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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 209**

**PUBLIC HEALTH**

**The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021**

*Approved by the Scottish Parliament*

<i>Made</i>	- - - -	<i>14th May 2021</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>at 11.30 a.m. on 17th May 2021</i>
<i>Coming into force</i>	- -	<i>17th May 2021</i>

The Scottish Ministers make the following Regulations in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(1) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by a resolution of, the Scottish Parliament.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021.

(2) These Regulations come into force on 17 May 2021.

**Amendment of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020**

2. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020(2) are amended in accordance with regulations 3 to 11.

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(1) 2020 c.7.

(2) S.S.I. 2020/344, last amended by S.S.I. 2021/202.

### **Amendment of regulation 2: interpretation**

3.—(1) Regulation 2 (interpretation) is amended in accordance with this regulation.

(2) After the definitions of “Level 0 area”, “Level 1 area”, “Level 2 area”, “Level 3 area”, and “Level 4 area”, insert—

““live event” means an event or activity which brings individuals together for the purpose of community, culture, sport, recreation, entertainment, art or business but does not include—

- (a) an event or activity which relates to a funeral, marriage ceremony or civil partnership,
- (b) a mass participation event such as a marathon, triathlon, or moonwalk,
- (c) an event designated by the Scottish Ministers as a flagship event according to criteria, and in a list, published by the Scottish Ministers,
- (d) a showing in a cinema,
- (e) a drive-in event,
- (f) an organised picket,
- (g) a public or street market, or
- (h) an illuminated trail.”.

(3) After regulation 2(3)(3) (interpretation), insert—

“(4) For the purposes of these Regulations, a person is not to be considered, by virtue of only being present at the same premises, venue or other setting as another person, as either—

- (a) engaging in a form of social interaction with that other person, or
- (b) undertaking an activity with that other person.

(5) For the purpose of paragraph (1), a picket is “organised” if—

- (a) it is carried out in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(4)</sup>,
- (b) the organiser of the picket has taken such measures described in paragraph 3(1)(a) and (b) of schedule 1, paragraph 4(1)(a) and (b) of schedule 2 or paragraph 8(1) (a) and (b) of schedule 3 as are relevant taking into account any relevant guidance issued by the Scottish Ministers.”.

### **Amendment of regulation 4: enforcement of requirements**

4. In regulation 4 (enforcement of requirements), for paragraph (12) substitute—

“(12) A local authority may only designate a person for the purpose of this regulation in relation to the requirements in—

- (a) Part 1 (closure of premises) and Part 2 (other restrictions on business) in each of schedules 1 to 5,
- (b) Part 4 (restrictions on stadia and live events) in each of schedules 1, 2 and 3.”.

### **Amendment of regulation 6: power of entry**

5. In regulation 6(5) (power of entry), for paragraph (5) substitute—

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(3) Regulation 2(3) was inserted by [S.S.I. 2021/136](#).

(4) [1992 c.52](#).

(5) Regulation 6(5) was relevantly amended by [S.S.I. 2020/374](#).

“(5) Where the offence referred to in paragraph (2)(a) is a contravention of one of the provisions mentioned in any of the following sub-paragraphs, a constable must reasonably suspect that there is a gathering inside a private dwelling which consists of more than—

- (a) fifteen persons, in relation to a contravention of paragraph 8 (restriction on gatherings in private dwellings) of schedule 1 (level 0 restrictions),
- (b) fifteen persons, in relation to a contravention of paragraph 9 (restriction on gatherings in private dwellings) of schedule 2 (level 1 restrictions),
- (c) fifteen persons, in relation to a contravention of paragraph 13 (restriction on gatherings in private dwellings) of schedule 3 (level 2 restrictions),
- (d) six persons, in relation to a contravention of paragraph 12 (restriction on gatherings in private dwellings) of schedule 4 (level 3 restrictions), or
- (e) six persons, in relation to a contravention of paragraph 13 (restriction on gatherings in private dwellings) of schedule 5 (level 4 restrictions).”.

#### **Amendment of schedule 1: Level 0 restrictions**

6.—(1) Schedule 1 (level 0 restrictions) is amended in accordance with this regulation.

