

2021 No. 17

PUBLIC HEALTH

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021

Approved by the Scottish Parliament

Made - - - - at 12.50 p.m. on 14th January 2021

Laid before the Scottish Parliament at 3.00 p.m. on 14th January 2021

Coming into force in accordance with regulation 1(2) and (3)

The Scottish Ministers make the following Regulations in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020^(a) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by, a resolution of the Scottish Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021.

(2) Subject to paragraph (3), these Regulations come into force on 16 January 2021.

(3) Regulations 4, 5, 6 and 14 come into force on 22 January 2021.

Amendment of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020

2. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020(a) are amended in accordance with regulations 3 to 12.

Amendment to regulation 4: enforcement of requirements

3. In regulation 4 (enforcement of requirements)—

- (a) in paragraph (8), for “or (7)” substitute “, (7) or (7A)”,
- (b) in paragraph (9) for “or (7)” substitute “, (7) or (7A)”.

Amendment to regulation 5: offences and penalties

4. In regulation 5(1) (offences and penalties)—

- (a) in sub-paragraph (d) for “7(1)(b) and 8”, substitute “7(1)(b), 8 and 9A”,
- (b) in sub-paragraph (e) for “8(1)(b) and 9”, substitute “8(1)(b), 9 and 10A”.

Amendment to schedule 4: residential tenancies (eviction)

5. In schedule 4 (level 3 restrictions), after paragraph 9 (requirement to collect and share information: restaurants, cafes, bars, public houses, etc.) insert—

“Residential tenancies (eviction)

9A.—(1) No person may attend at a dwelling house for the purpose of—

- (a) serving a charge for removing, or
- (b) executing a decree for removing from heritable property.

(2) Sub-paragraph (1) does not apply where the charge for removing relates to a decree for removing from heritable property, or where the decree for removing from heritable property is, granted wholly or partly on the basis that possession is sought in the circumstances as specified in—

- (a) Case 2 (nuisance, annoyance or conviction for using or allowing the dwelling-house to be used for immoral or illegal purposes) in schedule 2 of the Rent (Scotland) Act 1984(b),
- (b) Ground 15 (conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct) in schedule 5 of the Housing (Scotland) Act 1988(c),
- (c) Paragraph 2 (conviction for certain offences), 7 (anti-social behaviour or harassment) or 8 (nuisance, annoyance or harassment) of schedule 2 of the Housing (Scotland) Act 2001(d), or
- (d) Paragraph 13 (criminal behaviour), 14 (anti-social behaviour) or 15 (association with person who has relevant conviction or engaged in relevant anti-social behaviour) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016(e).

(a) S.S.I. 2020/344, amended by S.S.I. 2020/347, S.S.I. 2020/374, S.S.I. 2020/389, S.S.I. 2020/392, S.S.I. 2020/400, S.S.I. 2020/415, S.S.I. 2020/427, S.S.I. 2020/439, S.S.I. 2020/452, S.S.I. 2020/471, S.S.I. 2021/1 and S.S.I. 2021/3.

(b) 1984 c.58.

(c) 1988 c.43. Ground 15 was substituted by section 23(4) of the Crime and Disorder Act 1998 (c.37).

(d) 2001 asp 10.

(e) 2016 asp 19.

(3) The period mentioned in section 16(5A)(c) of the Housing (Scotland) Act 2001^(a) (powers of court in possession proceedings) does not run during any period for which this paragraph has effect.

(4) In this paragraph—

“the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007^(b),

“a charge for removing” means a charge to remove from subjects or premises, as required by section 216(1)(c) of the 2007 Act, in the case of a decree or order for removing from heritable property of a type mentioned in paragraph (f), (g) or (k) of section 214(2) of the 2007 Act^(d), and

“a decree for removing from heritable property” means a decree or order of a type mentioned in paragraph (f), (g) or (k) of section 214(2) of the 2007 Act.”.

Amendment to schedule 5: residential tenancies (eviction)

6. In schedule 5 (level 4 restrictions), after paragraph 10 (requirement to collect and share information: restaurants, cafes, bars, public houses, etc. in a level 4 area) insert—

“Residential tenancies (eviction)

10A.—(1) No person may attend at a dwelling house for the purpose of—

- (a) serving a charge for removing, or
- (b) executing a decree for removing from heritable property.

