail sector in Scotland;
- aide the recovery of the Scottish economy.

Consultation:**Public Consultation**

Retail guidance has been published online with a facility for members of the public to issue comments to a Scottish Government mailbox.

Business

Consultation with business on the development of the Coronavirus (COVID-19): retail sector guidance was conducted via the organisations represented on the Retail Guidance Sub-group, led by the Minister for Business, Fair Work and Skills.

The group guided the development and delivery of COVID-19 retail sector guidance for Scotland and phasing within the route-map ensuring the guidance and routemap is developed collaboratively and informed by input from members including trade unions, leadership bodies and regulators. The group will also support subsequent maintenance and updating of this guidance. Members draw on their expertise, experience and networks to ensure the guidance is informed by, and relevant to retailers and employees of all size and sector in Scotland.

At the time of the consultation, the membership of the Retail Guidance Sub-group included:

- South Ayrshire Council
- General, Municipal, Boilermakers
- Union of Shop, Distributive and Allied Workers
- Scottish Grocers Federation
- Scottish Retail Consortium
- Federation of Small Businesses
- Scottish Property Federation
- Scottish Wholesale Association
- Health and Safety Executive

The group will meet as frequently as is required to carry out its work and will review this each time a version of guidance is published.

In addition to the Retail Guidance Sub-group members, Police Scotland have also been consulted on the introduction of mandatory face coverings in retail.

Options:

Option 1 – Make face coverings mandatory in retail.

Costs – There is no legal duty on the employer to supply face coverings so there are no additional costs to business although it accepted that some retailers will wish to supply face coverings for their staff.

Face coverings may be uncomfortable to wear for the duration of a shift (typically around 8 hours).

Although not required to, staff may feel responsible for enforcing the regulation and this could be a cause of increased anxiety.

Benefits – Reduced risk of infection and transmission of the virus in conjunction with physical distancing and hygiene measures. Reduced anxiety for retailers, employees and wider population as result.

Supports the safe recovery of the sector through aiding public health efforts and increasing consumer confidence.

Passing trade will not be affected, as retailers do not have to prohibit entry to customers without a face covering.

Option 2 – Do not make face coverings mandatory in retail.

Costs – Potential increase in risk of infection and transmission of the virus. Employees and customers may feel anxious about working in increasingly busier environments without a face covering. Some customers may feel more apprehensive about physically visiting retail premises, potentially slowing the recovery of the sector.

Benefits – None.

Scottish Firms Impact Test:

The Retail Guidance Sub-group comprise representatives from a diverse range of Scottish retail trade unions and leadership bodies, ensuring that differing views and issues have been addressed.

The guidance provides a consistent approach in taking steps for a safe workplace, regardless of type of retail, whilst allowing employers to assess their own risk and put in place the safety measures appropriate for their specific needs.

Competition Assessment:

The introduction of mandatory face coverings in retail will affect all Scottish retailers, meaning there will be no impacts on competition as result of this regulation.

Consumer Assessment:

There is currently no data available on the impact of the guidance on consumers of the retail industry, specific retailers and businesses of different sizes.

The quality of goods available is unlikely to be impacted as a result of the regulation. It may be possible that services may differ from those received before the COVID-19 crisis as result of wider public health protection measures (eg. usage of fitting rooms or skincare demonstrations).

The particular measure of introducing mandatory face coverings in retail could impact on people living with sight and hearing loss. They may find that mandatory use of face coverings in retail could create new communication barriers, and blind and partially sighted people have reported coverings can also affect their hearing. Learning disabled or autistic adults and children may also struggle to understand and/or comply with new measures; there is a reasonable excuse not to wear a face covering where the person cannot put on, wear or remove a face covering because of any physical or mental illness or impairment or disability or wear one without severe distress.

People with breathing difficulties or physical conditions making face covering usage difficult and young children may find the mandatory usage of face coverings in retail challenging, however under such circumstances they may be exempt from these regulations.