(2) In paragraph 3(2)(6) (requirement to take measures to minimise risk of exposure to coronavirus in a Level 0 area), after head (a) insert—

“(aa) a child under 12 years of age and any other person,”

(3) In paragraph 7(7) (restriction on public gatherings outdoors in a Level 0 area)—

(a) in sub-paragraph (1)(d)—

(i) in sub-head (xii), omit “which is not a public procession”,

(ii) after sub-head (xiv), insert—

“(xv) an organised public procession which meets the conditions specified in sub-paragraph (5),”

(b) in sub-paragraph (3), for “sub-paragraph (1)(d)(xii) and (xiii)” substitute “sub-paragraph (1)(d)(xii), (xiii) and (xv)”.

(c) After sub-paragraph (4)(8), insert—

“(5) For the purpose of sub-paragraph (1)(d)(xv), the specified conditions are that the organised public procession —

(a) consists of not more than 500 persons, and

(b) has a duration of not more than 3 hours.”.

(4) After paragraph 8 (restriction on gatherings in private dwellings in a Level 0 area), insert—

## **“PART 4**

### **Restrictions on stadia and live events**

#### **Capacity limits on stadia and live events in a Level 0 area**

9.—(1) A person must not organise a live event in a Level 0 area which takes place wholly or mainly outdoors at which—

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(6) Paragraph 3 was relevantly amended by [S.S.I. 2020/374](#).

(7) Paragraph 7 was relevantly amended by [S.S.I. 2021/166](#).

(8) Sub-paragraph (4) was inserted by [S.S.I. 2021/166](#).

- (a) more than the specified (outdoors seated) number of persons are in attendance at any point in time during the event, where seating capacity is provided for each person attending, or
- (b) more than the specified (outdoors free-standing) number of persons are in attendance, where no seating capacity is provided,

unless sub-paragraph (3) applies.

(2) A person must not organise a live event in a Level 0 area which takes place wholly or mainly indoors at which more than the specified (indoors) number of persons are in attendance at any point in time during the event, unless sub-paragraph (3) applies.

(3) This sub-paragraph applies where—

- (a) the event is either—
  - (i) ticketed, or
  - (ii) otherwise subject to an effective capacity control measure,
- (b) the event takes place at a location, premises or other setting whose entrances and exits are controlled for the purpose of crowd and capacity management, and
- (c) a local authority has approved a capacity exemption application (see paragraph 10) in respect of the event.

(4) For the purpose of sub-paragraphs (1) and (2) the following types of persons are not to be included when counting the number of persons in attendance at a live event—

- (a) persons who are working or providing voluntary or charitable services at the event, and
- (b) children under 5 years of age.

(5) In this paragraph, “specified (outdoors seated)”, “specified (outdoors free-standing)” and “specified (indoors)” mean as specified for each scenario in Level 0 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

#### **Applications for exemption from capacity limits in a Level 0 area**

**10.**—(1) A person may apply to a local authority for an exemption from a requirement imposed by paragraph 9(1) or (2).

(2) In this schedule, an application under sub-paragraph (1) is referred to as a “capacity exemption application”.

- (3) A capacity exemption application may relate to a single event or a series of events.
- (4) A local authority may not charge any fee in respect of a capacity exemption application.
- (5) A capacity exemption application must be in writing and must include—
  - (a) a description of the type of event (or events) proposed,
  - (b) an event plan for the event (or events) proposed, and
  - (c) a risk assessment for the event (or events) proposed, including what measures are proposed relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events).

#### **Decisions on applications for exemption from capacity limits in a Level 0 area**

**11.**—(1) A local authority must, in deciding whether to approve a capacity exemption application, have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event (or events), and
  - (b) any other relevant circumstances.
- (2) A local authority may—
- (a) approve the application without conditions,
  - (b) approve the application with conditions relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
  - (c) refuse the application.
- (3) A local authority must, as soon as reasonably practicable after deciding an application, notify the person who made the application of—
- (a) its decision, and
  - (b) the reasons for its decision.

#### **Guidance on applications for exemption from capacity limits in a Level 0 area**

**12.**—(1) A person specified in sub-paragraph (3) must have regard to any guidance issued by the Scottish Ministers about capacity exemption applications.

- (2) Guidance issued by the Scottish Ministers may—
- (a) make different provision for different cases or descriptions of case,
  - (b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).
- (3) The persons specified for the purpose of sub-paragraph (1) are—
- (a) a person applying to a local authority for an exemption from a requirement imposed by paragraph 9(1) or (2), and
  - (b) a person determining an application.

