**Equality Impact Assessment**

**The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 5) 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, in order to protect the right to life and the right to health for Scotland's population, the unequal impact of the pandemic and the requirement to have due regard to the need to advance equality, eliminate discrimination and foster good relations (as per our Public Sector Equality Duty), and take an integrated and balanced approach to ensuring 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[1] and *Scotland's route map through and out of the crisis* ("the Route Map") published earlier this year made 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.

3. On Friday 23 October, we published *COVID-19: Scotland's Strategic Framework*. This new framework sets out how we intend to respond to the crisis over the coming period, across the four key harms of the virus. It details how we will work to suppress the virus and sets out our proposal to move to a strategic approach to outbreak management based on five levels of protection, across many aspects of our lives.

4. Some harms will be felt over different time horizons: short, medium and long-term. Some 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 felt equally across the population. Consideration of the continued, but differential, impacts at the different levels 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 first regulations"), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

6. The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 came into force on 14 September 2020 and revoked and replaced the first regulations. They make provision which is substantially similar to the first regulations, as amended at the date on which they were revoked.

7. On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 ("the additional temporary restrictions") set out additional restrictions, both nationally and specific to the central belt. These regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements)

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[1] https://www.gov.scot/collections/coronavirus-covid-19-framework-for-decision-making/

(Scotland) Regulations 2020 while the additional temporary restriction regulations were in force. The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach.

8. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (Levels regulations) implemented the new strategic framework and were published on 30 October and came into effect at 0600 hours on 2 November 2020. These regulations revoked the additional temporary restrictions regulations and the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020.

9. These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to allow students to return home at the end of term 1 of academic year 2020-21. The Regulations permit an "end of term household" to be formed and also allow travel across different areas if the purpose is to facilitate the formation of an end of term household.

10. 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, they must revoke that restriction or requirement.

11. The *Framework for Decision Making* makes clear that the reviews will be informed by assessments of options for relaxation or restriction under their impact on the four harms, their viability, and broader considerations including equality impacts, the impact on individual rights and consideration of measures, for example, for specific geographies and sectors.

12. The Scottish Government considered from the outset whether the lockdown provisions were consistent with the Equality Act 2010 and considered whether the provisions could constitute indirect discrimination. In many cases, the provisions have applied to all persons irrespective of protected characteristic, although we acknowledge that the same provision may not have equal impacts. Equality Impact Assessments (EQIAs) have been carried out to consider the likely or anticipated impact of the measures contained in the Coronavirus (Scotland) Act 2020 and for the respective legislation thereafter, as mentioned in paragraphs five, six and seven above. Where some possible negative 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; and has sought to mitigate disadvantage wherever possible, e.g. developing exemption cards for people whose health or disability makes the wearing of face coverings unsuitable. However, from the beginning, measures were put in place to support people with protected characteristics as they complied with lockdown guidance, such as the £350 million of community funding announced on the 18 March 2020.

13. The impact assessment has identified some potential positive impacts on one or more of the protected characteristics. Reductions in the spread of coronavirus are designed to positively affect the whole population, but will particularly affect the health of those people who are more severely affected by the disease.

14. This includes older people (age), those with underlying health conditions (some disabled people are more likely to experience severe ill-health from contracting COVID-19 than the general population), ethnicity and sex. Early data[2] showed that the COVID-19 virus was more deadly for

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https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/deathsinvolvingcovid19englandandwales/deathsoccurringinmarch2020#pre-existing-conditions-of-people-who-died-with-covid-19

people with underlying health conditions. Prevalence of some of these health conditions is known to be higher in certain ethnic groups[3], for example Type 2 diabetes is 6 times more likely in people of South Asian descent and over 2 times more likely in African and Afro-Caribbean people[4].

15. As we follow the levels approach, some changes will be delivered through regulations, such as amending regulations to allow for local areas to move in or out of a level. Other measures will be delivered through changes to guidance, such as expectations for employers to support the wellbeing of those who return to work in hospitality settings. However, all measures are given thorough consideration on the basis of their impact, including on equality and human rights[5].

