

## Final Business and Regulatory Impact Assessment (BRIA)

### **Title: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations**

#### **Purpose and intended effect:**

This BRIA is focused on the set of measures included within the update to Scotland's Strategic Framework and the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations, which make amendments to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the updated Strategic Framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

#### **Policy Objectives**

We published Scotland's updated Strategic Framework on 23 February 2021 following the emergence of the Variant of Concern (VOC) B.1.1.7 in Scotland and with most of Scotland being protected at Level 4. The updated Protective Levels Framework, which was published on 13 April 2021, sets out what restrictions are in place across the different levels. The levels are designed to support our strategic intent to suppress the virus while restoring as much normality to people's lives as possible.

[Coronavirus \(COVID-19\): local protection levels - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-protective-levels/pages/2.aspx)

In essence, the levels work by limiting members of different households from interacting in different settings and activities, where those settings and activities pose different risk factors for transmission of the virus. Decisions must be made about which activities and settings to restrict in order to achieve the required suppression of the virus. When different restrictions would have similar effects on transmission, difficult decisions must be made about which restrictions to apply. To help to make those difficult decisions, we consider the impacts on the four harms of the different options as well as the human rights engaged by the restrictions and the impacts on particular groups in society, including those with protected characteristics.

This is consistent with the principles and approach set out in our Framework for Decision Making in April 2020. We recognise that living with restrictions is tough for everyone in Scotland, with children and young people, vulnerable groups and businesses being particularly hard-hit.

The Regulations take progressively more restrictive steps as we move up the levels. All restrictions will be kept under review in the event of new information, such as a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response.

#### **Background:**

The COVID-19 pandemic has led to fundamental changes to everyday life for people in Scotland. While it has been necessary to take these extraordinary measures to respond to the pandemic in order to protect the right to life for Scotland's population and to protect the health of Scotland's population, the unequal impact of the pandemic, and the need to consider human rights and take an integrated and balanced

approach to ensuring the proportionality of the measures taken, have also been at the forefront of consideration of these actions during this emergency situation.

The Coronavirus (COVID-19): Framework for Decision-Making and Scotland's route map through and out of the crisis ("the Route Map") published in 2020 made 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.

In October 2020, we published COVID-19: Scotland's Strategic Framework. This framework set out how we intended to respond to the crisis over the coming period, and introduced the levels framework. Since the publication of our original Strategic Framework the emergence of the Variant of Concern (VOC) B1.1.7 has increased the transmissibility of the virus and is now the dominant strain in Scotland. This means that it is now more challenging to effectively suppress the spread of the virus. We have also begun the rapid roll-out of our vaccination programme.

We published an update to Scotland's [Strategic Framework](#) on 23 February 2021. In it we confirmed our strategic aim to "*suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible*" and set out how we will realise that intent.

On 22 June the Scottish Government published a further update to the [Strategic Framework](#). In it we set out our revised strategic intent "*to suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future*" and set out how and why our COVID-19 response strategy will change in light of the new conditions we face and what a move beyond Level 0 will look like. On that date we also published the outcome of our [Physical Distancing Review](#).

Some harms will be felt over different time horizons: short, medium and long-term. Some 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 felt equally across the population. Consideration of the continued, but differential, impacts at the different levels is therefore critical to the decision making process.

## **Legislative background**

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 first regulations"), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 came into force on 14 September 2020 and revoked and replaced the first regulations. They made provision which was substantially similar to the first regulations, as amended at the date on which they were revoked.

On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 ("the additional temporary restrictions") set out additional restrictions, both nationally and specific to the central belt. These regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 while the additional temporary restriction regulations were in force. The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the 2020 Regulations”) implement the Strategic Framework and came into effect at 6.00 am on 2 November 2020. These regulations revoked the additional temporary restrictions regulations and the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. The 2020 Regulations have been amended by numerous amending Regulations since 2 November 2020.

In January 2021, it became urgently necessary to go beyond the requirements and restrictions set out in the 2020 Regulations. This is because of a changed assessment of the risks of transmission of the virus in light of the emergence of a new variant of COVID-19, as referred to above. Additional strengthening of Level 4 restrictions was immediately implemented in order to try to curb exponential growth, this included a requirement to stay at home for those in Level 4 – all of mainland Scotland and some islands. Over March and April 2021, we reached a point where the relaxation of some of these measures became possible.

In April 2021, a new Local Protection Levels table<sup>1</sup> was published (as discussed above). This publication outlined the future content of the levels based approach following the emergence of the new variant and to reflect the impact that increasing vaccination numbers has on transmission. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 implement many of the adjustments required to give effect to the new publication. Previous regulations amending the 2020 Regulations gave effect to relaxations in March and April 2021 (referred to above).

Decision making under the Strategic Framework system is intended to be straightforward and transparent. It builds on existing structures and processes and includes engagement with local leadership as decisions are taken. However, decisions will be made by Ministers, with input from relevant advisers, because implementing levels decisions is the exercise of a statutory power for the protection of public health, for which Ministers are responsible and accountable.

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, they must revoke that restriction or requirement.

The Scottish Ministers will regularly review the restrictions and requirements as well as the levels allocation for areas. Following reviews, Ministers may move any particular area, or the entire country, to a different level of restrictions. The timetable for easing restrictions sets out the dates on which we are aiming to move through the levels. The timetable is subject to the data available and the plans will be kept under review. Under the levels approach, Scottish Government will work closely with local authority leaders when making these decisions.

The *Framework for Decision Making* makes clear that the reviews will be informed by assessments of options for relaxation or restriction under their impact on the four harms, their viability, and broader considerations including consideration of impacts on businesses and the associated costs, equality impacts, the impact on human rights and consideration of various measures, for example, for specific sectors, industries or businesses.

The Scottish Government considers the impact of the provisions in the regulations on businesses, particularly the likely costs and benefits to the public, private and third sector. The following impact assessments consider the impacts of the various provisions and the restrictions at each protection level.

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<sup>1</sup> [Coronavirus \(COVID-19\): local protection levels - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-local-protection-levels-2021/pages/1-introduction-and-contents.aspx)

## *Amusement Arcades*

### **The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020: Amusement Arcades**

#### **Purpose and intended effect:**

This Business and Regulatory Impact Assessment (BRIA) is focused on the set measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, as amended, (the Regulations). The Regulations reflect Scotland's Strategic Framework.

This BRIA considers the impact of continuing the measures in the Regulations that impact on amusement arcades.

Under the Regulations, Amusement Arcades are permitted to open to the public at Levels 0-2 in line with the measures in the Regulations, but will be closed in Level 3 and Level 4 areas. The provisions relating to amusement arcades have not been altered by the amendments in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.21) Regulations 2021.

As well as the measures provided for in the Regulations, British Amusement Catering Trade Association (BACTA, the trade association that represents the UK's Amusement arcade industry) has developed industry guidance. This guidance has been developed to support the safe reopening of amusement arcades. The industry have also agreed that Adult Gaming Centres (AGC) will follow the Scottish Government retail guidance, and Family Entertainment Centres (FEC) will follow the SG tourism and hospitality guidance.

Measures contained within the Regulations which impact Amusement Arcades need to be viewed within the broader context of the package of measures within each Level, as a number of measures that are in place in a given Level are not specific to Amusement Arcades.

The Strategic Framework and therefore the Regulations, includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The Strategic Framework takes a four harms approach to considering which interventions are introduced at each Level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

#### **Policy Objective:**

The objective of the Regulations, so far as they concern Amusement Arcades, is to ensure that the operation of Amusement Arcades is appropriate to the level of COVID-19 risk within the Local Authority area while also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths, and the potential overwhelming of the NHS.

The key measures relating to **Amusement Arcades** are set out in the table below:

<b>Amusement Arcade Measures (socialising rules apply)</b>	<b>Level 0 (Baseline)</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>
Family Entertainment Centres (FECs)	Open – protective measures in place	Open – protective measures in place	Open – protective measures in place	Closed	Closed
Adult Gaming Centres (AGCs)	Open – protective measures in place	Open – protective measures in place	Open – protective measures in place	Closed	Closed

## **Background**

The amusement arcades sector which includes adult gaming centres and family entertainment centres is an important part of Scotland's economy and society.

- There a [75 establishments](#) registered under the category Amusement Arcade in Scotland according to the Scottish Assessors Association

### **Adult Gaming Centres**

The High Street arcade, of which there are about 50 in Scotland, is much like any other High Street shop in terms of its size, customer base and staff profile. Generally speaking, High Street stores will be equivalent in size to other High Street retail units in the order of 1,000 to 2,000 square feet. You can find smaller and larger. They will house fruit machines of different types.