#### **Revocation and variation of approval of exemption from capacity limits in a Level 0 area**

**13.**—(1) Where a local authority approves a capacity exemption application, it must keep the approval under review.

(2) Where it has approved a capacity exemption application without conditions (whether under paragraph 11 or this paragraph), a local authority may—

- (a) add conditions relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (b) revoke its approval of the application.

(3) Where it has approved a capacity exemption application but imposed conditions (whether under paragraph 11 or this paragraph) relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), a local authority may—

- (a) vary any such condition,
- (b) add any such condition,
- (c) remove any such condition, or
- (d) revoke its approval of the application.

- (4) A local authority must, in deciding whether to make a decision under sub-paragraph (2) or (3), have regard to—
- (a) the risk of the incidence and spread of coronavirus arising from the event (or events), and
  - (b) any other relevant circumstances.
- (5) A local authority may make a decision under sub-paragraph (2) or (3)—
- (a) of its own accord, or
  - (b) on application by the person who made the capacity exemption application.
- (6) A local authority must, as soon as reasonably practicable after making a decision under sub-paragraph (2) or (3), notify the applicant of—
- (a) its decision, and
  - (b) the reasons for its decision.

#### **Scottish Ministers’ power to call in applications for exemption from capacity in a Level 0 area**

14.—(1) The Scottish Ministers may direct a local authority that a capacity exemption application must be referred by a local authority to the Scottish Ministers for decision.

(2) A local authority must notify the Scottish Ministers when it receives a capacity exemption application where the capacity applied for exceeds the maximum capacity for that category of event specified for Level 0 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

(3) Where an application is referred to the Scottish Ministers for decision paragraphs 11 and 13 apply, subject to the modification that any reference to a local authority is to be read as a reference to the Scottish Ministers.

#### **Offence of breaching conditions of approval to hold larger live event in a Level 0 area**

15.—(1) It is an offence for a person to contravene a condition imposed—

- (a) by a local authority under paragraph 11(2)(b), 13(2) or (3), or
- (b) by the Scottish Ministers by virtue of paragraph 14(3).

(2) A person who commits an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding the statutory maximum.”.

#### **Amendment of schedule 2: Level 1 restrictions**

7.—(1) Schedule 2 (level 1 restrictions) is amended in accordance with this regulation.

(2) In paragraph 4(2)(9) (requirement to take measures to minimise risk of exposure to coronavirus in Level 1 area), after head (a) insert—

“(aa) a child under 12 years of age and any other person,”.

(3) In paragraph 8(10) (restriction on public gatherings outdoors in a Level 1 area)—

- (a) in sub-paragraph (1)(d)—
  - (i) in sub-head (xii), omit “which is not a public procession”,
  - (ii) after sub-head (xiv), insert—

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(9) Paragraph 4 was relevantly amended by [S.S.I. 2020/374](#).

(10) Paragraph 8 was relevantly amended by [S.S.I. 2021/166](#).

- “(xv) an organised public procession which meets the conditions specified in sub-paragraph (5),”
- (b) in sub-paragraph (3), for “sub-paragraph (1)(d)(xii) and (xiii)” substitute “sub-paragraph (1)(d)(xii), (xiii) and (xv)”
- (c) after sub-paragraph (4)(11), insert—
- “(5) For the purpose of sub-paragraph (1)(d)(xv), the specified conditions are that the organised public procession—
- (a) consists of not more than 100 persons, and
- (b) has a duration of not more than 2 hours.”
- (4) After paragraph 9 (restrictions on gatherings in private dwellings in a Level 1 area) insert—

## “PART 4

### Restrictions on stadia and live events

#### **Capacity limits on stadia and live events in a Level 1 area**

**10.**—(1) A person must not organise a live event in a Level 1 area which takes place wholly or mainly outdoors at which—

- (a) more than the specified (outdoors seated) number of persons are in attendance at any point in time during the event, where seating capacity is provided for each person attending, or
- (b) more than the specified (outdoors free-standing) number of persons are in attendance, where no seating capacity is provided,

unless sub-paragraph (3) applies.

(2) A person must not organise a live event in a Level 1 area which takes place wholly or mainly indoors at which more than the specified (indoors) number of persons are in attendance at any point in time during the event, unless sub-paragraph (3) applies.

(3) This sub-paragraph applies where—

- (a) the event is either—
- (i) ticketed, or
- (ii) otherwise subject to an effective capacity control measure,
- (b) the event takes place at a location, premises or other setting whose entrances and exits are controlled for the purpose of crowd and capacity management, and
- (c) a local authority has approved a capacity exemption application (see paragraph 11) in respect of the event.

