

EQUALITY IMPACT ASSESSMENT

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020

Introduction

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

Legislative background

5. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government immediately used powers conferred by that Act to bring forward the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ("the Principal Regulations"), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. The Principal Regulations came into force on Thursday 26 March.
6. Recognising the extraordinary impact of the measures, Scottish Ministers have put in place a statutory requirement to review the restrictions every three weeks to ensure they remain proportionate and necessary.

7. As soon as the Scottish Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must revoke that restriction or requirement. Following the review required by 9 July 2020, Scottish Ministers decided to make the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020.
8. The Framework for Decision Making makes clear that the reviews will be informed by assessments of options for relaxation under their impact on the 'four harms', their viability, and broader considerations including equality impacts and consideration of measures, for example, for specific geographies and sectors.
9. The Scottish Government considered from the outset whether the lockdown provisions were consistent with the Equality Act 2010 and also considered whether the provisions could constitute indirect discrimination. In many cases, the provisions have applied to all persons irrespective of protected characteristic. Equality Impact Assessments (EQIAs) have been carried out to consider the impact of the measures contained in the Coronavirus (Scotland) Act 2020 and for the respective legislation thereafter. Where some possible impacts have been identified, the Scottish Government has considered these to be justified as both a necessary and proportionate means of achieving the legitimate aim of protecting the general public from the threats posed by the outbreak of the Coronavirus pandemic and, therefore, the threat to human life in Scotland. However, from the beginning measures were put in place to support people as they complied with lockdown guidance, such as the £350 million of community funding announced on the 18 March.
10. As Scotland emerges from the lockdown, following the Route Map, some changes are delivered through regulations, such as the opportunity to take part in outdoor recreation. Other measures are delivered through changes to guidance, such as the opportunity to take part in some non-contact sporting activities. However, all measures are given thorough consideration on the basis of their impact, including on equality and human rights.

Policy Objectives

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

Physical distancing

13. These Regulations amend the principal regulations to provide that a person who is responsible for carrying on a business or providing a service from premises which are passenger transport service premises or a shop must take all reasonable measures to ensure that a distance of one metre is maintained between any persons on those premises. People responsible for businesses or service provision which does not meet the definitions of a shop or transport service premises, must continue to take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons on those premises.

Meeting other households outdoors and indoors

14. Regulation 6 of the principal regulations provides that no person may participate in a gathering in a public place, with certain exceptions including where everyone in the gathering are members of no more than three households. These Regulations amend the principal regulations to provide that where a gathering takes place outdoors it may consist of five households and where a gathering takes place indoors it may consist of three households.

Extended households

15. The Regulations amend the principal regulations to allow two households to form an extended household. The term “extended household” means two households which have chosen to be treated as a single household and do not already form part of another extended household. Accompanying guidance advises that extended households groups should only be formed by a person who lives alone (or a single parent household where the children are under 18 years of age) and one other household, or between two people who are in a relationship but do not live together, any people under 18 that either partner lives with would also be considered part of the extended household.

Face coverings

16. The Regulations create a new offence, requiring people to wear a face covering when using a shop. The duty to wear a face covering in shops does not apply in certain circumstances or to certain groups of people, such as to children under the age of 5.
17. These Regulations also add to a non-exhaustive list of reasonable excuses which are a defence to not wearing a face covering. The list of reasonable excuses includes if a person is disabled or has a health condition and wearing a face covering would be inappropriate because it would cause difficulty, pain or severe distress or anxiety or because they cannot apply a covering and wear it in the proper manner safely and consistently.

Outdoor contact sports

18. These Regulations allow organised outdoor contact sports to resume for children and young people. Relevant guidance on outdoor gatherings should be adhered to by those taking part in organised outdoor contact sport. Individuals should also consult the safety guidance for each individual activity before taking part.

- Meeting other households outdoors and indoors.