(2) Sub-paragraph (1) does not apply where the charge for removing relates to a decree for removing from heritable property, or where the decree for removing from heritable property is, granted wholly or partly on the basis that possession is sought in the circumstances as specified in—

- (a) Case 2 (nuisance, annoyance or conviction for using or allowing the dwelling-house to be used for immoral or illegal purposes) in schedule 2 of the Rent (Scotland) Act 1984,
- (b) Ground 15 (conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct) in schedule 5 of the Housing (Scotland) Act 1988,
- (c) Paragraph 2 (conviction for certain offences), 7 (anti-social behaviour or harassment) or 8 (nuisance, annoyance or harassment) of schedule 2 of the Housing (Scotland) Act 2001, or
- (d) Paragraph 13 (criminal behaviour), 14 (anti-social behaviour) or 15 (association with person who has relevant conviction or engaged in relevant anti-social behaviour) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

(3) The period mentioned in section 16(5A)(c) of the Housing (Scotland) Act 2001 (powers of court in possession proceedings) does not run during any period for which this paragraph has effect.

(4) In this paragraph—

“the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007,

“a charge for removing” means a charge to remove from subjects or premises, as required by section 216(1) of the 2007 Act, in the case of a decree or order for

(a) Subsection (5A) was inserted by section 153(a) of the Housing (Scotland) Act 2010 (asp 17).

(b) 2007 asp 3.

(c) Section 216(1) was amended by section 58(5) and (6) and paragraph 92(a) of schedule 5 of the Criminal Finances Act 2017 (c.22).

(d) Section 214(2) was relevantly amended by S.S.I. 2019/51.

removing from heritable property of a type mentioned in paragraph (f), (g) or (k) of section 214(2) of the 2007 Act, and

“a decree for removing from heritable property” means a decree or order of a type mentioned in paragraph (f), (g) or (k) of section 214(2) of the 2007 Act.”.

Amendment to Level 3: restrictions

7. In schedule 4 (level 3 restrictions)—

(a) in paragraph 1(3) (requirement to close certain premises in a Level 3 area to members of the public), after head (f) insert—

“(g) any suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board.”,

(b) in paragraph 5 (restrictions on food and drink businesses in a Level 3 area), after sub-paragraph (7) insert—

“(8) Sub-paragraph (1) does not prevent the use of suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board.”.

Amendment to Level 4: restrictions

8. In schedule 5 (level 4 restrictions)—

(a) in paragraph 1(2), after head (u), insert—

“(v) child contact centres”,

(b) in paragraph 1(3) (requirement to close certain premises in a level 4 area to members of the public), after head (f) insert—

“(g) any suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board,

(h) premises of a listed business in sub-paragraph (2)(v),—

(i) where—

(aa) the child contact centre is provided by a local authority, and

(bb) the contact is facilitated by a local authority,

(ii) for the purposes of—

(aa) a handover of a child to a person with whom the child is not, or will not be, living, or

(bb) for the return of a child from a handover to a person with whom the child is or will be living.”,

(c) in paragraph 1(7), after “electrolysis”, insert—

““child contact centres” means any place that is used for the facilitation of contact between a child and a person with whom the child is not, or will not be, living (including the handover of the child to that person)”,

(d) in paragraph 1A (requirement to close places of worship in a level 4 area to members of the public)(a)—

(i) in sub-paragraph (2)(e) omit “vaccination centres”,

(ii) after sub-paragraph (2) insert—

“(2A) A place of worship may be used if it is a suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board.”,

(a) Paragraph 1A was inserted by S.S.I. 2021/3.

- (e) in paragraph 2 (requirement to close retail and library premises in a Level 4 area to members of the public), after sub-paragraph (3) insert—
“(4) Sub-paragraph (1) does not prevent the use of suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board.”,
- (f) in paragraph 3(2)(d) (requirement to cease providing holiday accommodation in a Level 4 area), for “or a local authority” substitute “, a local authority or a health board.”,
- (g) in paragraph 6 (closure of food and drink businesses in a Level 4 area), after sub-paragraph (6) insert—
“(7) Sub-paragraph (1) does not prevent the use of suitable premises to host vaccination services, where requested to do so by the Scottish Ministers, a local authority or a health board.”,
- (h) in paragraph 17(1)(a) (requirement to stay at home in Level 4 areas), after “leave” insert “or remain outside of”,
- (i) in paragraph 18(1)(b) (examples of reasonable excuse), after “leaving” insert “or remaining outside of”.