(4) For the purpose of sub-paragraphs (1) and (2) the following types of persons are not to be included when counting the number of persons in attendance at a live event—

- (a) persons who are working or providing voluntary or charitable services at the event, and
- (b) children under 5 years of age.

(5) In this paragraph, “specified (outdoors seated)”, “specified (outdoors free-standing)” and “specified (indoors)” mean as specified for each scenario in Level 1 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

#### **Applications for exemption from capacity limits in a Level 1 area**

**11.**—(1) A person may apply to a local authority for an exemption from a requirement imposed by paragraph 10(1) or (2).

(2) In this schedule, an application under sub-paragraph (1) is referred to as a “capacity exemption application”.

(3) A capacity exemption application may relate to a single event or a series of events.

(4) A local authority may not charge any fee in respect of a capacity exemption application.

(5) A capacity exemption application must be in writing and must include—

(a) a description of the type of event (or events) proposed,

(b) an event plan for the event (or events) proposed, and

(c) a risk assessment for the event (or events) proposed, including what measures are proposed relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events).

#### **Decisions on applications for exemption from capacity limits in a Level 1 area**

**12.**—(1) A local authority must, in deciding whether to approve a capacity exemption application, have regard to—

(a) the risk of the incidence and spread of coronavirus arising from the event, and

(b) any other relevant circumstances.

(2) A local authority may—

(a) approve the application without conditions,

(b) approve the application with conditions relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event, or

(c) refuse the application.

(3) A local authority must, as soon as reasonably practicable after deciding an application, notify the person who made the application of—

(a) its decision, and

(b) the reasons for its decision.

#### **Guidance on applications for exemption from capacity limits in a Level 1 area**

**13.**—(1) A person specified in sub-paragraph (3) must have regard to any guidance issued by the Scottish Ministers about capacity exemption applications.

(2) Guidance issued by the Scottish Ministers may—

(a) make different provision for different cases or descriptions of case,

(b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).

(3) The persons specified for the purpose of sub-paragraph (1) are—

- (a) a person applying to a local authority for an exemption from a requirement imposed by paragraph 10(1) or (2), and
- (b) a person determining an application.

#### **Revocation and variation of approval of exemption from capacity limits in a Level 1 area**

14.—(1) Where a local authority approves a capacity exemption application, it must keep its approval under review.

(2) Where it has approved a capacity exemption application without conditions (whether under paragraph 12 or this paragraph), a local authority may—

- (a) add conditions relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (b) revoke its approval of the application.

(3) Where it has approved a capacity exemption application but imposed conditions (whether under paragraph 12 or this paragraph) relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), a local authority may—

- (a) vary any such condition,
- (b) add any such condition,
- (c) remove any such condition, or
- (d) revoke its approval of the application.

(4) A local authority must, in deciding whether to make a decision under sub-paragraph (2) or (3), have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event (or events), and
- (b) any other relevant circumstances.

(5) A local authority may make a decision under sub-paragraph (2) or (3)—

- (a) of its own accord, or
- (b) on application by the person who made the capacity exemption application.

(6) A local authority must, as soon as reasonably practicable after making a decision under sub-paragraph (2) or (3), notify the applicant of—

- (a) its decision, and
- (b) the reasons for its decision.

#### **Scottish Ministers' power to call in applications for exemption from capacity in a Level 1 area**

15.—(1) The Scottish Ministers may direct a local authority that a capacity exemption application must be referred by a local authority to the Scottish Ministers for decision.

(2) A local authority must notify the Scottish Ministers when it receives a capacity exemption application where the capacity applied for exceeds the maximum capacity for that category of event specified for Level 0 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

(3) Where an application is referred to the Scottish Ministers for decision paragraphs 12 and 14 apply, subject to the modification that any reference to a local authority is to be read as a reference to the Scottish Ministers.

### **Offence of breaching conditions of approval to hold larger live event in a Level 1 area**

**16.**—(1) It is an offence for a person to contravene a condition imposed—

- (a) by a local authority under paragraph 12(2)(b), 14(2) or (3), or
- (b) by the Scottish Ministers by virtue of paragraph 15(3).

(2) A person who commits an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding the statutory maximum.”.