Assessing the impacts and identifying opportunities to promote equality

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

Impact	<p>Along with the revised guidance published by the Scottish Government, this measure is intended to reduce the impact of the maximum limits on numbers of households and people meeting outdoors and indoors. It aims to make it easier to connect and be close to larger groups of family and friends. It may be of particular benefit to mental health and wellbeing, allowing some social activities to restart or take place in a more normal way.</p>
	<p>Age: Children and Younger People</p> <p>Enables children and younger people to maintain links with groups of friends.</p> <p>Could help improve a child's wellbeing by giving them access to a wider range of relatives or family friends from another household.</p> <p>Along with the provisions in guidance which allow young people to meet more often with friends, this measure may reduce the possibility that younger people may feel limited in the number of social meetings they can have.</p> <p>Possibility of anxiety about peer pressure not to comply with distancing rules may be reduced for some by revised guidance making clear that children under 12 need not physically distance.</p>
Differential impacts	<p>Age: Older People</p> <p>Older people who are more likely to be housebound or feel comfortable in home surroundings will now be able to meet a wider range of friends or family at one time.</p> <p>The relaxing of restrictions could increase the chances of older people contracting COVID-19. Figures show that older people are more likely to be adversely affected by the virus.</p> <p>Some may feel anxious that allowing people into their homes will increase risk of infection. (Also applies to disability, women more than men and socio-economically disadvantaged)</p>
	<p>Sex: Women</p> <p>As women are more likely to be main carers, more opportunity to receive help with tasks.</p> <p>Single parents will be able to access a wider range of support.</p> <p>Single people will feel less isolated, improving mental wellbeing.</p>
	<p>Sex: Men</p> <p>No impact identified.</p>
	<p>Race</p> <p>Taken together with the provisions in guidance allowing larger numbers of people to meet, this measure reduces restrictions on the size of household able to meet.</p>

		Relaxing restrictions around meeting up with others could increase the chances of people of some minority ethnicities contracting COVID-19.
Impact		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.
	Religion & Faith	No impact identified
	Disability	Those who are more likely to be housebound or feel comfortable in home surroundings, and who may have limited access to public facilities outdoors, will now be able to meet a wider range of friends or family at one time. This measure could provide a wider range of sources of support, in addition to the carers already permitted. Positive impact on mental wellbeing from reduced isolation
	Socio-economic disadvantage	Allowing indoor meetings further ensures (in addition to previous relaxations) that social interaction need not be restricted by lack of private outdoor space.
Mitigating actions:		
Survey data around anxiety is being collected to see if measures strike the right balance. This measure has been introduced only in Phase 3 of the Route Map, when the virus has been suppressed and risk of infection therefore reduced.		

•	Age: Children and Younger	These proposals solely relate to children and young people aged 0-17.
Differential impacts	People	Together with revised guidance published by Transport Scotland
	Age: Older People	This measure does not intend to increase capacity of the public transport network to aide economic growth and social activity in a
	Sex: Women	This measure applies equally to women appropriate risk mitigation consequences in having more people within the confined spaces of public transport vehicles or within the public areas of stations and
	Sex: Men	This measure applies equally to women and men who work in
	Age: Children	The measure should apply equally, regardless of age.
Race		This measure should apply equally, irrespective of race.
Religion & Faith		This measure should apply equally, irrespective of religion.
Disability		This measure should apply equally to disabled people, although it will depend on an accessible offer from providers.
Socio-economic disadvantage		This measure relates to sports clubs but also to third sector organisations offering outdoor play and physical activity. Last year, the Community Play Fund distributed funding between 15 organisations and reached more than 3000 children in some of Scotland's most disadvantaged communities.
Mitigating actions:		
Sports Clubs will be expected to operate under Sport Governing Body guidance which will have been agreed with sportscotland.		
Sports Governing Bodies (SGBs) govern and administer sport on a national (Scottish) basis. SGBs are typically independent, self-appointed organisations that govern their sports through the common consent of their sport. National associations and clubs are able to become affiliated to SGBs.		
Financial investment of SBGs by sportscotland is focussed on agreed outcomes designed to contribute to the delivery of their Corporate Strategy and other national strategies. SGBs are expected to meet certain requirements for investment, such as having an up to date policy framework and action plans covering all key areas of equality, anti-doping and sports betting.		

