

Equality Impact Assessment

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 10) 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.

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. Following the review required by 9 July 2020, Scottish Ministers decided to progress to phase 3 of the route map. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020 were made on 9 July and introduced a number of changes for the purposes of implementing certain phase 3 policies. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 were made on 14 July and introduced a number of further changes for the purposes of implementing certain phase 3 policies. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 9) Regulations 2020 were made on 21 July and introduced some further changes for the purposes of implementing certain phase 3 policies.
13. As lockdown measures continue to be eased, and additional evidence additional measures may become necessary to limit the spread of Covid 19. 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.

Locations where a face covering is mandatory

14. Regulation 6B of the principal regulations, which previously made face coverings mandatory in retail environments (including those where services were provided) has been amended to make face coverings mandatory in a wider range of indoor spaces open to the public. This includes places of worship, community centres, crematoriums and post offices. The Regulations also make face coverings mandatory in banks and takeaways which were previously exempt from the requirement. The requirement to wear a face covering has been extended because there is evidence that face coverings add some additional value in preventing the spread of Covid 19, especially in crowded and less well ventilated spaces, and where 2 m distancing is not possible.
15. The Regulations also provide some additional exemptions to the requirement to wear a face covering in public spaces. This is to ensure that the exemptions properly reflect the activities that will take place in public places such as places of worship, libraries and community centres.

Face Shields

16. Regulation 10 of the principal regulations sets out a definition of a face covering. These Regulations amend the definition of face covering to exclude face shields from the definition of face covering. This is because recent evidence indicates that face shields do not provide enough protection and so should not be regarded as meeting the legal definition of a face covering in locations where they are mandatory.

Assessing the impacts and identifying opportunities to promote equality

17. It is necessary to make and lay this instrument urgently to make necessary adjustments to the current arrangements which reduce 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.
18. 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.
19. This EQIA draws and builds on considerations in similar EQIAs that were previously developed to assess the impact of mandatory use of face coverings in public transport and retail settings. The EQIA on the use of face coverings on public transport drew on analysis from external organisations who had consulted on this issue. These included, for example, Disability Equality Scotland's snap poll on wearing of face coverings, which showed that almost all (98%) of those who responded indicated they would wear a face covering on public transport if mandatory; and analysis of a survey being undertaken by Transport Scotland which shows 77% of those who responded intend to wear a face covering if using public transport.
20. This EQIA also considers the impact of amending the regulations to exclude a face shield from falling within the definition of a face covering. Emerging evidence and clinical advice is that that face shields alone are inadequate protection from the spread of COVID-19.

Mandatory use of face coverings and adjustments to the definition of face covering	
Impact	<p>As we continue to relax restrictions on businesses and public services, the risk of COVID-19 infection and transmission in the community will increase, especially for those more susceptible to severe illness.</p> <p>There is some evidence that face coverings prevent transmission of the virus in certain circumstances, particularly poorly ventilated and (crowded) enclosed spaces. However, they should be used in addition to and not instead of the core public health measures.</p> <p>While it is recognised that face coverings alone cannot protect from COVID-19, the introduction of mandatory face coverings in a wider range of settings, in conjunction with physical distancing and hand hygiene measures, is likely to reduce the risks of transmission of the virus.</p> <p>People with breathing difficulties, those with physical conditions which make face covering usage difficult, and young children could find the mandatory use of face coverings to be 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 a challenge. However, discretion is allowed where wearing a face covering would cause difficulty, pain or severe distress or anxiety to the wearer or the person in the care of the wearer.</p> <p>The current exemptions and reasonable excuses for not wearing a face covering would therefore be retained and additional exemptions for specific spaces under certain circumstances (e.g. a religious leader removing a face covering to be audible when leading a service) will be added.</p> <p>As the evidence suggests that face coverings provide some level of protection against transmission from the wearer to other people in close proximity, our policy is focussed on wearing a face covering to protect others. Increasingly the range of settings in which face coverings are mandatory would therefore benefit all people, including those described above, by making them feel safer and reducing their risk of infection. An important point is that these benefits would be experienced even by those who are exempt from the mandatory requirement.</p>
Differential impacts	<p>Age: Children and Younger People</p> <p>There are no particular age groups that would be more disadvantaged by extending the range of settings in which the use of face coverings is to become mandatory. These settings are likely to be frequented by people of all age groups.</p> <p>Children may find face coverings irritating and may have particularly preferred to use a face shield, which are now being excluded from the definition of face coverings. For safety reasons,</p>

	<p>there is no requirement that children under the age of 5 use face coverings (under the regulations they are exempt). There are no specific requirements on the nature of face coverings other than they cover the nose and mouth so a suitable and comfortable garment could be found.</p>
Age: Older People	<p>We have consulted Age Scotland.</p> <p>Older people are at higher risk of developing more severe symptoms when infected. Extending the mandatory use of face coverings to a wider range of settings is likely to lower risk of transmission of the virus, which is likely to reduce harm and offer more reassurance to older people.</p> <p>Older people with advancing dementia or Alzheimer's may have additional challenges adhering to face covering rules. We have engaged with colleagues leading on carers policy to agree the groups who are exempt from the mandatory requirement. This includes those with dementia or Alzheimers.</p> <p>For some people with Alzheimer's it can be distressing to see their carer wearing a face covering as they are unable to recognise them. Therefore a person is exempt from wearing a face covering if it causes severe distress to either the wearer or the person in the care of the wearer.</p>
Sex: Women	<p>It is unlikely that these measures will have a specific differential impact for women. However, as women tend to be the main carers for children, they may be more likely to experience resistance from children who find face coverings uncomfortable.</p> <p>However, we also know that there is a higher ratio of women to men in older age groups, reflecting women's longer life expectancy. Because older people are at higher risk of developing more severe symptoms when infected, extending the mandatory use of face coverings to a wider range of settings is likely to have a greater benefit to women overall.</p>
Sex: Men	<p>It is unlikely that these measures will have a specific differential negative impact for men but there may be some particular benefits for men.</p> <p>Men appear to be more seriously affected by coronavirus once it has been contracted. 53% of hospital admissions were men and 47% were women, and more men than women have been admitted to ICU¹. Age-standardised death rates (adjusting for the age-structure of the population) were almost 50% higher for men than for women².</p>
Race	<p>It is unlikely that these measures will have a differential impact for specific racial groups. There are no particular racial groups that would be more disadvantaged by extending the range of settings</p>