## Policy Objectives

16. We published our Strategic Framework and levels table in response to the rising number of COVID-19 cases seen recently in Scotland, and increase in hospital and intensive care unit (ICU) admissions. A paper published on 7 October 2020 sums up the evidence on infection trends, confirmed cases, hospital use and deaths, and how these vary across Scotland and is available at https://www.gov.scot/publications/coronavirus-covid-19-evidence-paper-october-2020/.

17. The framework moved Scotland from the Route Map, which applies countrywide, into something that allows us to flex, on a much more transparent basis, depending on rates of transmission across different areas of the country. However, we recognise that many of 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.

*Students returning home at end of term*

18. The Regulations permit students to travel home from their term-time address and join one other household at the end of term and for the duration of the winter holiday period. This is permitted across all levels in the strategic framework. In order to account for the different circumstances of students, the Regulations allow this to be one household of a student's choosing, as opposed specifying this be the household they resided in prior to moving to their term-time address or a family home. Students need to select one household to move to at the end of term and cannot switch between households, except where this is already covered by an existing exemption.

19. The Regulations also provide an exemption to the travel restrictions for all college and university students travelling to or from any local authority areas in Scotland at the end of term, including those travelling to or from elsewhere in the UK. Quarantine requirements will continue to apply to people travelling to Scotland from outside the Common Travel Area, unless an exemption applies, in line with existing guidance and legislation on international travel. Others can travel in order to facilitate the formation of an end of term household, this could involve collecting students from their term-time accommodation or similar activity, if that is required.

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[3]SAGE:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895841/S0483_Ethnicity_and_Covid-19.pdf
[4] https://www.diabetes.co.uk/south-asian/
https://www.diabetes.co.uk/news/2013/jan/those-of-african-caribbean-descent-more-likely-to-have-diabetes-92672091.html
[5] A summary of equality and Fairer Scotland evidence was published for Phase 1 and 2 of the RouteMap. An update for Phase 3 is forthcoming. https://www.gov.scot/publications/equality-fairer-scotland-impact-assessment-evidence-gathered-scotlands-route-map-through-out-crisis/

**Colleges and Universities – End of Term 1**

**Impact**

The Scottish Government is committed to ensuring that students who have been living away from home are able to safely return home at the end of term, if they choose to do so. We will work with universities, colleges and accommodation providers to support students to ensure that this is possible, whilst mitigating the risk of transmission of the virus.

We expect up to 80,000 students may wish to travel home for the winter break. As with large numbers within the population as a whole travelling, this poses a potential risk of virus transmission and we must support students who choose to return home to do so safely.

The measures we have set out to achieve this are:

- **Student welfare.** This is of critical importance, particularly for students who cannot or choose not to return home, such as international and UK students and care-experienced students for whom university is home. We expect institutions to ensure that those students who want to stay in their university and college accommodation over the holiday period will be well supported.

- **Staggered and early departure**. Universities are asked to make any necessary adjustments to scheduling to ensure that in-person teaching and assessment ends early enough to allow students time to get home at the end of term, irrespective of the level the institution is in.

- **Taking extra care.** We will advise any student who wants to return home for the end of term to voluntarily reduce their social mixing for two weeks before going home. This means going out only for essential reasons and exercise.

- **Testing.** Enabling easy access to testing for students with symptoms has already proved to be effective in controlling outbreaks. We will be including Scottish students in a UK-wide initiative to test asymptomatic students prior to the end of term using new lateral flow devices (LFD) technology.

- **Safe travel.** All college and university students travelling home will be given advice on how to do so safely.