and Younger People	
Age: Older People	The measure should apply equally, regardless of age.
Sex: Women	The measure should apply equally to women and men that travel,
Sex: Men	The measure should apply equally to men and women that travel,
Race	The measure should apply equally, regardless of race
Religion & Faith	The measure should apply equally, regardless of religion or faith
Disability	There are already measures in place to aid people with disabilities for whom travel proves challenging. Those measures have been available throughout the pandemic and when operating at 2 metre physical distancing and will continue to apply with the measure to enable public transport operators to operate at 1 metre physical distance.
Socio-economic disadvantage	The measure should enable greater capacity on public transport and therefor enable those who do not have access to private vehicles to access work, social and leisure activities more easily.

Mitigating actions:

The guidance is clear that transport operators prior to implementing 1 metre distancing are expected to undertake a risk assessment to determine what measures need to put in place to mitigate risk consequent on the implementation of reducing from 2 metre physical distancing to 1 metre. The guidance makes clear that operators should consider those mitigation measures identified by the Scottish Government Covid-19 Advisory Group such as ventilation, cleaning of surfaces, hand-washing (or use of hand-sanitisers), physical screens and face-coverings as being appropriate to mitigate the risk of air-borne and surface transmission of the virus. Operators are also expected to communicate to passengers and users of their facilities of how they should maintain physical distancing in vehicles and vessels and within the public areas of stations and interchanges and that special consideration should be given to the impact of any mitigation measures on those with physical disabilities or cognitive impairment as well as advising all passengers/users that they are within an environment where 1 metre physical distancing operates.

- Face coverings

<p>Impact</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>People with breathing difficulties or physical conditions making face covering usage difficult and young children would find the mandatory usage of face coverings in retail challenging, however under such circumstances they may be exempt from the requirement or have a reasonable excuse not to wear a face covering.</p> <p>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, discretion is allowed where wearing a face covering would cause difficulty, pain or severe distress or anxiety.</p>				
<p>Differential impacts</p>	<table border="1"> <tr> <td data-bbox="268 1167 523 1742"> <p>Age: Children and Younger People</p> </td> <td data-bbox="523 1167 1394 1742"> <p>Young workers are more likely to work in both food and non-food retail sectors. Almost a quarter of people aged 16 to 24 in employment work in Retail, including wholesale and repair of vehicles, accounting for 22.3 per cent of the workforce in this sector.</p> <p>Children may find face coverings irritating but it is not advised that children visit shops regularly. Shopping trips are shorter at the moment so the duration that they are worn is not long. There are no specific requirements on the nature of face coverings other than they cover noses and mouths so a suitable garment should be found.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p> </td> </tr> <tr> <td data-bbox="268 1742 523 2007"> <p>Age: Older People</p> </td> <td data-bbox="523 1742 1394 2007"> <p>Older people are at higher risk of infection. Older people with advancing dementia or Alzheimer's will in many cases have additional challenges adhering to face covering rules in shops.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result. A reasonable excuse for not wearing a face covering includes where a person</p> </td> </tr> </table>	<p>Age: Children and Younger People</p>	<p>Young workers are more likely to work in both food and non-food retail sectors. Almost a quarter of people aged 16 to 24 in employment work in Retail, including wholesale and repair of vehicles, accounting for 22.3 per cent of the workforce in this sector.</p> <p>Children may find face coverings irritating but it is not advised that children visit shops regularly. Shopping trips are shorter at the moment so the duration that they are worn is not long. There are no specific requirements on the nature of face coverings other than they cover noses and mouths so a suitable garment should be found.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>	<p>Age: Older People</p>	<p>Older people are at higher risk of infection. Older people with advancing dementia or Alzheimer's will in many cases have additional challenges adhering to face covering rules in shops.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result. A reasonable excuse for not wearing a face covering includes where a person</p>
<p>Age: Children and Younger People</p>	<p>Young workers are more likely to work in both food and non-food retail sectors. Almost a quarter of people aged 16 to 24 in employment work in Retail, including wholesale and repair of vehicles, accounting for 22.3 per cent of the workforce in this sector.</p> <p>Children may find face coverings irritating but it is not advised that children visit shops regularly. Shopping trips are shorter at the moment so the duration that they are worn is not long. There are no specific requirements on the nature of face coverings other than they cover noses and mouths so a suitable garment should be found.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>				
<p>Age: Older People</p>	<p>Older people are at higher risk of infection. Older people with advancing dementia or Alzheimer's will in many cases have additional challenges adhering to face covering rules in shops.</p> <p>However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result. A reasonable excuse for not wearing a face covering includes where a person</p>				