There will be two or three shifts operating with typically two to three floor staff. If the venue is also the company premises, backroom staff and managers will also be on the shop floor from time to time to help out or greet customers.

High Street arcades are usually open all week. They rarely see more than a few people at any one time. Average dwell times are anywhere between 30 minutes an hour. Some customers may visit a couple times per week. It's often part of a shopping trip in to town.

Staff are the usual working-age mix, typical of any shop and have customers of all ages and genders, again just like any shop.

### **Family Entertainment Centres**

The family entertainment centres, of which there are about 25 in Scotland, is very much part of the visitor economy dependent upon families visiting as part of a day trip or during a holiday.

Seaside arcades offer a wide range of facilities for various age groups. They are located usually on sea fronts with open frontages and often utilise the space outside on the pavement (subject to planning) to site coin-operated children's rides and vending machines. These would be in the order of c2000 to c5000 square feet. Please note that they are also often located in caravan parks.

They have around four to five staff on any one shift at peak times, also dependent on the time of year. As seasonal businesses they will close during the winter, perhaps opening on a few weekends. Quieter parts of the season also require less staff.

The staff tend to be younger and are seasonal, which often attracts students to the role - especially over the summer.

In seaside arcades and in caravan parks, the customers are almost exclusively family groups of all ages. Numbers visiting depend on the time of year and the weather. They will pop in to the arcade as part of a day trip or as part of their annual holiday.

### **COVID-19 and the Amusement Arcades**

The closure of amusement arcades impacted consumers across different age groups. For AGCs, consumers are a mix of ages. For FECs the customers are families with young children.

BACTA have highlighted the significant financial impact the continued closure had on the sector, particularly family entertainment centres which are seasonal and rely on business during the summer months for their survival through the year. During the review period, BACTA had flagged that many of the smaller businesses would not survive if they were not permitted to reopen quickly.

However, amusement arcades fulfils many of the high-risk criteria for COVID-19 transmission, as transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments. The highest risks of transmission are in crowded spaces over extended periods of time.<sup>2</sup>

### **Transmission**

The latest four harms assessment conducted in June 2021 has indicated that the indoor setting, even with involvement of a relatively small number of people, is an environment which may be difficult to ventilate. The noisy machines that may contribute to raised voices and continuous touching of surfaces by multiple players alongside the surface transmission associated with handling of tokens, constitute an inherently high risk environment.

In addition many of the users of amusement arcades may be younger people who have not been vaccinated.

The inherent risk of transmission is moderate to high, 3-4. In low levels, 1 and 0 this would be reduced to possibly low 2 to moderate 3.

### **Current position of amusement arcades**

As part of the Route Map out of lockdown, amusement arcades in Scotland were allowed to re-open to the public on 24 August 2020, having been closed since March 2020 under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020<sup>3</sup> (the additional temporary regulations) set out additional temporary restrictions to act as a circuit breaker in slowing the spread of COVID-19 and implement different measures for different areas of Scotland.

<sup>2</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>3</sup> The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 came into force at 18:00 on 9th October 2020 except for Regulations 7, 11, 12, 16 and 17 which came into force on 10 October 2020.

The additional temporary regulations were due to expire on 25 October 2020 but were extended by amendment until 6 am on 2 November 2020 to allow for consultation on the levels-based approach. The Regulations implemented the new Strategic Framework and came into effect on 2 November 2020. Amusement arcades were permitted to open at Levels 0-2 under these Regulations but closed at Levels 3-4.

Amusement arcades have been able to re-open to the public from 17 May 2021, when mainland Scotland (apart from Glasgow and Moray) moved to Level 2.

### **Rationale for Government intervention**

The Strategic Framework Levels are designed to suppress the virus to the lowest possible level and to keep it there, whilst returning to as much normality as possible for as many people as possible.

In terms of amusement arcades, the principles that guided the Levels update process included a need to maintain proportionality and suppress the virus in each Level and to maintain the effectiveness of the Levels whilst also considering the emergence of new more transmissible variants.

Within the sector, the aim is to limit different households from interacting in these settings to prevent the spread of the virus, whilst considering the four harms of different options as well as impacts on different groups within society. This is consistent with the principles and approach set out in the Framework for Decision Making in April 2020.

In terms of the re-opening and recovery of the sector, the transmission risk has been taken into account within different settings, alongside consideration of the wider harms including those that impact on the economy and wellbeing.

### **Conclusion**

Limiting social mixing as much of possible in all settings is the most effective measure against transmission of the virus. It is particularly important to focus on settings which have high risk factors. However, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside big increases in mental health problems. The limitations on leisure and entertainment sector are part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The Levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the restrictions on the leisure and entertainment sector. Similarly as the risk falls, restrictions will ease.

Across all of the Levels we seek to balance:

- The impact on reducing the risk of transmission of the virus through restricting the opportunity for mixing of children and adults in amusement arcade settings
- Enabling as much of the sector as possible to remain open safely in areas with low infection rates, in ways that enable businesses to remain viable and protect jobs
- The economic costs, including wider costs and the impact on the supply chain.

- **Public Consultation**

Given the need to respond quickly to protect public health, there has not been time to undertake a public consultation on the measures covered by the requirements. We have however received a large volume of correspondence from both amusement arcades owners and employees, which has provided an insight into the challenges faced by the sector.



- **Business**

Scottish Government officials have engaged with BACTA, the trade association for the amusement and gaming machine industry in the UK.

BACTA has welcomed consistent approach related to gaming machines being switched off in pubs, betting shops and other premises when the level in which those premises are located doesn't allow for the amusement arcades to remain open.

BACTA representatives have been lobbying for amusement arcades to be allowed to open in Level 3 protection areas after lifting Stay at Home restrictions.

BACTA CEO spoke to Cabinet Secretary for Finance at the Scottish Tourism Alliance on 16 February 2021 and requested that a separate fund be considered for its amusement arcades supply chain members.

BACTA representatives had a call with Scottish Government officials on 29 March to discuss Funding for Supply Chain businesses that have been refused discretionary funding.

BACTA raised concerns around what they perceived to be inequality with how the discretion fund is administered and called for a broadening of guidance to support their members. It was subsequently confirmed and communicated to BACTA that updated guidance has been provided to local authorities around the allocation of the increased Discretionary Fund.

BACTA representatives had another phone consultation with Scottish Government officials on 26 April 2021 reiterating the need to reduce the physical distancing requirement from 2m to 1m in their seaside family centres in order to maximise revenue during seasonal opening while taking into consideration ventilation on those premises.

## **Options**

This section sets out the range of options that have been considered, and we continue to work constructively with the industry to explore and assess alternatives.

As set out in the Regulations, businesses are under a legal obligation to take measures to minimise the risk of exposure to COVID-19 on their premises, and suitable measures are set out in the Regulations and guidance including:

1. Provide clear signage to customers and staff to promote physical distancing.
2. Hand sanitizer to be provided by a member of staff to all customers entering the premises and for hand sanitisation stations to be available around the venue. Promote good hand hygiene for all staff/visitors/service users. Ensure there are sufficient hand washing facilities and provision of alcohol-based hand rub at key areas such as entry and exit points.
3. Arrange premises in configurations to provide natural physical distancing where possible.
4. Provide, where alternative configurations are not possible and signage is not practical, plexi-glass or similar dividers to maintain physical distancing.
5. Utilise signage or screens on multi-player machines so that there is only one player permitted to play at any one time or if two players wish to play that there is physical distancing between them.
6. Limit and monitor the customers in the premises to a level that allows for appropriate physical distancing.
7. Staff to request contact details for Test and Protect.



8. In the event that the number of customers exceeds the number that can safely enter the premises according to the venue's risk assessment, provide indicative physical distancing signage to customers waiting outside of the premises.
9. Staff to be fully trained and prepared in these Covid-19 safety protocols.
10. Staff to regularly clean, with a suitable product, all machines especially after they have been vacated by a player. Ensure regular detergent cleaning schedules and procedures are in place using a product which is active against bacteria and viruses. Ensure regular (at least twice daily) cleaning of commonly touched objects and surfaces (telephones, keyboards, door handles, desks, counter tops etc.).
11. Staff to wear PPE where identified as appropriate in the venue risk assessment (gloves always to be used when handling cash), in line with relevant guidelines.
12. Customer use of toilets should be restricted to one person at a time.
13. Face coverings to be worn by everyone within the premises, unless exempt from the requirement to wear a face covering.

Social gathering rules in place across Scotland also apply. The rules on social gatherings vary across the Levels and are set out in the Strategic Framework and the Regulations.