People suffering from mental health conditions such as anxiety or panic disorders may also find the mandatory use of face coverings in retail a challenge. However, there is a reasonable excuse not to wear a face covering where it would cause difficulty, pain or severe distress or anxiety.

Test run of business forms:

No statutory forms will be created. All forms created will be word based forms created by retail policy officials and incorporated into the retail guidance.

The recommended actions should be fully considered and implemented where possible as part of procedures and should be considered by store managers, health and safety officers, small business owners and sole traders.

Digital Impact Test:

All documents created will be word based documents created by the SG officials and uploaded to the SG website by the SG's web editors. Route Map lead officials will lead on wider considerations.

Legal Aid Impact Test:

This measure itself does not in itself create any new legal rights.

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider route map BRIA.

Implementation and delivery plan and post-implementation review:

SG Investment team created Scottish sector specific guidance in consultation with the Retail Guidance Sub-group. The specific regulation on mandatory face coverings in retail has been consulted on with members of this group and Police Scotland.

The Retail Guidance sub-group will continue to engage with Scottish Government to continually review

the guidance on a 3 weekly basis.

Each revision of the guidance will reflect the most up to date information and best practice at the various stages of the routemap phased release of restrictions.

When revising the guidance, we will refer to the UK Government, and other devolved administrations, publications to reduce divergence in the guidance.

Reviews will continue until we are instructed they are no longer required.

Summary and recommendations:

It is essential that the SG provides full consideration to this measure to ensure that the health risks posed by COVID-19 are minimised as much as possible, protecting employers, employees and the wider society.

The SG COVID-19 Retail Guidance has been created by a working group of experts from various business, government and enforcement agency backgrounds, who will continue to provide feedback on their practical experience of the guidance. The guidance which contains clarifications of the route map will evolve as we progress through the routemap out of lockdown and ensure a consistent, informed and safe approach is taken by all manufacturers and employees.

The risk of COVID-19 infection and transmission in the community will increase as retail reopens, being particularly detrimental to those more susceptible to severe illness. The introduction of mandatory face coverings in retail, in conjunction with physical distancing and hand hygiene measures, is likely to significantly reduce the risks of transmission of the virus.

It is therefore recommended that this measure is introduced to aid the recovery of the retail sector and existing public health efforts.

Title of proposal: Outdoor contact sports.

Purpose and intended effect:

Background

Organised outdoor sport can resume for children and young people from 13 July, with a phased implementation, subject to SGBs agreeing guidance with sportscotland.

Objective

The measure is intended to provide benefits to the health and wellbeing of children and young people and to enable them to enjoy the summer holiday safely. It should also provide some respite to those caring for children during the summer holidays.

Rationale for Government intervention

This will enable the resumption of outdoor sport, which was previously prohibited by the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

Consultation:

Public Consultation

There hasn't been any public consultation on this matter. This will impact on those individuals who wish to resume club activity.

Business

sportscotland are liaising with Sports Governing Bodies, who in turn are speaking to sports clubs. Guidance on the sector will be relevant to risks for individual sports which we believe is essential to keep individuals safe and reduce transmission risks.

Options:

1) To permit organised outdoor sport to resume for children and young people from 13 July, with a phased implementation, subject to SGBs agreeing guidance with sportscotland.

Costs

Different sports will be permitted to operate differently, depending on the risks and mitigations identified. It will currently only apply to children and young people.

Benefits

Health and wellbeing benefits to children and young people. It will ensure relevant risks and mitigation can be determined for specific sports to ensure these are able to operate safely within the guidance.

2) To permit organised outdoor sport to resume for children and young people from 13 July, subject to overarching duration and participant numbers (90 mins, 15 children)

Costs

This does not provide flexibility for sports and is arbitrary rather than based on risks of particular sports. This may be more likely to impact on some sports than others, depending how they normally operate.

Benefits

Health and wellbeing benefits to children and young people even if activities were limited by time.