	cannot put on, wear or remove a face covering because of any physical or mental illness or impairment, or without severe distress.
Sex: Women	<p>It is unlikely that these measures will have a specific differential impact for women.</p> <p>Mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>
Sex: Men	<p>It is unlikely that these measures will have a specific differential impact for men.</p> <p>Mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>
Race	<p>It is unlikely that these measures will have a specific differential impact.</p> <p>Mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>
Religion & Faith	<p>It is unlikely that these measures will have a specific differential impact.</p> <p>Religious face coverings that cover the mouth and nose also fulfil the purposes of the regulation.</p> <p>Mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.</p>
Disability	<p>People living with sight and hearing loss 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.¹ A reasonable excuse for not wearing a face covering includes where a person cannot put on, wear or remove a face covering in order to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise).</p> <p>Face coverings may also present challenges for people with a restricted field of vision, where any residual vision is at the lower edge of the usual field of view.</p> <p>Learning disabled or autistic adults and children may also struggle to understand and/or comply with new measures.</p>

¹ Royal Blind and Scottish War Blinded response to COVID-19 Committee Call for Evidence, 29 May 2020

		However, mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.
	Socio-economic disadvantage	It is unlikely that these measures will have a specific differential impact. Mandatory face coverings in retail are likely to lower risk of infection and transmission of the virus, which would have potential to reduce anxiety for this group as result.

Mitigating actions:

Version 1 of the COVID-19 Retail Guidance was published on 26 May 2020. The guidance will be reviewed in line with the regular three weekly review of lockdown requirements. 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, including addressing any equality concerns.

The guidance has been developed through a Ministerial-led Sub-group, comprising business representative organisations, trade unions and regulators to ensure that this guidance is evidence-based, fair and ethical, clear and realistic. The sub-group has conducted the first review of the guidance, and as a result, the updated COVID-19 Retail Guidance was released on 19 June.

The Retail Guidance Sub-group and Police Scotland have been consulted on the introduction of mandatory face coverings in retail. When creating the guidance, members of this group considered the diversity of the retail workforce and the unequal impact COVID has had or will have on workers with protected characteristics under the Equality Act 2010.

The retail guidance states employers should take into account individual health circumstances and protected characteristics, and not tolerate the discrimination or the victimisation of those more vulnerable to COVID-19. The introduction of mandatory face coverings, in conjunction with physical distancing and additional hygiene measures, will help protect and minimise health risks to workers and those most at risk.

Individual discretion should be applied in considering the use of face coverings where the wearing of a face covering is difficult on grounds of any physical or mental illness or impairment or disability, for example for children with breathing difficulties and disabled children who would struggle to wear a face covering. Similarly, discretion is allowed for people who have a health condition, disabled people and those who need to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise) where wearing a face covering would be inappropriate because it would cause difficulty, pain or severe distress or anxiety or because it cannot be worn in the proper manner safely.

As part of keeping the guidance under review, it is our intention to continue to develop our evidence base to ensure that we continue to comply with the needs of the Public Sector Equality Duty and that any changes to the guidance meet the needs of people with one or more of the impacted protected characteristics.