### **Amendment of schedule 3: Level 2 restrictions**

**8.**—(1) Schedule 3 (level 2 restrictions) is amended in accordance with this regulation.

(2) In paragraph 1(2)(**12**) (closure of premises), omit—

- (a) head (j), and
- (b) head (k).

(3) In paragraph 5(**13**) (restricted opening hours for food and drink businesses in a Level 2 area), omit—

- (a) sub-paragraph (3)(c), and
- (b) sub-paragraph (4).

(4) In paragraph 8(2) (requirement to take measures to minimise risk of exposure to coronavirus in Level 2 area), after head (a) insert—

“(aa) a child under 12 years of age and any other person,”

(5) In paragraph 12(**14**) (restriction on public gatherings outdoors in a Level 2 area)—

- (a) in sub-paragraph (1)(d)—
  - (i) in sub-head (xii), omit “which is not a public procession”,
  - (ii) after sub-head (xiv), insert—
    - “(xv) an organised public procession which meets the conditions specified in sub-paragraph (5),”

(b) in sub-paragraph (3), for “sub-paragraph (1)(d)(xii) and (xiii)” substitute “sub-paragraph (1)(d)(xii), (xiii) and (xv)”

(c) after sub-paragraph (4)(**15**), insert—

“(5) For the purpose of sub-paragraph (1)(d)(xv), the specified conditions are that the organised public procession—

- (a) consists of not more than 50 persons, and
- (b) has a duration of not more than 1 hour.”.

(6) In paragraph 13(1)(za)(**16**) (restrictions on gatherings in private dwellings in a Level 2 area)—

- (a) for “four” substitute “six”, and
- (b) for “two” substitute “three”.

(7) After paragraph 13 (restrictions on gatherings in private dwellings in a Level 2 area) insert—

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(12) Paragraph 1(2) was relevantly amended by [S.S.I. 2020/347](#), [S.S.I. 2021/193](#) and [S.S.I. 2021/202](#).

(13) Paragraph 5 was relevantly amended by [S.S.I. 2021/193](#).

(14) Paragraph 12 was relevantly amended by [S.S.I. 2021/166](#).

(15) Sub-paragraph 4 was inserted by [S.S.I. 2021/166](#).

(16) Paragraph 13(1)(za) was inserted by [S.S.I. 2021/193](#).

## “PART 4

### Restrictions on stadia and live events

#### **Capacity limits on stadia and live events in a Level 2 area**

**14.—(1)** A person must not organise a live event which takes place wholly or mainly outdoors at which—

- (a) more than the specified (outdoors seated) number of persons are in attendance at any point in time during the event, where seating capacity is provided for each person attending, or
- (b) more than the specified (outdoors free-standing) number of persons are in attendance, where no seating capacity is provided,

unless sub-paragraph (3) applies.

(2) A person must not organise a live event in a Level 2 area which takes place wholly or mainly indoors at which more than the specified (indoors) number of people are in attendance at any point in time during the event, unless sub-paragraph (3) applies.

(3) This sub-paragraph applies where—

- (a) the event is either—
  - (i) ticketed, or
  - (ii) otherwise subject to an effective capacity control measure,
- (b) the event takes place at a location, premises or other setting whose entrances and exits are controlled for the purpose of crowd and capacity management, and
- (c) a local authority has approved a capacity exemption application (see paragraph 15) in respect of the event.

(4) For the purpose of this paragraph the following types of persons are not to be included when counting the number of persons in attendance at a live event—

- (a) persons who are working or providing voluntary or charitable services at the event, and
- (b) children under 5 years of age.

(5) In this paragraph, “specified (outdoors seated)”, “specified (outdoors free-standing)” and “specified (indoors)” mean as specified for each scenario in Level 2 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

#### **Applications for exemption from capacity limits in a Level 2 area**

**15.—(1)** A person may apply to a local authority for an exemption from a requirement imposed by paragraph 14(1) or (2).

(2) In this schedule, an application under sub-paragraph (1) is referred to as a “capacity exemption application”.

(3) A capacity exemption application may relate to a single event or a series of events.

(4) A local authority may not charge any fee in respect of a capacity exemption application.

(5) A capacity exemption application must be in writing and must include—

- (a) a description of the type of event (or events) proposed,
- (b) a live event plan for the event (or events) proposed, and

- (c) a risk assessment for the event (or events) proposed, including what measures are proposed relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events).

### **Decisions on applications for exemption from capacity limits in a Level 2 area**

**16.**—(1) A local authority must, in deciding whether to approve a capacity exemption application, have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event, and
- (b) any other relevant circumstances.