Scottish Firms Impact Test:

sportscotland are liaising with Sports Governing Bodies, who in turn are speaking to sports clubs. Guidance on the sector will be relevant to risks for individual sports which we believe is essential to keep individuals safe and reduce transmission risks.

Competition Assessment:

This will apply to all sports following SGB guidance.

Consumer Assessment:

There are approximately 6,500 clubs affiliated to Sports Governing Bodies. There are approximately 760,000 registered members of sports clubs, although many of these will be aged 18 and over and currently outwith these proposals.

Test run of business forms:

No statutory forms will be created. Sports clubs will be expected to follow guidance produced by Sports Governing Bodies.

Digital Impact Test:

All documents created will be word based documents created by the SG officials, sportscotland or SGBs and uploaded to the SG website by the SG's web editors or to the sportscotland website. Route Map lead officials will lead on wider considerations.

Legal Aid Impact Test:

This measure itself does not in itself create any new legal rights.

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider route map BRIA.

Implementation and delivery plan and post-implementation review:

sportscotland will be communicating with SGBs, including setting out their own Phase 3 guidance, approving SGB guidance and discussing any issues. They will raise any concerns or issues from the sector with us.

Summary and recommendations:

The health and wellbeing of children is important and we believe these measures will bring considerable benefit to children and young people, while guidance will ensure any risks and mitigations are managed.

It is therefore recommended that this measure is introduced to support the health and wellbeing of young people.

Title of proposal: Physical distancing – retail.

Purpose and intended effect:

Background

We know that 2 metre distancing has a serious economic impact, which in turn can affect people's health. As we enter Phase 3 of the route map, we will allow exemptions for specific sectors where agreed mitigations must be put in place. This will allow organisations in relevant retail premises, if they choose, to operate with a 1 metre distance on condition that agreed mitigations are implemented.

Objective

The objective of this intervention is to ensure that as much retail as possible can re-open safely in a way that is fair to retailers, does not introduce market asymmetries and provides jobs for retail workers. There is increasing data showing that stores will not re-open after the COVID-19 emergency which has consequences for jobs, the built environment and the wider economy so there is a need to take action to minimise these outcomes.

It is proposed that exceptions to the 2 metre physical distancing requirements can operate in retail from 10 July, subject to agreement on mitigation measures

Rationale for Government intervention

This measure is clarified in retail guidance. There is a legal requirement to conduct a review of measures, every three weeks, in accordance with the Health Protection (Coronavirus) (Restrictions)(Scotland) Regulations 2020. Ongoing reviews of the retail guidance will:

- ensure it reflects any changes required by revised COVID legislation and regulation;

- contains current recommended best practice guidance for safe working;
- give employers and employees the confidence to return to the workplace;
- minimise any divergence in guidance between the SG and UK government whilst ensuring Scottish sector specific guidance is available;
- aid the recovery of the retail sector in Scotland;
- aid the recovery of the Scottish economy.

Consultation:

Public Consultation

Guidance has been published online with a facility for members of the public to issue comments to a Scottish Government mailbox

Business

Consultation with business on the development of the Coronavirus (COVID-19): retail sector guidance was conducted via the organisations represented on the Retail Guidance Sub-group, led by the Minister for Business, Fair Work and Skills.

The group guided the development and delivery of COVID-19 retail sector guidance for Scotland and phasing within the route-map ensuring the guidance and routemap is developed collaboratively and informed by input from members including trade unions, leadership bodies and regulators. The group will also support subsequent maintenance and updating of this guidance. Members draw on their expertise, experience and networks to ensure the guidance is informed by, and relevant to retailers and employees of all size and sector in Scotland.

