

Equality Impact Assessment

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.11) 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. 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.

Mandatory collection of visitor (including customer, staff and volunteer) contact details in the hospitality sector to assist contact tracing as part of NHS Scotland's Test and Protect

13. These Regulations amend the principal regulations to mandate that specified hospitality settings must collect and record minimal contact data from visitors to their

premises in support of contact tracing as part of NHS Scotland's Test and Protect. There is also a requirement to provide this information, on request, to a public health officer to support contact tracers to give appropriate public health advice to possible close contacts of individuals who have tested positive for Covid-19 in established high risk settings such as pubs, restaurants, cafés and other hospitality venues.

Assessing the impacts and identifying opportunities to promote equality

14. It is necessary to make and lay this instrument urgently to make necessary adjustments to the current arrangements which facilitate minimising the risks to public health arising from Covid-19.
15. 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.

<ul style="list-style-type: none"> Mandatory collection of visitor (including customer, staff and volunteer) contact details in the hospitality sector to assist contact tracing as part of NHS Scotland's Test and Protect 	
Impact	<p>Along with revised guidance published by the Scottish Government, this measure is intended to increase compliance by hospitality premises in collecting minimal contact details in support of Test and Protect, building upon the existing data collection advice set out in guidance on 03 July and 14 July.</p>
Differential impacts	<p>Age: Children and Younger People</p> <p>The proposal notes provision of contact details via a lead member of each household present. In instances involving families, this would normally be a parent/guardian/carer.</p> <p>In instances where children and younger people may be meeting up without an adult (e.g go to a café), consideration must be given to ensuring informed consent is given to the provision of contact details, either manually or digitally. This will be covered in revised guidance.</p> <p>Ensuring this approach is adhered to may, by virtue of enabling premises to remain open versus harsher lockdown measures, reduce the possibility that younger people may feel limited in the number of social meetings they can have.</p> <p>While this will potentially enable children and younger people to maintain links with groups of friends (while adhering to wider Covid-19 requirements for social gatherings), there is the possibility of anxiety about providing contact details. This may be reduced by on-going messaging distributed via key partners, schools, youth networks etc about the importance of Test and Protect and contact tracing to break chains of transmission. Additionally, establishments are expected to take every step to explain the requirement to visitors, and explain appropriately what the data will be used for, if requested.</p>
	<p>Age: Older People</p> <p>Older people who are more likely to be less digitally enabled may face situations where premises have digital-only systems to enable compliance with the requirement.</p> <p>This will be mitigated via guidance highlighting the need to ensure systems put in place to capture contact details can be utilised by all customers through e.g. supplementing any digital solutions with manual recording by the venue for any visitor not digitally enabled. Additionally, establishments are expected to take every step to explain the requirement to visitors, and explain appropriately what the data will be used for, if requested.</p> <p>Ensuring this approach is adhered to may, by virtue of enabling premises to remain open versus harsher lockdown measures, reduce the possibility that older people may feel limited in the number of social meetings they can have.</p>
	<p>Sex: Women</p> <p>Data collected is only to be used for the purpose for which it is intended. Therefore, women should feel reassured that providing their details in support of contact tracing will not result in unwanted contact from individuals with access to the data collected. Women</p>

	who are concerned about sharing their contact details with venues may as a result of the regulations feel less comfortable visiting hospitality venues.
Sex: Men	Data collected is only to be used for the purpose for which it is intended. Therefore, as noted above, men should feel reassured that providing their details in support of contact tracing will not result in unwanted contact from individuals with access to the data collected.
Race	Language barriers may exist for individuals who cannot speak English. As part of hospitality venues complying with requirements, this would be part-mitigated by staff taking every possible step to explain the requirements to visitors.
Religion & Faith	People from certain religions or faiths may potentially not wish to be identified via their details being associated with certain establishments. With the data being managed securely by venues, and only passed to contact tracers when requested, it is our assessment that provision of contact details in hospitality settings will not result in unwanted identification or association with a particular establishment.
Disability	The proposal may be difficult for some individuals to comply with, in terms of provision of details and ensuring informed compliance to the terms of data collection. However, it is only being mandated in law that settings collect the data and share it with contact tracers, not for individuals to provide the details. In those instances, premises should take every step to enable the provision of minimal contact details, assuming the individual is content to provide those details in support of contact tracing. This may require the provision of a manual system to enable details to be noted, in an otherwise digital-only environment. It is expected that an establishment covered by the regulations would explain the requirements to, for example, a blind person who cannot read the privacy notice, or provide a written copy of the privacy notice/requirements to someone with hearing difficulties.
Socio-economic disadvantage	Those people who are digitally disadvantaged and e.g. do not have a smartphone may be unable to make use of digital solutions to providing contact details to premises. This is mitigated for via the provision of a manual 'backup' method for those visitors who cannot engage with a digital system.

Mitigating actions:

Before the commencement of these regulations, relevant guidance will be reviewed in order to better facilitate the provision of data where equalities considerations are considered. While the legislation will not encompass the level of detail required to mandate absolute adherence to the above characteristics being included in the implementation of systems, it will be covered in guidance to enable premises to ensure they comply in a manner that is inclusive of equalities considerations. The regulations will also be reviewed alongside all

other Covid-19 regulations, enabling changes to be made if deemed necessary and proportionate. It is not anticipated that there are significant equalities impacts created by these proposed regulations – those outlined above are expected to be addressed by the steps outlined.