The legislation was amended with effect from 27 November so that all students will be able to travel home from their term-time address and join one other household once term finishes (referred to as an 'end of term household'). This should be permitted across all levels in the strategic framework. In order to account for the different circumstances of students, this other household can be one of a student's choosing, as opposed to specifying this be the household they resided in prior to moving to their term time address or a family home. However, students need to select one household to move to at the end of term and cannot switch between households (except where this is already covered by an existing exemption).

The end of term household exception applies to all college and university students at institutions in Scotland or other parts of the UK who are travelling to or from any local authority areas in Scotland at the end of term, including those travelling to or from elsewhere in the UK and international destinations. Quarantine requirements will continue to apply to people travelling to Scotland from outside the Common Travel Area, unless an exemption applies, in line with existing guidance on international travel.

Whilst certain asks will be made of students within guidance, for example around testing and reducing their social interaction prior to travelling to their chosen household at the end of term, there are no legal requirements placed on students as a condition of them being able to travel to their end of term household.

Students should follow the End of Term Guidance [Coronavirus (COVID-19): student home visits - gov.scot (www.gov.scot)](www.gov.scot)

This impact assessment considers the potential impact of travel at end of Term 1 on all affected members of society, but particularly those with protected characteristics, who are at greater risk to be adversely affected by the COVID-19 outbreak.

The Scottish Government is mindful of the three needs of the Public Sector Equality Duty (PSED):

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

The Scottish Government recognises that while the measures have been developed with the aim to have a positive impact on one or more of the protected characteristics[6], there is a possibility that the introduction of the measures may indirectly have a negative impact on one or more of the protected characteristics.

The policy decision to allow students to return to an *end of term household* at the end of term applies to all students, and therefore, it is not expected to have an impact on any group of people with protected characteristic, or on the wider equality duties.

Some groups of people with protected characteristic, however, have a larger representation, which might have an effect on the outcome, for example:

- the majority of students in student accommodation are women;
- almost half of students in halls are from outside the UK, and hence, those staying in Purpose Built Student Accommodation (PBSA) and halls of residence are potentially more likely to have a wider variety of ethnic backgrounds;
- the majority of students residing in PBSA and halls of residence are 21 and under

The easing of restrictions to allow a cohort of students who are more likely to have a wider variety of ethnic backgrounds, be female or under 21, to form an "end of term household" with another household, may have a positive impact on outcomes for these groups.

Where any negative impacts have been identified, we have sought to mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality. We have sought to do this through provisions contained in the Regulations, or by current support and guidance available.

While it is the view of the Scottish Government that any remaining impacts are currently justified and a proportionate means of helping to achieve the legitimate aim of reducing the public health risks posed by coronavirus, we also recognise that these measures are only required to respond to the current set of circumstances, and are only necessary as long as the potential public health benefits can justify any negative impacts caused.

We will continue to engage closely with universities, unions, the Scottish Funding Council (SFC) and other sector organisations throughout to ascertain the likely impacts, both positive and negative, and any mitigating actions required.

**Numbers**

The Scottish Funding Council estimates as much as up to 80,000 students may wish to travel home for the winter break.

**Universities:** In 2018-19 there were 253,475 student enrolments at Scottish universities. Of this, 195,705 were full-time and 57,770 were part-time.

Teaching typically occurred at 19 institutions (including Open University) across around 140 sites, containing around 1,900 buildings. Some enrolments will include placements.

In 2018-19 there were 49,515 staff at universities. Of this, 31,855 were full-time and 17,660 were part-time.

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[6] Section 4 of the Equality Act 2010

**Colleges:** In 2018-19 there were 328,889 student enrolments at Scottish colleges. Of this, 75,274 were full-time and 253,615 were part-time.

Teaching occurred at 26 colleges across a number of sites and buildings. Some enrolments are carried out with the standard sites, and some will include placements.

In 2018-19 there were 14,692 staff at colleges. Of this, approximately half were full-time and the other half part-time.