### **Sectors and groups affected**

The Regulations affect:

- AGC
- FEC
- Outlets and centres which have gaming machines
- Motorway Service Stations
- Businesses providing services to customers for the amusement arcades industry (e.g. supply chains, transport providers, vending machine food providers)
- Employees of amusement arcades, the employees of suppliers as well as individuals who visit amusement arcades

### **Our approach to assessing options**

Within this BRIA we have compared the package of measures within each level against the baseline approach of Level 0. This has allowed us to present the clinical evidence for intervention at each Level setting out the health benefits, whilst acknowledging the potential impacts on the Amusement Arcades. We have also set out some other key options considered at each Level. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

Our objective is to get all parts of the country to Level 1 and then to Level 0 and then move to Phase 4 of the Route Map and then back to normality.

In assessing the relevant options for each Level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

### **Options for 'Baseline' / Level 0**

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

Broadly, this level is the closest we can get to normality, whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission against emerging variants. The baseline is similar to what was in place before the 24 August 2020, when amusement arcades were permitted to re-open to the public with mitigations in place.

At Level 0 protective measures are in place and these are set out in the guidance and Regulations. These measures have been augmented in line with scientific and public health advice in the context of the relevant prevalence levels.

It is recognised that Baseline has a potential impact on the human rights of individuals and businesses, but Baseline is necessary and proportionate until we can get back to normality.

Despite the costs of mitigations and the restriction on numbers due to distancing, this option maintains the economic benefit of allowing amusement arcades to continue to trade, employ staff and generate income and maintains the social benefit of providing people with an opportunity for entertainment and leisure. Baseline also achieves the policy intent of helping to control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

### **Options for Level 1**

Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters and low community transmission.

The options considered for this Level were:

1. Maintain the Baseline
2. Close all amusement arcades

Amusement arcades are higher-risk settings, including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean. The increased risk is also associated with the noise levels and lack of adequate ventilation. Mitigations have been put in place in accordance with the published guidance and Regulations.

#### *Option 1: Maintain Baseline*

This option would mean that amusement arcades, whilst having regard to the published guidance and in accordance with the restrictions and mitigations required at all Levels could open to members of the public.

The need to maintain 2m physical distance between groups would likely impact on the numbers able to attend amusement arcades at any one time, with a consequent impact on income for operators.

Despite the costs of mitigations and the restriction on numbers due to distancing, this option maintains the economic benefit of allowing amusement arcades to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for entertainment and leisure.

The opportunity for virus transmission would be relatively high, despite existing mitigations. Businesses have already invested a lot of time, money, and effort in implementing mitigations however evidence demonstrates that amusement arcades continue to be high-risk settings.

The risk-reduction benefits would be achieved from the mitigating actions in place since March 2020, such as physical distancing screens, one-way systems, ventilation, use of contactless payments, and increased hygiene.

#### *Option 2: Close all amusement arcades businesses*

This option would mean that amusement arcades would be closed to the public.

This would affect all businesses within the area, and their customers. It will impose substantial costs on businesses affected, impacting revenues with businesses still having to meet fixed costs. Complementary industries, such as transport and supply chain, would also be affected.

In general, the impacts would be the closure of businesses/facilities and inability to generate income to cover costs (overheads such as rent, rates and water).

In Level 0, where there is very low instances of the virus, physical distancing measures and restrictions on social gatherings will still be in place, and these are considered sufficient to support suppression of the virus. In Level 1, there are slightly higher rates of virus and community transmission is starting to increase. The detailed public health protections at amusement arcades remain in place at Level 1. The guidance which has been developed for the industry, sets out clear mitigation measures to reduce the risk of virus transmission. The option of closure needs to take account of the effectiveness of these measures in reducing the risk to the public health as well as the costs and benefits to individuals and businesses in closing amusement arcades. These mitigations support the suppression of the virus in amusement arcades and are sufficient in Level 1 to allow amusement arcades to open.

#### **Conclusion**

In considering the evidence around options for Level 1 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that continuing to maintain the Baseline - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this Level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded in line with clinical advice that, given the robust mitigations in the guidance together with the requirements of the Regulations, it is necessary to maintain the Baseline at Level 1.

#### **Options for Level 2 and 3**

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods (preferably less than 4 weeks), and only for as long as required to get the virus down to a low, sustainable level.

#### **OPTIONS FOR LEVEL 2**

##### *Option 1: Maintain Baseline*

This option would mean that amusement arcades whilst having regard to the published guidance and in accordance with the mitigations and restrictions required at all Levels, could open to the public. This would have a positive impact on the revenue generation of amusement arcades, supply chain businesses,

employment of staff and on customers' socialising – although customer numbers will be limited by physical distancing.

Beyond the risk-reduction benefits achieved from the mitigating actions, as explained above, there would be no further public health benefits

At Level 2, there would be increasing community transmission and multiple clusters. For example, more than 75 cases per 100,000 population<sup>4</sup>. However, given the protective measures already in place, to reduce the possibility of virus transmission and combined with the increasing level of vaccination across the country, the option of keeping amusement arcades open at Level 2 should be considered.

#### *Option 2: Close all amusement arcades businesses*

This option would mean that all amusement arcades would be required to close. Given the increased incidence and community transmission of the virus at this Level and the high risk factors of amusement arcades (including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean), keeping amusement arcades open at this Level would present and increased risk in relation to increasing virus transmission. Closing amusement arcades eliminates this risk.

Closing amusement arcades would impact all businesses within the area, and their customers. It will impose substantial costs on businesses affected, impacting revenues with businesses still having to meet fixed costs. Complementary industries, such as transport and supply chain, would also be affected. In general, the impacts would be the closure of businesses/facilities and inability to generate income to cover costs (overheads such as rent, rates and water).

At Level 2, with increased incidence of the virus and community transmission, the detailed public health measures remain in place. The option of closure needs to take into account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits to individuals and businesses from closing amusement arcades.

### **Conclusion**

In considering the evidence around options for Level 2, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of option 1 (maintaining the baseline at Level 2 - in preference to mandatory closures) dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this Level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded that, given the robust mitigation measures in the guidance together with the Regulations, it is necessary for Baseline to continue at Level 2.

### **OPTIONS FOR LEVEL 3**

At Level 3, there would be increasing community transition and multiple clusters. For example, more than 150 cases per 100,000 population<sup>5</sup>. There are therefore greater public health costs of not restricting

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<sup>4</sup> Decisions regarding which level applies to each local authority will be informed by 5 key indicators: Numbers of new cases per 100,000 people, test positivity rate, future number of cases per 100,000

<sup>5</sup> Decisions regarding which level applies to each local authority will be informed by 5 key indicators: Numbers of new cases per 100,000 people, test positivity rate, future number of cases per 100,000 people, number of people likely to need acute hospital care in future weeks, number of people likely to need intensive care in future weeks. Further information on these indicators can be found at: <https://www.gov.scot/publications/coronavirus-covid-19-allocation-of-levels-to-local-authorities>

social interaction within a high-risk setting as the virus would continue and accelerate its spread, ultimately resulting in direct harms to health.

At Level 3, there is an increased series of protective measures required across all sectors to tackle the virus, focusing on key areas of risk. Broadly, indoor settings where household mixing takes place, areas with higher concentrations of separate households, and venues where maintaining hygiene is more difficult due to the number of shared surfaces or equipment which would need to be continually cleaned between uses. The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

#### *Option 1: Maintain Baseline*

This option would mean that amusement arcades whilst having regard to the published guidance and in accordance with the mitigations and restrictions required at all Levels, could open to the public. This would have a positive impact on the revenue generation of amusement arcades, supply chain businesses, employment of staff and on customers' socialising – although customer numbers will be limited by physical distancing.

#### *Option 2: Close all amusement arcades businesses*

Given the increased incidence and community transmission of the virus at this Level compared to Level 2 and the high risk factors of amusement arcades (including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean), keeping amusement arcades open at this Level would present high risk in relation to increasing virus transmission.

Closing amusement arcades would impact all businesses within the area, and their customers. It will impose substantial costs on businesses affected, impacting revenues with businesses still having to meet fixed costs. Complementary industries, such as transport and supply chain, would also be affected. In general, the impacts would be the closure of businesses/facilities and inability to generate income to cover costs (overheads such as rent, rates and water).

The closures of amusement arcades in this Level while betting shops are allowed to open can be seen as controversial especially as both premises involve gambling and both premises can include fruit machines however the decision to close amusement arcades in this level was made based on higher risk of transmission of the virus through increased amount of users.

It is also recognised that the closure of amusement arcades has a potential impact on the human rights of individuals and businesses.