(2) A local authority may—

- (a) approve the application without conditions,
- (b) approve the application with conditions relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (c) refuse the application.

(3) A local authority must, as soon as reasonably practicable after deciding an application, notify the person who made the application of—

- (a) its decision, and
- (b) the reasons for its decision.

### **Guidance on applications for exemption from capacity limits in a Level 2 area**

**17.**—(1) A person specified in sub-paragraph (3) must have regard to any guidance issued by the Scottish Ministers about capacity exemption applications.

(2) Guidance issued by the Scottish Ministers may—

- (a) make different provision for different cases or descriptions of case,
- (b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).

(3) The persons specified for the purpose of sub-paragraph (1) are—

- (a) a person applying to a local authority for an exemption from a requirement imposed by paragraph 14(1) or (2), and
- (b) a person determining an application.

### **Revocation and variation of approval of exemption from capacity limits in a Level 2 area**

**18.**—(1) Where a local authority approves a capacity exemption application, it must keep its approval under review.

(2) Where it has approved a capacity exemption application without conditions (whether under paragraph 16 or this paragraph), a local authority may—

- (a) add conditions relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (b) revoke its approval of the application.

(3) Where it has approved a capacity exemption application but imposed conditions (whether under paragraph 11 or this paragraph) relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), a local authority may—

- (a) vary any such condition,
- (b) add any such condition,
- (c) remove any such condition, or
- (d) revoke its approval of the application.

(4) A local authority must, in deciding whether to make a decision under sub-paragraph (2) or (3), have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event (or events), and
- (b) any other relevant circumstances.

(5) A local authority may make a decision under sub-paragraph (2) or (3)—

- (a) of its own accord, or
- (b) on application by the person who made the capacity exemption application.

(6) A local authority must, as soon as reasonably practicable after making a decision under sub-paragraph (2) or (3), notify the applicant of—

- (a) its decision, and
- (b) the reasons for its decision.

#### **Scottish Ministers' power to call in applications for exemption from capacity in a Level 2 area**

19.—(1) The Scottish Ministers may direct a local authority that a capacity exemption application must be referred by a local authority to the Scottish Ministers for decision.

(2) A local authority must notify the Scottish Ministers when it receives a capacity exemption application where the capacity applied for exceeds the maximum capacity for that category of event specified for Level 0 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

(3) Where an application is referred to the Scottish Ministers for decision paragraphs 16 and 18 apply, subject to the modification that any reference to a local authority is to be read as a reference to the Scottish Ministers.

#### **Offence of breaching conditions of approval to hold larger live event in a Level 2 area**

20.—(1) It is an offence for a person to contravene a condition imposed—

- (a) by a local authority under paragraph 16(2)(b), 18(2) or (3), or
- (b) by the Scottish Ministers by virtue of paragraph 19(3).

(2) A person who commits an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding the statutory maximum.”.

#### **Amendment of schedule 4: Level 3 restrictions**

9.—(1) Schedule 4 (level 3 restrictions) is amended in accordance with this regulation.

(2) In paragraph 7(2)(17) (requirement to take measures to minimise risk of exposure to coronavirus in Level 3 area), after head (a) insert—

“(aa) a child under 12 years of age and any other person.”

(3) For paragraph 13(2)(18) (restrictions on leaving Level 3 area), substitute—

“(2) But a person who lives in a Level 3 area may leave the area in order to travel to another part of the same area.”

(4) For paragraph 14(2)(19) (restrictions on entering Level 3 area), substitute—

“(2) But a person who does not live in a Level 3 area may travel through it in order to reach a place outwith the area.”

(5) After paragraph 15(2)(v)(i)(20) (examples of reasonable excuse), insert—

“(a) that starts and ends at the same place, which place must be—

(aa) in the area in which the person lives, or

(bb) within 5 miles of such area, and”.

#### **Amendment of schedule 5: Level 4 restrictions**

**10.**—(1) Schedule 5 (level 4 restrictions) is amended in accordance with this regulation.

(2) In paragraph 8(2)(21) (requirement to take measures to minimise risk of exposure to coronavirus in Level 4 area), after head (a) insert—

“(aa) a child under 12 years of age and any other person.”

(3) After paragraph 16(2)(t)(i)(22) (examples of reasonable excuse), insert—

“(a) that starts and ends at the same place, which place must be—

(aa) in the area in which the person lives, or

(bb) within 5 miles of such area, and”.