¹ Public Health Scotland (2020) [COVID-19 Statistical Report](#) (This data is from the report published on 03 June 2020)

² National Records of Scotland (2020) <https://www.nrscotland.gov.uk/files/statistics/covid19/covid-deaths-report-week-23.pdf> 1st - 7th June 2020

		in which the use of face coverings is to become mandatory. These settings are likely to be frequented by people of all races.
	Religion & Faith	<p>It is unlikely that these measures will have a specific differential impact.</p> <p>There are no particular religious or faith groups that would be more disadvantaged by extending the range of settings in which the use of face coverings is to become mandatory. These settings are likely to be frequented by people of all groups.</p> <p>Religious face coverings that cover the mouth and nose also fulfil the purposes of the regulation.</p>
	Disability	<p>We have consulted with a range of Disabled Peoples Organisations: Glasgow Disability Alliance; Disability Equality Scotland and Inclusion Scotland. We also reviewed evidence submitted to COVID-19 Committee Call for Evidence by the charities Royal Blind and Scottish War Blinded.</p> <p>People living with sight and hearing loss may find that extending the mandatory use of face coverings could create new communication barriers, and blind and partially sighted people have reported coverings can also affect people's speech therefore making it harder for them to hearing. We have included, as a reasonable excuse for not wearing a face covering, 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, facial expression or otherwise).</p> <p>Excluding face shields from the definition of face coverings is likely to have a more detrimental impact on those who rely on lip reading. The face coverings guidance will therefore make clear that when communicating with someone who relies on lip reading and facial expressions, you are permitted to remove your face covering to communicate. To the best of your ability you should maintain 2 metres distance while doing so.</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. For this reason, we have engaged with colleagues leading on carers policy to agree the groups who are exempt from the mandatory requirement. This includes those with learning disabilities.</p> <p>It is important to weigh this up against the evidence that Covid-19 particularly affects those with a pre-existing medical conditions³. Some disabled people are more likely to experience severe ill-health from contracting Covid-19 than the general population, due to a higher incidence of pre-existing health conditions and poorer overall health within the disabled community.</p>

³ <https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19/coronavirus-covid-19-general-advice>

		<p>Recent analysis also highlights that a higher proportion of disabled people than non-disabled people were worried about the effect of the coronavirus pandemic on their well-being. Concerns about well-being tended to be most frequent among those with mental health and socio-behavioural-related impairments, whereas concerns about access to essentials tended to be most frequent among those with hearing- or dexterity-related impairments⁴.</p> <p>The benefits of extending the use of face covering to more settings will therefore have a greater positive impact on people with disabilities.</p>
	<p>Socio-economic disadvantage</p>	<p>It is unlikely that these measures will have a specific differential impact. There is no requirement to wear a face covering with a particular specification – other than it covers the nose or mouth .– Instructions on how to make face covering are publicly available. Using a scarf meets the definition in the regulations provided it covers the nose and mouth. This means that there need not be any need to purchase a face covering and we will continue to highlight this in the communication campaign. However, disability organisations have highlighted concerns about accessibility and affordability. Some people may not be in a position to make their own face coverings or afford to buy and or frequently replace them.</p>
<p>Mitigating actions:</p> <p>The measures may disproportionately positively benefit the health of the people who the disease more severely affects, such as older people, those with underlying health conditions (and some disabled people are more likely to experience severe ill-health from contracting Covid-19 than the general population) and males. However, some potential indirect negative impacts on one or more of the protected characteristics have been identified. Whilst the view of The Scottish Government is that this regulation is justified and a proportionate means of reducing the public health risks posed by coronavirus, there is also a need to mitigate those negative effects identified.</p> <p>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.</p> <p>Communications around the policy will be considered to ensure that the regulation meets the tests of advancing equality and fostering good relations. The media campaign will, for example, remind people that there are some important exemptions and that we should avoid</p>		

⁴ ONS Coronavirus Social Impacts Study

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/coronavirusandthesocialimpactsondisabledpeopleingreatbritain/may2020?hootPostID=b78ba3a6a211a045c00d5971c4d6a38a>

judging people who appear not to be complying and that we should treat one another with kindness.

For some disabled people with learning impairments, understanding of and actions required to comply with the regulation, may provide additional challenges. Provision of information and advice will be made as accessible as possible and with relevant stakeholder organisations to mitigate this.

The Scottish Government's Covid-19 guidance for those who are vulnerable or need additional support provides additional information. Ready Scotland's additional support page also provides links to information for disabled people, linking people to Disability Information Scotland.

Insofar as these mitigating actions may not be able to mitigate all of the potential impacts, the Scottish Government currently considers the potential impacts justified, and a proportionate means of achieving the legitimate aim of reducing the public health risks posed by coronavirus, and the prevention of harm to individuals living in Scotland.

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.