<table>
<tr><td rowspan="3"><strong>Differential impacts</strong></td><td><strong>Age: Children and Young People</strong></td><td>Universities and colleges serve a number of young people: around two fifths of college enrolments (around 140,000),[7] and a quarter of university enrolments (61,000) [8] are aged 19 and under.<br><br>The majority of students residing in PBSA and halls of residence are 21 and under.[9]<br><br>The majority of recent HE entrants in Scotland are aged under 25, and the majority of Scottish domiciled entrants to full-time Further Education (FE) are aged between 16 and 20 years old. Whilst people in these age groups are generally at less risk of COVID-19 health impacts, evidence shows that they are more likely than the general population to experience social impacts resulting from COVID-19, and to do so more acutely. Allowing students to travel home at the end of Term 1 will have a positive impact and allow them to return to their families.<br><br>The age demographic of the student population, and the particular impact of social impacts on them, is the primary reason for adopting a specific policy to allow this group to return to family settings over the winter break, with the aim of reducing isolation.</td></tr>
<tr><td><strong>Sex: Men and Women</strong></td><td>In the academic course 2018/19, 59% (149,255) of enrolments at Scottish Universities were female, while 41% (103,495) were male.<br><br>In that same year, at colleges, 50.6% (165,653) enrolments were female and 49.4% (161,749) were male.<br><br>The measures are expected to benefit students in both sex groups, which are similarly represented in both, higher and further education. Impact, therefore, is expected to be similar in both groups.</td></tr>
<tr><td><strong>Race</strong></td><td>When compared to the overall UK population, a larger proportion of college and university students are from Minority Ethnic backgrounds.<br><br>A larger proportion of Minority Ethnic students, therefore, may be exposed to health risks while staying on campus. Recent studies, primarily in England but with some evidence from Scotland, have shown that mortality rates from COVID-19 are higher amongst the minority ethnic population. The evidence base is building but this is likely due to a range of clinical, social and economic factors. Allowing students to travel home after Term 1, might have a positive effect in reducing the associated health risks for students in this group.<br><br>Almost half of students in halls of residence are from outside the UK, there is a possibility that existing international travel restrictions out with Scotland might prevent them from travelling home and benefit from the holiday period like UK based students.</td></tr>
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[7] https://stats.sfc.ac.uk/infact/QueryBuilder/Basic
[8] HESA Students Data, SG Secondary Analysis https://www.hesa.ac.uk/data-and-analysis/students
[9] HESA Students Data, SG Secondary Analysis https://www.hesa.ac.uk/data-and-analysis/students

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| | **Socio-economic disadvantage** | NUS Scotland has published research identifying that students are subject to a range of factors that can lead them to be particularly vulnerable to mental health issues when compared to the general population. Loneliness, social isolation, and financial concerns, for example, are listed amongst the factors that can accompany re-location to commence a programme of study.<br><br>A recent ONS study of universities (3 English 1 Scottish) stated that 49% of students asked reported a worsening of their mental health and that students are significantly more anxious than the general GB population. |
| | **Disability** | Disabled people may experience exacerbation of already poor mental health due to loneliness and reductions in mental wellbeing experienced during isolation and restrictions in the ability to undertake physical activity.<br><br>Disabled students may find it harder to participate in distance learning and may require greater input from families for care and learning.<br><br>Disabled students and staff may find it harder to adhere to physical distancing measures or changed physical layouts, including student accommodation layouts and this may negatively impact them; or they may be unable to attend university due to health reasons.<br><br>The ONS Opinions and Lifestyle Survey indicates that people with underlying health conditions or long-term illness may be at a slightly greater risk of poor mental wellbeing during the pandemic.[10]<br><br>Allowing students to return at the end of term will potentially allow them to access this support. |
| | **Religion and Belief** | In 2018/19, 51% of university enrolments self-declared that they had no religious beliefs, 36% of university enrolments self-declared as having a religion or belief and 13% are unknown or prefer not to say.[11]<br><br>Public health informed restrictions were not lifted for religious purposes during Passover, Easter, Eid or Diwali, with synagogues, churches and mosques remaining closed during these celebrations, and travel and family visits restricted.<br><br>We are aware of the difficulties faced by students who wished to celebrate religious festivals during Term 1 and may have felt restricted in their ability to do so.<br><br>We are aware that the end of Term 1 coincides with certain religious festivities, such as Christmas and Hannukah. However, the aim of the policy is to facilitate a return home or into other domestic household settings for all students, to ease social isolation or other harms over the holiday period between terms 1 and 2. |
| | **Sexual Orientation** | No evidence of a differential impact identified at this time. |
| | **Gender Reassignment** | No evidence of a differential impact identified at this time. |