#### **Amendment of schedule 6 (areas)**

**11.**—(1) Schedule 6(23) (areas) is amended in accordance with this regulation.

(2) For the table following paragraph 1(1), substitute the following table—

<i>Column (1)</i>	<i>Column (2) Area</i>	<i>Column (3) Level of Area</i>
1	Scotland (except the areas set out in the following rows)	2
2	The islands in the Highland local government area (except the Isle of Skye)	1
3	The Isle of Coll, the Isle of Colonsay, the Isle of Erraid, the Isle of Gometra, the Isle of Iona, the Isle of Islay, the Isle of Jura, the Isle of Mull, the Isle of Oronsay, the Isle of Tiree, and the Isle of Ulva	1

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(17) Paragraph 7 was relevantly amended by [S.S.I. 2020/374](#).

(18) Paragraph 13(2) was amended by [S.S.I. 2021/193](#).

(19) Paragraph 14(2) was amended by [S.S.I. 2021/193](#).

(20) Paragraph 15(2) was relevantly amended by [S.S.I. 2021/136](#) and [S.S.I. 2021/186](#).

(21) Paragraph 8 was relevantly amended by [S.S.I. 2020/374](#).

(22) Paragraph 16(2) was relevantly amended by [S.S.I. 2021/49](#), [S.S.I. 2021/136](#) and [S.S.I. 2021/186](#).

(23) Schedule 6 was amended by [S.S.I. 2020/452](#) and [S.S.I. 2021/193](#).

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<i>“Column (1)</i>	<i>Column (2)</i> <i>Area</i>	<i>Column (3)</i> <i>Level of Area</i>
4	Orkney Islands local government area	1
5	Shetland Islands local government area	1
6	Na h-Eileanan Siar local government area	1
7	Glasgow City local government area	3
8	Moray local government area	3”

St Andrew’s House,  
Edinburgh  
14th May 2021

*JOHN SWINNEY*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”). These Regulations come into force on 17 May 2021.

Regulation 3 amends regulation 2 of the Local Levels Regulations to include a definition of “live event”, and to make further provision relating to that definition. Regulation 2 also amends regulation 2 of the Local Levels Regulations to clarify the interpretation of “gathering”.

Regulation 4 amends regulation 4 of the Local Levels Regulations to extend the purposes for which a local authority may designate a person for enforcement purposes to include the provisions of Part 4 (restrictions on stadia and live events) in each of schedules 1, 2 and 3.

Regulation 5 amends regulation 6(5) of the Local Levels Regulations to change the number of persons which a constable must reasonably suspect to be at a gathering in a private dwelling before the power of entry in regulation 6(1) of the Local Levels Regulations may be exercised.

Amendments to schedules 1, 2, 3, 4, and 5 of the Local Levels Regulations at regulations 6(2), 7(2), 8(4), 9(2) and 10(2) adjust physical distancing requirements for children under 12. Persons responsible for places of worship, businesses or providing services are currently required to ensure, so far as reasonably practicable, that people on their premises or waiting to enter maintain a physical distance from each other, unless excepted from this requirement. These amendments add children under the age of 12 to the list of excepted persons.

Amendments to schedules 1, 2, and 3 of the Local Levels Regulations at regulations 6(3), 7(3), and 8(5) remove the restriction on organised public processions up to specified numbers of persons and specified durations.

Amendments to schedules 1, 2, and 3 of the Local Levels Regulations at regulations 6(4), 7(4), and 8(7) provide that live events can take place in Level 0, 1 and 2 areas up to specified limits. An event organiser may apply to a local authority for an exemption to the relevant capacity limits. A local authority may approve a capacity exemption application for a live event, and may make that approval subject to conditions. A local authority has power to vary and revoke those approvals. The Scottish Ministers may call in, for determination by them, a capacity exemption application.

Regulation 8(6) amends paragraph 13(1)(za) of the Local Levels Regulations to increase the number of persons who are permitted to gather indoors in a private dwelling to 6 persons from 3 households.

Amendments to schedule 6 of the Local Levels Regulations at regulation 11 provide for different Levels to apply in different parts of Scotland, as set out in the table. There are consequential amendments to schedules 4 and 5 of the Local Levels Regulations at regulations 9(3), (4) and (5) and regulation 10(3) to adjust travel controls to and from Level 3 and 4 areas.