Amendment to Level 4: restrictions on retail premises

9. In schedule 5 (level 4 restrictions)—

- (a) in paragraph 2(1)(a), for “collection services” substitute “a permitted collection service”,
- (b) in paragraph 2(3)(u), omit “and outdoor car lots.”,
- (c) after paragraph 2(3)(u), insert—
“(ua) subject to sub-paragraph (5), outdoor motor vehicle lots.”,
- (d) after paragraph 2(4), as inserted by regulation 8(e), insert—
“(5) An outdoor motor vehicle lot may open only to the extent necessary to enable—
(a) collection of a vehicle that has been purchased, or
(b) delivery or collection of a vehicle for the purposes of a repair, MOT or service.
- (6) In this paragraph “permitted collection service” means a service that is provided—
(a) by any of the following—
 - (i) baby equipment shops,
 - (ii) book shops,
 - (iii) clothing shops,
 - (iv) electrical goods shops, including repair shops,
 - (v) footwear shops,
 - (vi) garden centres and plant nurseries,
 - (vii) homeware shops,
 - (viii) key cutting shops,
 - (ix) libraries, and
 - (x) shoe repair shops,
(b) by staggered appointment, with where reasonably practicable a gap between each appointment, and
(c) where access to the premises is given only to the extent necessary to provide the service.”.

(a) Paragraph 17 was inserted by S.S.I. 2021/1.

(b) Paragraph 18 was inserted by S.S.I. 2021/1.

Amendment to Level 4: restrictions on food and drink businesses in level 4 area

10. In schedule 5 (level 4 restrictions), in paragraph 6(2)(a) (closure of food and drink businesses in a level 4 area), insert at the end—

“provided that the person responsible for carrying on the food and drink business ensures that—

- (i) the food or drink is provided by means of a delivery to the customer, or
- (ii) the customer who collects the food or drink does not enter into the premises to do so.”.

Amendment to Level 4: restriction on gatherings in private dwellings

11. In schedule 5 (level 4 restrictions), in paragraph 13(1)(c)(i) (restriction on gatherings in private dwellings in a Level 4 area), after “services” insert “, but, where the work or provision of services is for the purpose of the upkeep, maintenance or functioning of the dwelling, a person may attend the gathering only if the work or provision of services is essential for that purpose”.

Amendment to Level 4: restriction on consumption of alcohol in a public place outdoors

12. In schedule 5 (level 4 restrictions), after paragraph 18 (examples of reasonable excuse) insert—

“PART 5

Restriction on consumption of alcohol

Restriction on consumption of alcohol in a public place outdoors in a Level 4 area

19.—(1) A person must not consume a alcohol in a public place outdoors located in a Level 4 area.

(2) For the purposes of the restriction in sub-paragraph (1)—

- (a) any liquid found in a container is presumed to conform to the description of the liquid on the container,
- (b) a container which is found to contain—
 - (i) no liquid, or
 - (ii) insufficient liquid to permit analysis

is presumed to have contained, at the time of any alleged breach of that restriction, liquid which conformed to the description of the liquid on the container.

(3) A person is not entitled to lead evidence for the purpose of rebutting a presumption mentioned in sub-paragraph (2) unless, not less than 7 days before the date of any trial in proceedings for an alleged offence for a breach of the restriction in sub-paragraph (1), that person has given notice to the prosecutor of an intention to do so.”.

Amendment to schedule 5: minor corrections

13. In schedule 5, in paragraph 18(2)(t)(iii) (examples of reasonable excuse)—

- (a) in sub-sub-head (cc) for “, (b) or (c)” substitute “or (c)”, and
- (b) in sub-sub-head (ff) omit “(i) or”.

Revocations

14.—(1) The Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020(a) are revoked.

(2) In the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendments) (Scotland) Regulations 2020(b), omit regulation 7 (amendment of the Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020).

MICHAEL MATHESON

A member of the Scottish Government

St Andrew's House,
Edinburgh
At 12.50 p.m. on 14th January 2021

(a) S.S.I. 2020/425.
(b) S.S.I. 2020/439.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”). With the exception of regulations 4, 5, 6 and 14, these Regulations come into force on 16 January 2021. Regulations 4, 5, 6 and 14 come into force on 22 January.