At the time of the consultation, the membership of the Retail Guidance Sub-group included:

- South Ayrshire Council
- General, Municipal, Boilermakers
- Union of Shop, Distributive and Allied Workers
- Scottish Grocers Federation
- Scottish Retail Consortium
- Federation of Small Businesses
- Scottish Property Federation
- Scottish Wholesale Association
- Health and Safety Executive

The group will meet as frequently as is required to carry out its work and will review this each time a version of guidance is published.

The STUC have also been consulted in a call with trade unions.

Options:

Option 1 – Implement as stated

If they choose, some retail units can operate with a 1 metre distance on condition that agreed mitigations are implemented.

Option 2 – do nothing

Maintain 2 metre distancing in retail outlets

Sectors and groups affected

Those likely to be affected by the guidance are as follows: retailers and retail employees; trade unions and leadership bodies; regulatory bodies and health and safety representatives; local authorities; delivery companies; and consumers.

Benefits – option 1

Most retail outlets can re-open safely benefiting from retail guidance that is endorsed by trade unions and industry. There is minimal competitive disadvantage to larger retailers with smaller retailers more likely to have more room in their premises for increased footfall and space for customers to move.. Retailers can trade with fewer restrictions, bringing jobs and revenue to the economy.

Benefits – option 2

No increased health risk.

Costs – option 1

There will be additional costs to retailers to amend signage and the 2m physical distancing measures they have put in place. However this should be compensated by greater levels of trade.

There will be some increased risk of covid-19 transmission compared to the do nothing scenario but with inclusion of a size threshold and published guidance for retailers it is expected that these risks are minimal.

Costs – option 2

Permitting a relaxation of the two metre rule in retail premises will reduce diversion between Scottish and UK based retailers. 'One-metre-plus' has been in effect in England since 4 July. There is a danger that Scotland lags too far behind the UK, firms with a stronger Scottish footprint will suffer adversely compared to firms with a stronger English footprint. We would effectively be introducing a competitive disadvantage to Scottish companies. There will be further redundancies with the resultant negative effects for the economy, wider society and mental health of the population.

Scottish Firms Impact Test:

The Retail Guidance Sub-group comprise representatives from a diverse range of Scottish retail trade unions and leadership bodies, ensuring that differing views and issues have been addressed.

The guidance provides a consistent approach in taking steps for a safe workplace, regardless of type of retail, whilst allowing employers to assess their own risk and put in place the safety measures appropriate for their specific needs.

Competition Assessment:

It will be beneficial for retailers including retail services such as hairdressers and barbers who cannot operate 2m physical distancing.

Consumer Assessment:

There is currently no data available on this issue but qualitative evidence suggests that we will encourage a return to more normal shopping and consumer behavior. This will mean increased footfall

and higher rates of consumer spend.

Test run of business forms:

No statutory forms will be created. All forms created will be word based forms created by retail policy officials and incorporated into the retail guidance.

The recommended actions should be fully considered and implemented where possible as part of procedures and should be considered by store managers, health and safety officers, small business owners and sole traders.

Digital Impact Test:

All documents created will be word based documents created by the SG officials and uploaded to the SG website by the SG's web editors. Route Map lead officials will lead on wider considerations.

Legal Aid Impact Test:

The introduction of this measure may reduce the need for legal challenge as it allows more businesses to operate normally. There is however a legal risk associated with the health and safety impact on workers. Trade unions have expressed concern at the measure.

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider route map BRIA.

Implementation and delivery plan and post-implementation review:

SG Investment team created Scottish sector specific guidance in consultation with the Retail Guidance Sub-group.

The Retail Guidance sub-group will continue to engage with Scottish Government to continually review the guidance on a 3 weekly basis.

Each revision of the guidance will reflect the most up to date information and best practice at the various stages of the Route Map phased release of restrictions.

When revising the guidance, we will refer to the UK Government, and other devolved administrations, publications to reduce divergence in the guidance.

Reviews will continue until we are instructed they are no longer required.