### **Conclusion**

In considering the evidence around options for Level 3, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that given the high risk factors for amusement arcades, such as high number of households mixing and difficulties with maintaining physical distancing, and keeping shared equipment and surfaces clean, amusement arcades should continue to be closed in Level 3. Whilst some other businesses remain open at Levels 3 it is not considered possible to open amusement arcades because of the particular difficulties in maintaining social distancing, the amount of surfaces being touched, the particular difficulties in cleaning them between customers and the limited ability to introduce further effective mitigating measures. In addition at Level 3 there are still restrictions on socialisation. When considering the four harms of COVID-19, the decision to close amusement arcades is proportionate and necessary to maintain the closure of amusement arcades at Level 3 in order to restrict social interaction and protect public health.

## **Options for Level 4**

Level 4 will be deployed only if absolutely necessary if a high level of intervention is required to address high transmission rates and suppress the virus.

Within this Level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS. It is likely that this level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in Level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, and deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

### *Option 1: Level 0 Baseline*

This option would mean that amusement arcades whilst having regard to the published guidance and in accordance with the mitigations and restrictions required at all Levels, could open to the public. This would have a positive impact on the revenue generation of amusement arcades, supply chain businesses, employment of staff and on customers' socialising – although customer numbers will be limited by physical distancing.

### *Option 2: Close all amusement arcades businesses*

Given the increased incidence and community transmission of the virus at this Level compared to Level 2 and the high risk factors of amusement arcades (including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean), keeping amusement arcades open at this Level would present high risk in relation to increasing virus transmission.

It is recognised that the closure of amusement arcades at Level 4 has economic consequences on businesses and individuals. It is also recognised that the closure of amusement arcades has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of COVID-19, the decision to close amusement arcades is proportionate and necessary in order to restrict social interaction and protect public health.

## **Conclusion**

In considering the evidence around options for Level 4, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that given the high risk factors for amusement arcades, such as high number of households mixing and difficulties with maintaining physical distancing, and keeping shared equipment and surfaces clean, amusement arcades should continue to be closed in Level 4. Whilst some other businesses remain open at Level 4 it is not considered possible to open amusement arcades because of the particular difficulties in maintaining social distancing, the amount of surfaces being touched, the particular difficulties in cleaning them between customers and the limited ability to introduce further effective mitigating measures. It is concluded that given the high Level of transmission at Level 4, closure of amusement arcades is the best option to meet public health objectives.

## Competition Assessment

Closing amusement arcades from protection Level 3 onwards is only likely to impact on competition between businesses in Scotland where particular local authorities are in Level 3 when the rest of Scotland is in Level 2 or below. The impact of this will be wider than just on amusement arcades.

- **Will the measure directly or indirectly limit the number or range of suppliers?**

The impact on business viability may mean that some businesses cease to trade and this will reduce the number of suppliers if there is a widespread return to Level 3 or 4.

- **Will the measure limit the ability of suppliers to compete?**

The different Levels depending on the severity of the epidemic are likely to be advantageous to amusement arcades in areas at Level 2 where they are allowed to open and to betting offices.

It is likely that the restrictions on amusement arcades in terms of visitor numbers due to distancing requirements will limit the ability of some suppliers to compete. It is difficult to assess whether the restrictions are likely to have an advantageous effect on other businesses – although sports, visitor attractions, hospitality and leisure venues who are able to remain open at Level 3 may benefit while amusement arcades are closed.

The requirement for businesses to remain closed in Level 3 and 4 areas are also likely to increase costs for businesses potentially making it harder for new businesses to compete.

- **Will the measure limit suppliers' incentives to compete vigorously?**

It is not anticipated that the measures in the strategic framework will impact on supplier's incentives to compete vigorously.

- **Will the measure limit the choices and information available to consumers?**

The measures in the strategic framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

## Consumer Assessment

The following sets out the Scottish Government's initial view on the impact of the Amusement Arcades measures within the Strategic Framework on consumers.

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

Restrictions will impact upon consumers in terms of the inability to visit amusement arcades in Levels 3-4.

- **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services Amusement Arcades.

- **Does the policy involve storage or increased use of consumer data?**

No.



<p><b>• Does the policy increase opportunities for unscrupulous suppliers to target consumers?</b></p> <p>This is unlikely to occur as a consequence of the strategic framework Amusement Arcades.</p>
<p><b>Test run of business forms</b> N/A</p>
<p><b>Digital Impact Test</b> N/A</p>
<p><b>Legal Aid Impact Test</b> N/A</p>
<p><b>Enforcement, sanctions and monitoring</b></p> <p>Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.</p>
<p><b>Implementation and delivery plan and post-implementation review</b></p> <p>Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. The Regulations must be reviewed by the Scottish Ministers at least every 21 days. We are continuing our constructive engagement with the sector.</p>
<p><b>Summary and recommendations</b></p> <p><b>Introduction</b></p> <p>This BRIA has examined the Amusement Arcades sector measures within each level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.</p> <p><b>Background</b></p> <p>The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.</p> <p>Whilst this BRIA is focused on Amusement Arcades, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view amusement arcades measures in the context of this wider package of actions.</p> <p><b>Options Appraisal</b></p> <p>The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.</p> <p>The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table below brings together the benefits and costs of:</p> <ul style="list-style-type: none"> <li>• Opening amusement arcades in accordance with the Regulations and guidance setting out protective measures (in Level 1-2)</li> <li>• Closing amusement arcades (in Level 3)</li> <li>• Closing amusement arcades (in Level 4)</li> </ul>

It compares these measures against the baseline / Level 0 option. More detailed discussion of each of the levels and the options that have been considered by Scottish Ministers within levels is contained within the main body of this document.

*Option 1: Baseline*

The Baseline option would have a positive economic impact on amusement arcade venues through their revenue generation, employment of staff, and on supply chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission.

Amusement arcade venues are characterised by many of the high-risk factors associated with transmission of the virus. The health risks posed would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on the amusement arcade industry as trade may be reduced due to customers being anxious about social interaction. The workforce may be affected by higher levels of sick workers due to high rates of Covid-19, or staff self-isolating.

*Option 2: Strategic Framework*

<b>Measure</b>	<b>Benefits</b>	<b>Costs</b>
Amusement arcades open in Level 0,1 and 2 (guidance and Regulations in place)	Amusement arcade venues are characterised by many of the high-risk factors associated with transmission of the virus.  However, with robust guidance in place to mitigate risks together with the restrictions set out in the Regulations it was determined that, in line with clinical advice, outlets can open.	There will be costs associated with complying with guidance including enhanced cleaning and reduced capacity to ensure physical distancing can be maintained which will result in increased costs to the businesses. Revenue and turnover for the amusement arcades businesses may be impacted.
Closing amusement arcades (in Level 3 & 4)	As above, given the high risk factors associated with amusement arcades, keeping amusement arcades closed would contribute to reducing the R number and community transmission. At Levels 3 and 4 there is a high prevalence of the virus. It is necessary for the protection of public health to close amusement arcades at Levels 3 and 4.	Evidence from the lockdown period shows that the immediate closure of businesses led to a collapse in income and immediate cash-flow and viability challenges for many sectors of the economy. Closure will threaten viability of businesses putting jobs at risk and leading to higher unemployment. There will also be impact in relation to reduced opportunity for social interaction.

## Conclusion

**This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.**

It is also important to note that we have set out a comprehensive package of financial support for businesses in the amusement arcade sector to mitigate the negative impacts of the restrictions.

The Scottish Government financial support include :

- A grant of £2,000 or £3,000 (depending on rateable value) for business required to close by law, payable every four weeks for the duration protective measures are in place
- A hardship grant of £1,400 or £2100 (depending on rateable value) for businesses that remain open but are specifically required to modify their operations by protective measures, payable every four weeks for the duration of measures in place

These grants were provided regardless of level to eligible businesses and paid in fortnightly instalments (subject to discussions with local authorities). The final payments of Strategic Framework Business Fund were issued on 22 March 2021.

Additionally eligible amusement arcades sector businesses received Business Restart Grant payments of up to £19,500 on 19 April 2021.

This support is in addition to the UK government Coronavirus Job Support Scheme whereby employees working for businesses legally mandated to shut will receive 80% of their salary paid for by government.

These support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the sector on the impact of the measures, and the level of support available, as they are implemented.

**Title of Legislation:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020

**Purpose and intended effect:**

This Business and Regulatory Impact Assessment (BRIA) is focused on the set measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”), as last amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 22) Regulations 2021 (“the amending Regulations”), which impact on casinos. The Regulations reflect Scotland’s Strategic Framework. This BRIA addresses the impact of all measures in the Regulations that impact on casinos, including changes to the Regulations made by the amending Regulations.

Under the Regulations, as amended, casinos are permitted to operate at level 0, to operate with restrictions in levels 1 and 2, but will be closed in Level 3 and 4 areas.