Regulations 3 and 13 make minor corrections.

Regulation 4 amends regulation 5 of the Local Levels Regulations to provide that a person contravening a requirement in paragraph 9A of schedule 4 or paragraph 10A of schedule 5 does not commit an offence.

Regulation 5 amends schedule 4 of the Local Levels Regulations to prevent in a Level 3 area, except in specified circumstances, attendance at a dwelling house for the purpose of serving a charge for removing or executing a decree for removing from heritable property (giving notice of or carrying out eviction order in relation to a residential tenancy of a dwelling house).

Regulation 6 amends schedule 5 of the Local Levels Regulations to prevent in a Level 4 area, except in specified circumstances, attendance at a dwelling house for the purpose of serving a charge for removing or executing a decree for removing from heritable property (giving notice of or carrying out eviction order in relation to a residential tenancy of a dwelling house).

The specified circumstances, for the purposes of regulations 5 and 6, are where possession of the dwelling house is sought on the basis of nuisance, annoyance or conviction for using or allowing the dwelling-house to be used for immoral or illegal purposes, anti-social behaviour, certain convictions or association with a person who has relevant convictions or a person who has engaged in relevant anti-social behaviour.

Regulation 7 amends paragraph 1 of schedule 4 of the Local Level Regulations to exempt premises in Level 3 areas hosting vaccination services, at the request of the Scottish Ministers, local authority or a health board, from the requirement to close under that paragraph. Additionally, it amends paragraph 5 of that schedule to enable premises used by food and drink businesses to host vaccination services, at such request.

Regulation 8 makes provision for certain child contact centres to be required to close in a level 4 area. An exception is created, however, for child contact centres to open for the purposes of a handover of a child to a person they are not or will not be living with, and for their return from a handover to a person with whom the child is or will be living. Child contact centres provided by local authorities will be permitted to remain open.

Regulation 8 amends schedule 5 to enable premises required to close in Level 4 areas, including retail and library premises and premises used by food and drink businesses, to host vaccination services at the request of the Scottish Ministers, local authority or a health board. Additionally, it amends paragraph 1A of that schedule to enable places of worship to host vaccination services at such request.

Regulation 8 amends paragraphs 17 and 18 of schedule 5 of the Local Levels Regulations by widening the existing restriction on a person in a Level 4 area leaving the place in which they are living, without a reasonable excuse as set out in paragraph 18, to prohibit such persons remaining outside that place.

Regulation 9 amends schedule 5 of the Local Levels Regulations with the effect that only specified businesses can arrange for goods bought remotely to be collected from their premises, and to further prescribe the conditions that must be met when goods are collected. It also restricts the circumstances in which motor vehicle lots can remain open.

Regulation 10 further amends schedule 5 of the Local Levels Regulations to require that, where a food and drink business provides food or drink for consumption off the premises under paragraph

6(2)(a), the person responsible for the business must ensure that it is provided by means of a delivery to the customer or the customer who collects it does not enter the premises to do so.

Regulation 11 amends paragraph 13(1)(c)(i) of schedule 5 of the Local Levels Regulations to narrow the exception from the prohibition on gatherings in private dwellings for the purpose of work or the provision of voluntary or charitable services. This creates a new restriction to apply to persons from two or more households gathering in a dwelling to do work or provide voluntary or charitable services for the purpose of the upkeep, maintenance or functioning of the dwelling. Such gatherings are to be permitted only where the work or services are essential for the purpose in question.

Regulation 12 inserts a new Part into schedule 5 of the Local Levels Regulations to impose a prohibition on a person consuming alcohol in a public place outdoors in a Level 4 area. For the purposes of this prohibition, there is a presumption that any liquid in a container conforms, or where the container is empty, the liquid did conform, to the description of the liquid on the container. Any person charged with an offence of breaching the prohibition must give notice of an intention to rebut the presumption at trial.

Regulation 14 revokes the Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020 which contained temporary provisions (which have now expired). Regulation 14 also revokes regulation 7 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendments) (Scotland) Regulations 2020 which is now spent.

© Crown copyright 2021

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, The Queen's Printer for Scotland

£6.90

www.legislation.gov.uk/ssi/2021/17

ISBN 978-0-11-102886-5



9 780111 028865