Summary and recommendations:

It is essential that the SG provides full consideration to this measure to reduce the requirement for physical distancing from 2 metres to 1 metre. The proposal to allow retail to move to 1 metre on 10 July would initially impact only those shops already open (street access retail); followed by shops inside shopping centres as they re-open on 13 July; and then by hairdressers and barbers as they reopen on 15 July and then other personal retail services (e.g. beauty salons) on 24 July.

The SG COVID-19 Retail Guidance has been created by a working group of experts from various business, government and enforcement agency backgrounds, who will continue to provide feedback on their practical experience of the guidance. The guidance which contains clarifications of the Route Map will evolve as we progress through the Route Map out of lockdown and ensure a consistent, informed and safe approach is taken by all manufacturers and employees.

We therefore recommend that the guidance is reviewed at regular 3 weekly intervals

Title of proposal: Physical distancing – transport.

Purpose and intended effect:

Background

Public Transport capacity is severely compromised in terms of its capacity by having to apply two metre physical distancing.

Objective

To increase capacity of public transport, subject to appropriate risk mitigation being in place, to assist with economic growth and social activity, encourage greater revenue through increased patronage and thereby reduce operating costs and levels of public subsidy.

Rationale for Government intervention

The measure will

- increase capacity on the public transport network
- reduce reliance on private vehicles with concomitant benefits for the environment and the road network
- aid recovery of the Scottish economy
- facilitate social activity, and
- reduce level of public subsidy.

Consultation:

Public Consultation

There has been no public consultation., though the measure will impact those that use or intend to use public transport.

Business

Consultation has taken place with operators (or their representative trade association) of the various public transport modes – rail, subway, tram, bus and ferry.

Options:

There were two options considered: maintain the current 2 metres physical distance i.e. no change, or to reduce physical distancing, subject to appropriate mitigation, to 1 metre as the economy reopens and travel increases for work, social activity and leisure. Maintaining the current measure of 2 metres would be an operational constraint which would directly impact the functioning of the economy and society. It would continue to encourage displacement to private transport with concomitant environmental considerations, reducing the ability of those without access to alternative transport means to access work and services and continue the level of financial support whilst not growing revenue.

In moving to 1 metre there will be a modest increase in cost of operations because of the requirement of appropriate mitigation measures to address the risk of air-borne and surface transmission of the virus. The costs of mitigation measures may be borne by individual operators however all operators are currently in receipt of, or have access to, varying levels of financial support to assist with their operations or ameliorate the substantial shortfall in revenue. By moving to 1 metre the capability of the whole transport network is increased with more capacity of the public transport network and a greater ability to enable economic growth and social activity.

<u>Scottish Firms Impact Test:</u> The direct impact is on all public transport operators based in Scotland many of whom are also registered in Scotland.
<u>Competition Assessment:</u> All public transport operators are impacted.
<u>Consumer Assessment:</u> The move to 1 metre will benefit users by significantly increasing capacity on the public transport network.
<u>Test run of business forms:</u> There are no business forms, though every operator will need to review their risk assessment to determine whether revision and additional mitigation measures will be required.
<u>Digital Impact Test:</u> The information will be promulgated via the SG and Transport Scotland websites using internal resources.
<u>Legal Aid Impact Test:</u> The measure in itself does not create any new legal rights.
<u>Enforcement, sanctions and monitoring:</u> The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider route map BRIA.
<u>Implementation and delivery plan and post-implementation review:</u> Guidance will be provided to public transport operators from 10 July to assist them in the production of their own risk assessments. That guidance was discussed with operators and unions and potential mitigation measures were raised in advance. Operators, as employers, are obligated to engage their employees in the production of their risk assessments and those assessments are constantly reviewed to ensure their continuing relevance. The guidance is subject to public commentary and regular review and will be modified to ensure its continuing relevance.
<u>Summary and recommendations:</u>

Declaration and publicationSign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Michael Russell

Date: 9th July 2020

Minister's name: Michael Russell

Minister's title: Cabinet Secretary for Constitution, Europe and External Affairs.