As well as the measures in legislation, there is guidance produced by the Betting and Gaming Council and agreed by the Scottish Government, and also referenced from the Scottish Government’s hospitality and tourism guidance, which sets out recommended measures and operational changes for casinos when open at levels 0-2. The guidance emphasises in particular the importance of undertaking a robust and ongoing risk-based assessment with full input from workforce representatives, and to keep all risk mitigation measures under regular review so that casinos continue to feel, and be, safe.

Measures contained within the Regulations which impact on casinos need to be viewed within the broader context of the package of measures within each Level, as a number of measures that are in place in a given Level are not specific to casinos. The Strategic Framework, and therefore the Regulations, includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the Levels is designed to reflect the relative severity of the area it is being applied to, with relative restrictions implemented as necessary.

The Strategic Framework takes a four harms approach to considering which interventions are introduced at each Level through assessment of:

- direct health harms associated with COVID-19
- broader Non-COVID health harms
- social harms
- economic harms

**Policy Objectives:**

The objective of the Regulations, so far as they concern casinos, is to ensure that the operation of casinos is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

The key measures relating to **Casinos** (part of Leisure and Entertainment) are set out in the table below:

Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
Open	Open between 0600-2300	Open between 0600-2230	Closed	Closed

**Background:**

Casinos form part of the wider Leisure and Entertainment industry and the city night time economy. There are 11 casinos in Scotland, employing 770 people across Glasgow, Edinburgh, Aberdeen and Dundee.

As part of the Route Map out of lockdown, casino businesses in Scotland were allowed to reopen from August 24<sup>th</sup> 2020, having been closed since March 2020. On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 (“the additional temporary restrictions regulations”) set out additional restrictions, both nationally and specific to the central belt. These regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 while the additional temporary restriction regulations were in force.

The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”) implemented the new Strategic Framework and came into effect on 2 November. Casinos were permitted to open at levels 0 and 1 under these regulations but closed at levels 2-4.

To minimise the risk of spreading the virus, the Scottish Government announced further tightening of restrictions from 5 January 2021. Mainland Scotland moved from Level 4 to a temporary Lockdown (an enhanced version of Level 4 with greater restrictions), with new guidance to stay at home except for essential purposes.

The regulations regarding casinos were amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 22) Regulations 2021 (“the amending Regulations”), which came into force on 5 May 2021. The amending Regulations revise certain aspects of the restrictions and measures that apply to casinos at levels 1 and 2.

Transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments. The highest risks of transmission are in crowded spaces over extended periods. This has formed the basis for further consideration of measures in recent weeks, in response to increases in covid-19 cases and transmission experienced across Scotland. The amended regulations also reflect discussions with the industry about the mitigations for indoor venues to be in place for re-opening casinos.

**Rationale for Government intervention:** Any restrictions introduced by regulations on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Limiting social mixing as much as possible in all indoor settings is the most effective measure against transmission of the virus.

The limitations on casinos are part of an overall system to balance suppression of the virus whilst minimising wider harm and minimising the wider economic harms associated with the measures. The levels approach

sets out proportionate action to address the harm from the virus whilst acknowledging the wider economic harms. When the risk of COVID-19 rises, so too will the restrictions. Similarly as the risk falls, restrictions will ease.

Across all of the five levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing in indoor venue settings
- Enabling as much of the sector as possible to open safely, in ways that enable organisations to remain viable and reduce the likelihood of redundancies
- The economic costs, including employment, wider costs and the impact on the supply chain.

### **Consultation:**

We have not undertaken public consultation on these measures, however correspondence has been received from members of the public asking for casinos to be able to open at level 2. Scottish Government officials have held discussion with representatives of the casino operators in reaching decisions effected by the amending regulations. The casino operators asked for casinos to be able to open at level 2, which was agreed to after consideration of all the evidence including mitigations in place. The changes include an agreed curfew between 2230 and 0600 in line with restrictions on the hospitality industry at level 2. There is an equivalent curfew of 2300 to 0600 for level 1.

### **Options:**

This section sets out the range of options that have been considered. We welcome constructive engagement with the casino industry and will continue to work with the industry to explore and assess alternatives.

Across all levels where casinos are permitted to open, there are a number of mitigating actions required or advised including:

- 2 metre distancing in gaming areas, 1 metre in hospitality areas
- each casino to have a physical distancing capacity
- one-way circuits indoors to control movement
- screens between tables
- wearing of face coverings when not eating or drinking
- social gathering rules
- hygiene measures including for gaming equipment used by customers
- no recirculated air through the ventilation system
- strict entry procedures and capture of contact detail for Test and Protect
- low level background noise to accommodate players' concentration

These Regulations will affect:

- Casino customers
- Operators and employees of casinos
- Businesses and individuals that provide goods and services to casinos

Within this BRIA we have compared the package of measures within each level against the baseline approach of level 0. This has allowed us to present the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on the casino industry. We have also set out some other key options considered at each level. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

Our objective is to get all parts of the country to level 0 and remain there. Within these levels, we would expect to see low incidence of the virus with isolated clusters, and low community transmission.

In assessing the relevant options for each level we considered current and previous restrictions, clinical and sectoral input and proposals from policy colleagues. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

### **Options for 'Baseline' / Level 0**

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality, while the vaccine programme is rolled out. The Baseline is similar to what was in place in the period before 9 October 2020, when casinos were allowed to re-open with mitigations in place.

### **Options for Level 1**

Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

- 1) Maintain baseline
- 2) Opening casinos with curfew restrictions
- 3) Closure of casinos

#### **Option 1: maintain Baseline**

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a full service.

This would effectively take Scotland back to the position prior to 9 October 2020 when casinos were allowed to be open across Scotland. It would have a positive impact on their revenue generation, employment of staff, and on customers' socialising, although customer numbers would still be limited by physical distancing requirements.

#### **Option 2: opening casinos with curfew restrictions**

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a service but, consistent with the hospitality sector, with restricted hours of 0600-2300 rather than 24 hour opening as is the norm under casino gambling licensing. Closing indoor venues at 23:00 will allow for limited evening services and social mixing, whilst still having a slightly greater impact on transmission than baseline.

It would have positive impact on casinos, but less so than option 1, given that a significant proportion of casino activity is after 2200 at night.

#### **Option 3: Closure**

This would take casinos in Scotland back to the position prior to 24 August 2020 when all casinos were required to be closed. and before the introduction of the industry's mitigating measures detailed above. In level 0, where there is very low incidence of the virus, social distancing measures, and restrictions on social gatherings will still be in place, and these are considered sufficient to support suppression of the virus. In level 1, there are slightly higher rates of virus and community transmission is starting to increase. The detailed public health protections in casinos remain in place at level 1. The option of closure needs to take account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits lost from closing casinos.



## **Conclusion**

In considering the evidence around options for level 0 and level 1 we weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of option 2 - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. It was therefore determined that, in line with clinical advice, casinos should remain allowed to be open, with all the mitigations in place, and with reduced opening hours determined by the hospitality requirements at this level.

### **Options for Level 2 and 3**

Levels 2 and 3 are intended to apply for short periods of time.

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods (preferably less than 4 weeks), and only for as long as required to get the virus down to a low, sustainable level.

### **OPTIONS FOR LEVEL 2**

- 1) Maintain baseline
- 2) Opening casinos with curfew restrictions
- 3) Closure

#### **Option 1: Maintain baseline**

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a full service.

This would effectively take Scotland back to the position prior to 9 October 2020 when casinos were allowed to be open across Scotland. It would have a positive impact on their revenue generation, employment of staff, and on customers' socialising, although customer numbers would still be limited by physical distancing requirements.

Beyond the risk-reduction benefits achieved from the mitigating actions for casinos detailed above there would be no further public health benefits compared to baseline and level 1.

Under level 2, there would be increasing community transmission and multiple clusters. There are therefore greater public health costs of not restricting social interaction within high risk settings. Level 1 measures would, in many cases, have already been applied and would not have been sufficient.

#### **Option 2: opening casinos with curfew restrictions**

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a service but, consistent with the hospitality sector, with restricted hours of 0600-2230 rather than 24 hour opening as is the norm under casino gambling licensing. Closing indoor venues at 2230 will allow for limited evening services and social mixing, whilst still having a slightly greater impact on transmission than baseline and level 1.

It would have positive impact on casinos, but less so than option 1, given that a significant proportion of casino activity is after 2200 at night.

### Option 3: Closure

This would take casinos in Scotland back to the position prior to 24 August 2020 when all casinos were required to be closed. and before the introduction of the mitigating measures detailed above. In level 2, with increased incidence of the virus and community transmission, the detailed public health protections in casinos remain in place. The option of closure needs to take account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits lost from closing casinos.

### **Conclusion**

In considering the evidence around options for level 0 and level 2 we weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of option 2 - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this level. It was therefore determined that, in line with clinical advice, casinos should remain allowed to be open, with all the mitigations in place, and with reduced opening hours determined by the hospitality requirements at this level.

