

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (RESTRICTIONS AND REQUIREMENTS) (LOCAL LEVELS) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2020

SSI 2020/374

The above instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6(3) of schedule 19 of the Act.

Purpose of Instrument

These Regulations adjust the levels-based approach which is currently in place across Scotland. The Regulations modify some of the restrictions and requirements for the different levels and set out changes to the level that applies to 3 areas of Scotland, all other areas remain in the same level.

Legislative background

1. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. From 14 September they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October those regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. A new levels-based approach was introduced on 2 November, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the principal regulations”) came into force and revoked the previous regulations.

Policy Objectives

Adjustments to allocation of levels

2. The Regulations amend the current allocation of levels to different areas of Scotland. Fife, Angus and Perth & Kinross local government areas are moved from Level 2 to Level 3 as a result of the most recent data. No other changes have been made to the allocation of levels. Supporting data was published on 10 November 2020 - <https://www.gov.scot/publications/coronavirus-covid-19-allocation-of-levels-to-local-authorities-10-november-2020/>.

Gatherings

3. These Regulations amend the principal regulations to adjust the social gathering rules. Regulation 4 allows in-home socialising to take place in a private dwelling for certain Level 1 areas. The areas are Orkney Islands, Shetland Islands and Na h-Eileanan Siar. The restrictions on in-home visiting can cause particular challenges for rural and island communities. While it is difficult to draw firm conclusions at this stage, early evidence suggests that the virus

remains controlled across the three island councils, however the position is less clear in Highlands and Moray. Considering the four harms approach and weighing up the benefits of in-home socialising, especially for those who live in remote places where there is no easy access to regulated indoor public places, we believe it is now appropriate to permit in-home socialising at Level 1 in these areas. These gatherings must consist of no more than 6 people from 2 households.

4. For Level 0 areas, regulation 7 reduces (from 15 to 8) the number of people aged under 18 (where at least one person is aged 12-17) who are permitted to gather in an outdoor public place. The exception for such gatherings does not count the number of households, so a gathering of up to 15 people aged under 18 could represent up to 15 households. The Scottish Government has, since the principal regulations were made, reconsidered the position on such gatherings and considers that a gathering of more than 8 people under 18 (and therefore up to 8 households) represents too great a risk of transmission for Level 0 areas. This does not affect the numbers who can gather in such a place if they fall within the general outdoor gathering limit (15 people from up to 5 households). Making this change also removes an inconsistency (identified by the Delegated Powers and Law Reform Committee) between outdoor gatherings of under 18 year olds in private dwellings (gardens) compared to public places: both will now be limited to 8 people.

5. Regulation 8 corrects an omission by adding an exception for outdoor gatherings in private dwellings subject to the 15 person/5 households rule. It also aligns the rules on counting children under 12 with those applicable to gatherings in other levels and settings. (These changes implement undertakings given to the DPLRC).

6. Regulation 9 corrects an omission in the principal regulations to better reflect the Strategic Framework in relation to public gatherings outdoors. Organised activities for people aged under 18 (other than public processions) are to be permitted in level 4 areas.

Offences, power of entry and miscellaneous amendments

7. Regulations 5, 6 and 18 make a number of amendments to correct errors in the principal regulations, including implementing commitments given to the DPLRC.

Sale of alcohol in hotels

8. These Regulations amend the principal regulations to prohibit hotels from selling alcohol in Level 3 areas unless provided as room service. This adjustment brings hotels into line with hospitality venues in Level 3 areas, where the sale of alcohol for consumption on the premises is not permitted.

Driving lessons and mobile close contact services

9. Regulation 15 amends the principal regulations to prohibit the provision of driving lessons and tests in a Level 4 areas.

10. Similarly, regulations 12 to 14 and 16 prohibit the provision of mobile close contact services (except mobile hairdressing/barbering for Level 2 and 3) in respect of Level 2, 3 and mobile close contact services and driving lessons and tests in respect of Level 4 areas across

local authority area boundaries. These changes, including on vehicle lessons, put further aspects on the levels-based approach into law rather than relying on guidance alone.

Face coverings

11. These Regulations amend the principal regulations to require face coverings to be worn in certain settings which had not previously been able to open before the levels-based approach was introduced. These settings are indoor theatres, comedy clubs, concert halls, soft play centres, sports stadiums, and conference or exhibition centres. This change brings the requirement to wear a face covering in these settings into line with similar indoor public venues.

12. These Regulations also provide a new exemption for the purpose of performing, presenting, addressing a public gathering, making a speech or being a panel member. The exemption only applies if there is a partition separating the individual from others or if two metre distancing can be maintained. This change brings the position for such activities into line with similar exemptions (such as for people leading acts of worship or the service at a marriage, funeral or civil partnership). The intention is to balance the risks of transmission with ensuring that the venues listed above can operate.

Consultation

13. There has been no public consultation in relation to this instrument. The Scottish Government has informally consulted with the industry bodies affected.

Impact Assessments

14. An Equality Impact Assessment and Business and Regulatory Impact Assessment have been completed and are attached. Other Impact Assessments have not been prepared for this instrument. The provisions are however subject to strict obligations on the Scottish Government to review their necessity.

Scottish Government
Directorate for Constitution and Cabinet
November 2020