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[10] https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/coronavirusandthesocialimpactsongreatbritain/5june2020#indicators-of-concern-well-being-and-loneliness
[11] HESA Students Data, SG Secondary Analysis https://www.hesa.ac.uk/data-and-analysis/students

| Mitigating actions | Guidance[12] has been published and continues to be updated to support college and university students. We have also published student facing FAQ documents on the Student Information Scotland portal.[13] |
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| | The Scottish Government is committed to ensuring that students who have been living away from home are able to safely return at the end of term, if they choose to do so. We will work with universities and colleges to support students to ensure that this is possible, whilst mitigating the risk of transmission of the virus. |
| | The measures we have set out to achieve this are: |
| | • **Student welfare.** This is of critical importance, particularly for students who cannot or choose not to return home, such as international and UK students and care-experienced students for whom university is home. We expect institutions to ensure that those students who want to stay in their university and college accommodation over the holiday period will be well supported. |
| | • **Staggered and early departure**. Universities are asked to make any necessary adjustments to scheduling to ensure that in-person teaching and assessment ends early enough to allow students time to get home at the end of term, irrespective of the level the institution is in. |
| | • **Taking extra care.** We will advise any student who wants to return home for the end of term to voluntarily reduce their social mixing for two weeks before going home. This means going out only for essential reasons and exercise. |
| | • **Testing.** Enabling easy access to testing for students with symptoms has already proved to be effective in controlling outbreaks. We will be including Scottish students in a UK-wide initiative to test asymptomatic students prior to the end of term using new lateral flow devices (LFD) technology. |
| | • **Safe travel.** All college and university students travelling home given advice on how to do so safely. |
| | COVID-19 does not affect all population groups equally, so individual health circumstances and protected characteristics have been taken into consideration while designing the measures that are required in order to allow students to travel home for the end of Term 1. |
| | Universities, colleges and accommodation providers should consider whether any particular measures or adjustments are required to fulfil duties under the equalities legislation. It is important to make sure the steps implemented do not have an unjustifiably negative impact on some groups compared to others, for example, those with caring responsibilities. |
| | Universities, colleges and accommodation providers should ensure that students are supported to self-isolate if they need to, including in student accommodation if needed. This includes if students are self-isolating beyond the end of term. Universities Scotland have published a Consistent Core of Care[14] package, which outlines the support available to students who are self-isolating. |
| | For students who remain in university or college accommodation over the winter break, colleges and universities should continue to make sure they are well supported. This includes paying particular regard to the specific needs of certain groups during this period, including care-experienced students, estranged students, and international students who will require access to welfare and mental health support and essential services during the holiday periods. This has been a particularly difficult year especially for students and we ask that plans are created for students who stay on campus or alone in university or college areas beyond the end of term. |

[12] https://www.gov.scot/publications/coronavirus-covid-19-student-home-visits/pages/end-of-term-2020/
[13] https://www.studentinformation.gov.scot/coronavirus/students-returning-home
[14] https://www.universities-scotland.ac.uk/wp-content/uploads/2020/09/CoreCare0920PDF.pdf

| | The impacts of the measures we have outlined above, as well as the mitigating actions we have envisioned continue to be explored in conjunction with key stakeholders. We will take further mitigating actions on the back of experience and evidence received. |