### **OPTIONS FOR LEVEL 3**

Under level 3, there would be increasing community transition and multiple clusters. For example, more than 150 cases per 100,000 population. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue and accelerate its spread, ultimately resulting in direct harms to health.

- 1) Maintain baseline
- 2) Closure

### Option 1: Maintain baseline

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a full service.

This effectively would take Scotland back to the position prior to 9 October 2020 when casinos were allowed to be open across Scotland. It would have a positive impact on their revenue generation, employment of staff, and on customers' socialising, although customer numbers would still be limited by physical distancing requirements.

### Option 2: Closure

This would take casinos in Scotland back to the position prior to 24 August 2020 and the introduction of the mitigating measures detailed above, and to the central belt restrictions introduced from 9 October 2020, when all casinos were required to be closed. The closures recognised that, despite the impact to the economic and employment contribution of casinos, there are greater costs of not restricting social interaction within high-risk indoor settings.

### **Conclusion**

In considering the evidence around options for level 3 we weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, the economic and social harms of intervention. It was

concluded that given the increased risk to public health at level 3, closure of casinos as indoor venues is the best option to meet public health objectives.

#### **Options for Level 4**

Level 4 will be deployed only if absolutely necessary as a short, sharp intervention to address extremely high transmission rates.

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

- 1) Maintain baseline
- 2) Closure

##### **Option 1: Maintain baseline**

This option would mean that casinos, whilst applying the mitigating actions that are required at all levels, could operate a full service.

This effectively would take Scotland back to the position prior to 9 October 2020 when casinos were allowed to be open across Scotland. It would have a positive impact on their revenue generation, employment of staff, and on customers' socialising, although customer numbers would still be limited by physical distancing requirements.

##### **Option 2: Closure**

This would take casinos in Scotland back to the position prior to 24 August and the introduction of the mitigating measures detailed above, and to the central belt restrictions introduced from 9 October 2020, when all casinos were required to be closed. The closures recognised that, despite the impact to the economic and employment contribution of casinos, there are greater costs of not restricting social interaction within high-risk indoor settings.

#### **Conclusion**

In considering the evidence around options for level 4 we weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, the economic and the social harms of intervention. It was concluded that given the increased risk at level 4, closure of casinos as indoor venues is the best option to meet public health objectives, building on the decision to close at level 3.

**Scottish Firms Impact Test:** There has been engagement with Scottish casinos in developing the provisions within the Strategic Framework. This engagement is set out within the consultation section of this BRIA. The information we have considered comes from Scottish casinos and also the Betting and Gaming Council who collect such data for the purposes of industry representation and the requirements of gambling licensing. We are not aware of a particular impact on these measures on casino competitiveness as the measures apply to all casinos and entry to the market is regulated under gambling licensing.

There are 11 casinos in Scotland, employing an estimated 770 people across Glasgow, Edinburgh, Aberdeen and Dundee.

Casinos have already incurred costs of implementing COVID-19 safety measures (for all scenarios in which they have previously been permitted to open). As restrictions increase through the levels, there are additional costs of implementing the hospitality measures and the income lost from food and drink sales, more significantly the income lost from restricted hours at levels 1 to 2 and the total income lost at levels 3 to 4.

**Competition Assessment:**

Closing casinos under these measures will not likely impact on competition between businesses.

It is not anticipated that the casino measures in the Strategic Framework will directly or indirectly limit the number or range of suppliers, unless they become financially unviable and businesses close.

It is not anticipated that the casino measures in the Strategic Framework will limit the ability of suppliers to compete.

It is not anticipated that the casino measures in the Strategic Framework will impact on suppliers incentives to compete vigorously.

The casino measures in the Strategic Framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

**Consumer Assessment:**

Casino restrictions are likely to impact upon consumers in terms of restricting their ability to visit casinos at levels 3 to 4 and to restrict the hours that they can visit at levels 1 to 2.

There is no expected impact on markets for essential services or the storage or increased use of consumer data.

It is unlikely that the casino COVID restrictions under the Strategic Framework will in themselves increase opportunities for unscrupulous suppliers to target consumers.

**Test run of business forms:** N/A

**Digital Impact Test:** N/A.

**Legal Aid Impact Test:** N/A

**Enforcement, sanctions and monitoring:** Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

Guidance has been put in place to support the implementation of the measures contained within the Strategic Framework. The guidance remains under review.

**Summary and recommendations:**

This BRIA has examined the measures for casinos within each level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework. The Scottish Government's Strategic Framework includes a package of measures which collectively are designed to suppress transmission of the virus. Whilst this BRIA is focused on casinos, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view the amended regulations in the context of this wider package of actions.

## **Options Appraisal**

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table below brings together the benefits and costs of:

- Protective measures and restrictions (in levels 1-2)
- Closing casinos (in levels 3-4)

It compares these measures against the baseline / level 0 option. More detailed discussion of each of the levels and the options that have been considered by Scottish Ministers within levels is contained within the main body of this document.

### **Option 1: Baseline**

The baseline option (effectively level 0 of the Strategic Framework) would have a positive economic impact on casinos through their revenue generation and employment of staff and on their customers' enjoyment. However this would be off-set by the health risks associated with increased opportunities for virus transmission in indoor venues.

Indoor venues such as casinos are characterised by many of the high-risk factors associated with transmission of the virus. The health risks posed would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on casinos as trade may be reduced due to customers being anxious about social interaction in indoor venues. The workforce may be affected by higher levels of sick workers due to high rates of Covid-19, or larger numbers of staff self-isolating for 14 days.

We recognise that the risks of transmission are mitigated by the measures introduced by casinos under the agreed guidance, and that thorough implementation of those measures also increases customer and staff confidence.

### **Option 2: Strategic Framework**

## **Summary and recommendations:**

### **Introduction**

This BRIA has examined the measures for casinos within each level of the Strategic Framework and compared these measures with the option of 'doing nothing', the equivalent of Level 0 in the Strategic Framework.

### **Background**

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.

Whilst this BRIA is focused on hospitality, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view hospitality measures in the context of this wider package of actions.

### Options Appraisal

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table below brings together the benefits and costs of:

- Restrictions on opening times indoors (in level 1-3)
- Restrictions on the sale of alcohol indoors at level 3
- Closing hospitality (in level 4)

It compares these measures against the baseline / level 0 option. More detailed discussion of each of the levels and the options that have been considered by Scottish Ministers within levels is contained within the main body of this document.

#### Option 1: Baseline

The baseline option (effectively level 0 of the Strategic Framework) would have a positive economic impact on hospitality venues through their revenue generation, employment of staff, and on supply chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission in hospitality settings.

Hospitality venues are characterised by many of the high-risk factors associated with transmission of the virus. The health risks posed by hospitality would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on the hospitality industry as trade made be reduced due to customers being anxious about social interaction, particularly in indoor venues. The workforce may be affected by higher levels of sick workers due to high rates of Covid-19, or larger numbers of staff self-isolating.

#### Option 2: Strategic Framework

Measure	Benefits	Costs
Mitigations and restrictions (in levels 1-2)	Measures such as physical distancing, wearing face coverings and enhanced hygiene reduce the scope for virus transmission. Permitting casino customers to continue with these measures in place supports customers' enjoyment. Restricting opening times reduces opportunities for virus transmission.	Restricting customer numbers and opening hours will lower demand, reduce revenue and turnover for casinos. This will increase at each level. Casinos also incur the costs of implementing the COVID mitigations.

Closing casinos (in levels 3-4)	<p>Level 3 is expected to be applied for short periods of time.</p> <p>Level 4 will be deployed only if absolutely necessary to address extremely high transmission rates.</p> <p>The risk of transmission in indoor venues, with general virus prevalence at these higher levels, is judged to be sufficient to require closure.</p>	<p>Evidence from closure of casinos shows a collapse in income and immediate cash-flow and viability challenges with many fixed costs continuing. Closure potentially threatens viability of businesses putting jobs at risk and leading to higher unemployment.</p>
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## Conclusion

**This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing virus whilst acknowledging and minimising the economic harms faced by businesses.**

It is also important to note that we have set out a comprehensive package of financial support for businesses to mitigate the negative impacts of the restrictions.

In March 2021, each casino in Scotland was eligible to receive a £50,000 top up payment from the Strategic Framework Business Fund (SFBF) to reflect the long period of closure necessitated under Framework restrictions.

On 19 April 2021, all SFBF recipients automatically received a combined final 2-week supplement and a one-off restart grant to help them reopen. For casinos, who we understand in Scotland are in premises with a rateable value over £51,001, the value of the grant was £7,500 (£6,000 two week payment and £1,500 restart grant).

