

Final Business and Regulatory Impact Assessment

Title of Legislation: The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Amendment Regulations 2020

Purpose and intended effect:

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 previous regulations”), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (“the Regulations”) revoked and replaced the previous regulations; the content of the Regulations remains primarily the same as the original regulations, as amended. The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 (“the temporary regulations”), suspended the Regulations for a 16 day period, and make tighter additional measures during that period.

These regulations adjust those temporary restrictions to provide an exemption to the requirement to wear a face covering for couples who are getting married or entering into a civil partnership. The new exemptions allows couples to attend the legal ceremony or registration without wearing a face covering, provided that physical distancing from others can be maintained. Guests are still required to wear a face covering during the ceremony or registration, unless exempt, and the couple must still wear a face covering at a reception held to celebrate, unless exempt for another reason such as eating or drinking.

These regulations also now require face coverings to be worn in workplaces in certain communal areas. Face coverings are now required in workplace canteens, unless seated, and are now also required in communal areas such as passageways, lifts and entrances.

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.

Policy Objectives:

As we are beginning to see an increase in transmission across Scotland, it has become necessary to implement some further restrictions to bring these numbers down again. An evidence paper was published on 7 October to sum up evidence on infection trends, confirmed cases, hospital use and deaths, and how these vary across Scotland. This paper is available at <https://www.gov.scot/publications/coronavirus-covid-19-evidence-paper-october-2020/>.

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.

Title of proposal: Face coverings

Purpose and intended effect:

The temporary regulations already mandate face coverings in shops and on public transport and most indoor public settings.

In order to mitigate transmission of Covid-19, and widen usage and compliance, this amendment is primarily intended to make face coverings mandatory in indoor communal areas in workplaces where measures have not been taken to ensure distancing. There is also provision to ensure the wearing of face coverings in workplace canteens except when seated at a table.

The current exemptions and reasonable excuses for not wearing a face covering will be retained and additional exemptions will be added for couples at their indoor marriage or civil partnership as well as persons undertaking tasks in the course of their employment, where the wearing of a face covering would cause a material risk of harm.

Objective

The objective of this intervention is to ensure that the health risks posed by COVID-19 are minimised as much as possible. As more indoor public premises re-open, the risk of COVID-19 infection and transmission in the community will also increase, being particularly detrimental to those more susceptible to severe illness.

Employees and others entering workplaces may have anxieties about being in this setting due to the risk of infection and transmission within their households.

While it is recognised that face coverings alone cannot protect from COVID-19, the introduction of mandatory face coverings in certain communal workplace settings, in conjunction with physical distancing and hand hygiene measures, is likely to play a role in reducing the risks of transmission of the virus.

Furthermore, as more restrictions are eased, the concept of ‘risk compensation’, or increasing risky behaviour after adopting a protective measure, should not be employed to argue against or delay the increased use of face coverings. Available evidence does not support concerns that wearing face coverings adversely affects compliance with other measures, for example, hand hygiene. [*Is risk compensation threatening public health in the covid-19 pandemic?* BMJ 2020;370:m2913]

Consultation:

We have engaged with internal SG policy teams for their advice and expertise on how this will effect different sectors.

Options:

Option 1 – Extend the mandatory usage of face coverings in communal areas in workplace settings.

Costs – There is no legal duty on the employer to supply face coverings so there are no additional costs to business or organisations. Although some businesses may decide themselves to purchase face coverings on behalf of their employees, employers are under no obligation to do so. Individuals can use the face covering that they would use in the places where face coverings are already mandated.

Benefits – Reduced risk of infection and transmission of the virus in conjunction with physical distancing and hygiene measures. Reduced anxiety for employers, employees and wider population as result. The benefits would also be experienced even by those who are exempt from the mandatory requirement.

Increasing the range of indoor 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. Moreover, increased mandating of face coverings will assist the wider acceptance within society of face coverings as one of a combination of measures which, together, will help suppress transmission of Covid-19.

Option 2 – Do not make face coverings mandatory in indoor communal work place settings.

Costs – Potential increase in risk of infection and transmission of the virus. Employees, customers and citizens may feel anxious about working or attending increasingly busier environments without a face covering. Some citizens and groups in society may feel more apprehensive about physically visiting some indoor public premises, potentially slowing the recovery of the sector.

The cost of people becoming ill and not being able to go to work and having to self-isolate. The cost on other public services.

Benefits – Some members of the public or employees may perceive there to be benefits from not having the added inconvenience of having to wear a face covering in communal spaces in their workplace.

Scottish Firms Impact Test:

No such test has been undertaken for the purposes of these amendments. However, similar extension of the regulations was made previously and stakeholder feedback has been incorporated. Internal SG policy teams have been consulted.

Competition Assessment:

The expansion of mandatory face coverings to indoor communal areas in workplace settings will have no effect on Scottish retailers.

Consumer Assessment:

The quality of goods and services available is unlikely to be impacted as a result of this change in the regulation.

Expanding the mandatory use of face coverings to indoor communal areas in work place settings could impact employees with health conditions or disabilities. Learning disabled or autistic adults may also struggle to understand and/or comply with new measures; there is an exemption from the requirement to wear a face covering where the person cannot put on, wear or remove a face covering because of any physical or mental illness or impairment or disability or wear one without severe distress.

People with breathing difficulties or physical conditions making face covering usage difficult may find the mandatory usage of face coverings in communal areas in the workplace challenging, however under such circumstances they would be exempt from that requirement.

People suffering from mental health conditions such as anxiety or panic disorders may also find the mandatory use of face coverings in communal areas in the workplace a challenge. However, there is an exemption from the requirement to wear a face covering where it would cause difficulty, pain or severe distress or anxiety.

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. 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. In addition, a face covering does not need to be worn when undertaking tasks in the course of their employment, where the wearing of a face covering would cause a material risk of harm; that scenario may, for example, apply on the factory floor due to requirements of the production process.

Communications around the policy will be considered to ensure that these regulations 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 judging people who appear not to be complying and treat one another with kindness.

Test run of business forms:

No statutory forms will be created.

Digital Impact Test:

All documents created will be word based documents created by the SG officials and uploaded to the SG website by the SG's web editors.

Legal Aid Impact Test:

This measure itself does not in itself create any new legal rights.

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider BRIA for COVID-19 legislation. These regulations do not impose any additional obligation on employers to ensure the wearing of face coverings in their workplace.

Implementation and delivery plan and post-implementation review:

As with other public health measures that are in place, we will keep face covering legal requirements under review in the context of transmission of the virus in Scotland and in the light of the any emerging evidence on face coverings and any other options that may be available in the future to limit the spread of Covid-19.

Summary and recommendations:

It is essential that the SG provides full consideration to this measure to ensure that the health risks posed by COVID-19 are minimised as much as possible, protecting employers, employees and wider society.

The risk of COVID-19 infection and transmission in the community has been increasing as wider sectors of the economy re-open. The introduction of mandatory face coverings to indoor communal settings in workplaces, in conjunction with physical distancing and hand hygiene measures, is likely to significantly reduce the risks of transmission of the virus.

It is therefore recommended that this measure is introduced to aid safer workplaces and existing public health efforts.

Declaration and publicationSign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Jeane Freeman**Date: 15th October 2020****Minister's name: Jeane Freeman****Minister's title: Cabinet Secretary for Health and Sport**