This support is in addition to the UK government Job Retention Scheme whereby employees working for businesses legally mandated to shut will receive 80% of their salary paid for by government.

These support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the sector on the impact of the measures, and the level of support available, as they are implemented.



## Funfairs

<p><b><u>Title of Legislation:</u></b> The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020</p>
<p><b><u>Purpose and intended effect:</u></b></p> <p>This Business and Regulatory Impact Assessment (BRIA) is focused on the measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”), as amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 and most recently in relation to funfairs by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 26) Regulations 2021 (“the amending Regulations”). The Regulations reflect Scotland’s Strategic Framework. This BRIA addresses the impact of the measures in the Regulations that impact on funfairs, including changes made by the amending Regulations.</p> <p>Under the Regulations, funfairs are permitted to open to the public at Level 2 from 5 June 2021 in line with the measures provided for in the Regulations.</p> <p>As well as the measures provided for in the Regulations, there is guidance produced by the sector and Scottish Government. The guidance emphasises in particular the importance of undertaking a robust and ongoing risk-based assessment with full input from workforce representatives, and to keep all risk mitigation measures under regular review so that Funfairs continue to feel, and be, safe.</p> <p>Measures contained within the Regulations which impact on funfairs need to be viewed within the broader context of the package of measures within each Level, as a number of measures that are in place in a given Level are not specific to funfairs.</p> <p><b><u>Policy Objectives:</u></b></p> <p>The objective of Scotland’s Strategic Framework is to set out a sustainable response to the pandemic to be implemented to allow the continued suppression of the virus as we move out of lockdown, and to allow the vaccination programme time to be rolled out to the general population. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five Levels of protection.</p>
<p><b><u>Title of proposal:</u></b> Funfairs</p>
<p><b><u>Background:</u></b></p> <p>This BRIA is focused on the set of leisure and entertainment measures for Funfairs included within Scotland’s Strategic Framework.</p> <p>However, individual measures need to be viewed within the broader context of the package of measures within each Level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each Level through assessment of:</p> <ul style="list-style-type: none"><li>• direct health harms associated with COVID-19</li><li>• broader health harms</li><li>• social harms</li><li>• economic harms</li></ul>

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The key measures relating to Funfairs are set out in the table below:

Leisure and Entertainment sector measures	Level 4	Level 3	Level 2	Level 1	Level 0
Funfairs	Closed	Closed	Open (mitigations and restrictions) in place).	Open (mitigations and restrictions in place).	Open (mitigations and restrictions in place)

There are two distinct types of funfairs currently operational in Scotland: travelling funfairs, such as those operated by members of the Showmen’s Guild; and non-travelling or static funfairs.

There is currently no statutory definition of a funfair. This was set to be remedied by Richard Lyle’s Travelling Funfairs (Licensing) (Scotland) Bill, which contains within section 1 a definition of a travelling funfair as well as a definition of a funfair:

- a “funfair” is a number of structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity, and
- a “travelling” funfair is one— (i) in respect of which those operating it travel with those structures and equipment from site to site and operate the funfair in those sites, but (ii) which, as respects its site, is being or is to be operated there for a period of not more than six weeks.

Section 1(2) of the Travelling Funfairs (Licensing) (Scotland) Bill states that: “examples of those structures and equipment are carousels and similar roundabouts, swings, roller-coasters and similar rides, helter-skelters and similar slides, coconut shies and similar stalls and dodgem cars. But the presence or absence of any of those is not, of itself, conclusive.”

The Travelling Funfairs (Licensing) (Scotland) Bill fell with the dissolution of Parliament due to the Scottish elections.

Both types of funfair vary in size. The numbers of funfair visitors vary by size of fair and location.

#### Travelling funfairs

Travelling funfairs are planned, highly regulated, professional events, and vary from micro business to substantial limited companies. Staffing of funfairs also varies. Most travelling funfairs are staffed by family members, who have varying roles within the business. The Showmen’s Guild of Great Britain and N Ireland represents over two thousand operating members in the travelling funfair industry and some circuses. When family members and employees are taken into account, it represents approximately 25000 people. The Showmen’s Guild in Scotland currently has over 300 members, making it 7th out of the 10 UK Showmen’s Guild regional sections in terms of the number of members that are registered with each section (office).

Each member will have funfair equipment and is a usually business in their own right. Membership of the Guild is normally held by the head of the household, with all the family involved in the day-to-day running of the funfair operation. Members must declare each piece of funfair equipment that they intend to operate with the Guild and all have test certificates and insurances. Data provided by the Showmen's Guild shows 915 separate pieces of equipment, although some are mothballed and others have no operational status given.

Travelling funfairs can vary from one or two rides to over twenty and in the case of Kirkcaldy Links Market (the largest fair in Scotland) over 100 attractions. Most fairs last for a week in each location but some may be longer, and some summer fairs last for the duration of school holidays at the seaside or other attractions. The season normally lasts from March just before Easter until November for fireworks displays but there are some exceptions to this, e.g. Christmas fairs, St. Valentines etc. The majority of the most profitable fairs are attached to other events like Highland games and gala days

### Static funfairs

Scotland's Economic Strategy identifies those sectors where Scotland has a distinct comparative advantage: these are called Growth Sectors and data within these sectors is classified using Standard Industrial Classification (SIC) codes. The Inter-Departmental Business Register (conducted by the Office for National Statistics) as at March 2019 shows that under SIC code 93.21, Activities of Amusement Parks and Theme Parks (although to note, some of these may be considered visitor attractions rather than funfairs), there were 25 businesses operating across 25 sites.

The Business Register and Employment Survey 2018 (conducted by the Office for National Statistics) showed there were approximately 900 employees work in Scotland in activities covered by SIC 93.21 - There is no difference between the number of workers that appear under the 'employee' and 'employment' status, indicating that the number of self-employed workers registered for VAT or PAYE were so low as not to appear in the survey.

The largest concentrations of workers were located in North Lanarkshire (400), Aberdeen (200) and Inverclyde (100).

### COVID-19 and the funfair sector

Static funfairs are likely to have furloughed most staff, having only had a brief window to operate in 2020 between late August and the October circuit breaker .

Data on loss of revenue for the sector is limited. Discussion with the Showmen's Guild has indicated that around 365 funfairs have been cancelled in Scotland last year.

Funfairs were initially allowed to reopen on 24th August 2020 having been closed since late March. We have worked with key industry bodies in ensuring there is appropriate guidance that meets the needs of the sector in Scotland. Guidance for operators is was provided online and could be accessed through links in the Tourism and Hospitality Guidance. Funfair guidance should be applied in conjunction with the Tourism and Hospitality Guidance.

We also worked closely with the Showmen's Guild in Scotland to devise a business support scheme for travelling funfairs that had been unable to access other business support. Travelling businesses had been unable to receive support under the Strategic Framework Business Fund ("the SFBF") and a bespoke scheme was needed to provide support while income was zero. This awarded grants to 151 successful applicants in January 2021.

## **Rationale for Government intervention:**

The Strategic Framework Levels are designed to suppress the virus to the lowest possible level and to keep it there, whilst returning to as much normality as possible for as many people as possible.

In terms of funfairs, the principles that guided this Levels update process included a need to maintain proportionality and suppress the virus in each Level and to maintain the effectiveness of the Levels, whilst also considering the emergence of new more transmissible variants.

Within the funfair sector, the aim is to limit different households from interacting in these settings to prevent the spread of the virus, whilst considering the impacts on the four harms of the different options as well as impacts on different groups within society. This is consistent with the principles and approach set out in our Framework for Decision Making in April 2020.

In terms of the re-opening and recovery of the funfair sector, the transmission risk has been taken into account within different settings, alongside consideration of the wider harms including those that impact on the economy and wellbeing.

The objective of the restrictions set out within the Strategic Framework is to ensure that the operation of funfairs is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

## Transmission

Transmission of SARS-CoV-2 is strongly associated with close and prolonged contact. Parts of the visitor funfair sector, where guests are in crowded spaces over extended periods, fulfil many of the high-risk criteria for COVID-19 transmission. For funfairs, particular higher-risk factors include issues with maintaining physical distancing, gatherings of large numbers of people, the high volumes of children / adults coming into contact in close proximity, the amount of contact with surfaces, and issues with keeping facilities/equipment clean between use by a high number of children and adults. The risk of transmission will also be increased in pinch points or bottleneck areas around entrances and exits and toilets. In relation to indoor funfairs, there will also be increased risks associated with proximity and duration of contact in indoor environments and, for example, the risks posed by inadequate ventilation

## Conclusion

Limiting social mixing as much of possible in all settings is the most effective measure against transmission of the virus. It is particularly important to focus on settings which have high risk factors. However, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside big increases in mental health problems. The limitations on leisure and entertainment sector are part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The Levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the restrictions on the leisure and entertainment sector. Similarly as the risk falls, restrictions will ease.

Across all of the Levels we seek to balance:

- The impact on reducing the risk of transmission of the virus through restricting the opportunity for mixing of children and adults in funfair settings
- Enabling as much of the sector as possible to remain open safely in areas with low infection rates, in ways that enable businesses to remain viable and protect jobs
- The economic costs, including wider costs and the impact on the supply chain.

### **Consultation:**

Public Consultation: Given the need to respond quickly to protect public health as virus rates increase, there has not been time to undertake a public consultation on the measures covered by the requirements of the Regulations.

Business: We worked with The British Association of Leisure Parks, Piers and Attractions and The Showmen's Guild in ensuring there is appropriate guidance that meets the needs of the sector in Scotland in terms of allowing access to funfairs for customers in a safe way at low levels of virus transmission whilst also ensuring staff are properly protected both in terms of customer interaction and in setting up and taking down funfair equipment. The sector bodies have developed the more detailed sector specific guidance within the broader parameters of the Scottish Government guidance on reopening safely.

We also engaged with the Scottish Showmen's Guild in order to develop and deliver a bespoke funding package to support travelling funfairs, recognising the challenges resulting from ongoing closure. This provided grants of £10k, taking into account the initial closure period, level of loss experienced by each family, lack of other available funding options and seasonal and geographical limitations of the sector's operation. It also considered the unique operational structures of this part of the sector. The scheme was launched in late December and closed on 22 January, providing support to 151 applicants.

We have continued to receive correspondence from the sector seeking a specific date on which they can reopen to enable pitches to be booked and licenses to be sought from local authorities.

### **Options:**

At the time of the initial development of the Levels, a range of options were considered. Upon consideration of the factors involved, Ministers considered whether to maintain the existing Strategic Framework position as regards funfairs. At the time of the amending Regulations, funfairs were required to close to members of the public in Level 2.

Coronavirus measures are kept under ongoing review by the Scottish Ministers and are adapted as new evidence becomes available or circumstances change. Conversations with stakeholders also form part of the analysis and allow Scottish Ministers to reach a considered view about the practical implications of any planned or existing restrictions and to identify appropriate mitigations. In the case of funfairs, the move to permitting opening in Level 2 from 5 June 2021, reflects the increasing economic harm being felt by the sector, particularly moving into the summer season, the anticipated minor impact on the R number of allowing the sector to reopen in level 2 subject to mitigations to reduce transmission, and taking into account the lead time necessary for travelling funfairs to resume operation, and the desirability of allowing operators to plan for the summer season.

The guidance published for funfairs in the UK (this includes guidance drafted by UK Hospitality and guidance drafted by the Showmen's Guild of Great Britain) sets out

mitigating actions required to be able to operate safely for both employees and customers, including:

- Taking reasonably practical measures to maintain physical distancing (although there is recognition that this may be difficult to implement with very young children)
- wearing of facemasks by adults
- enhanced cleaning and hygiene
- queue management
- management of toilet facilities.

The guidance for funfairs has been incorporated into the Scottish Government's general guidance on tourism and hospitality referenced above.

Social gathering rules in place across Scotland also apply. The rules on social gatherings vary across the Levels and are set out in the Strategic Framework and these Regulations.

#### Sectors and groups affected

The Regulations affect both static and travelling funfairs. The Regulations also affect employees of such funfairs, suppliers to funfairs as well as individuals who visit funfairs.

#### Our approach to assessing options

Within the initial BRIA we compared the package of measures within each Level against the baseline approach of Level 0. This allowed us to present the clinical evidence for intervention at each Level setting out the health benefits, whilst acknowledging the potential impacts on the leisure and entertainment sector, and in particular, funfairs. Throughout these measures we sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms. Our objective is to get all parts of the country to Level 1 and then to Level 0, and then move to Phase 4 of the Route Map and then back to normality. In assessing the relevant options for each Level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

#### **Options for 'Baseline' / Level 0**

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this Level is the closest we can get to normality, whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission against emerging variants. At Baseline, all funfairs, static and travelling, would be able to operate in line with the guidance produced for reopening on 24 August 2020. The guidance was drafted to help all workers in the UK Travelling Fairground Sector to understand how to work safely and keep their customers safe during the COVID-19 pandemic, and how to keep as many people as possible socially distant from those who are not part of their household / extended household. It aimed to provide a practical framework for operators to think about what they needed to do in order to continue, or restart, operations during the COVID-19 pandemic.

This included measures on social distancing, both for the public and for employees, use of face masks, keeping fairground rides and attractions clean during use, and use of Test and Protect. The requirement for social distancing would very likely reduce the overall numbers able to attend a funfair at any one point which, combined with the additional safety measures which operators need to take, would have some detrimental impact on income Levels.

Despite the costs of mitigations and the restriction on numbers due to distancing, this option maintains the economic benefit of allowing funfairs to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for entertainment and leisure.

#### **Options for Level 1**

Level 1 is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

The options considered for this Level were:

1. Maintain Baseline
2. Close funfairs

Funfairs are higher-risk settings, given they are gatherings of large groups of numerous different

households, there is a strong likelihood of social interaction, a non-linear progression through funfairs settings and consequent difficulty with physical distancing, potential pinch points or bottlenecks at entrances and exits to funfair rides. Mitigations can be put in place in line with the published guidance.

#### Option 1. Maintain Baseline

This option would mean that funfairs whilst having regard to the published guidance and in accordance with restrictions and mitigations required at all Levels could open to members of the public.

The need to maintain 2m physical distance between groups would be likely to impact on the numbers able to attend a funfair at any one time, with a consequent impact on income for operators.

Despite the costs of mitigations and the restriction on numbers due to distancing, this option maintains the economic benefit of allowing funfairs to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for entertainment and leisure.

#### Option 2. Close funfairs

This option would mean that funfairs are required to close. In Level 0, where there is very low instances of the virus, physical distancing measures and restrictions on social gatherings will still be in place, and these are considered sufficient to support suppression of the virus. In Level 1, there are slightly higher rates of virus and community transmission is starting to increase. The detailed public health protections at funfairs remain in place at Level 1. The guidance which has been developed in collaboration with the sector and clinicians, sets out clear mitigation measures to reduce the risk of virus transmission, such as enhanced cleaning regime, restricting numbers at funfairs at any point in line with the guidance, which also asks operators to consider how they can manage the arrival of visitors at different times, to help ensure physical distancing can be maintained, including between employees, and that appropriate hygiene measures are in place for equipment. The option of closure needs to take account of the effectiveness of these measures in reducing the risk to the public health as well as the costs and benefits to individuals and businesses in closing funfairs. These mitigations support the suppression of the virus in funfair settings and are sufficient in Level 1, given low prevalence and transmission levels of the virus, not to require funfairs to be closed.

#### **Conclusion**

In considering the evidence around options for Level 1 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of this measure of maintaining the baseline and permitting funfairs to open - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this Level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded in line with clinical advice that, given the robust mitigation measures in the guidance together with the requirements of the Regulations, funfairs could remain open at this Level.

#### **Options for Level 2**

Within Level 2, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures required across all sectors to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place, areas with higher concentrations of separate households, and venues where maintaining hygiene is more difficult due to the number of shared surfaces or equipment which would need to be continually cleaned between uses. The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

The options considered at Level 2:

1. Maintain baseline
2. Close funfairs

### Option 1. Maintain baseline

This option would mean that funfairs whilst having regard to the published guidance and in accordance with restrictions and mitigations required at all Levels, could open to members of the public. This would have a positive impact on the revenue generation of funfairs, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Beyond the risk-reduction benefits achieved from the mitigating actions for funfairs, as explained above, there would be no further public health benefits compared to baseline and Level 1.

Given increased incidence of the virus and increased risk of transmission in Level 2, maintaining the baseline as in Level 1 with similar numbers of customers would provide an increased risk of transmission. However, given mitigations are already in place to reduce the possibility of virus transmission, and combined with the increasing level of vaccination across the country, and taking into account the largely outdoor nature of the sector, the option of keeping funfairs open at Level 2 could be considered.

### Option 2. Close funfairs

This option would require funfairs to close. Given the increased incidence and community transmission of the virus at this Level and the high risk factors of funfairs (including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean), keeping funfairs open at this Level would present an increased risk in relation to increasing virus transmission. Closing funfairs eliminates this risk. At Level 2, with increased incidence of the virus and community transmission, the detailed public health measures remain in place. The option of closure needs to take into account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits to individuals and businesses from closing funfairs.

### **Conclusion**

In considering the evidence around options for Level 2 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. Initially, it was considered appropriate to maintain the closure of funfairs in Level 2. However, after further considering matters and engaging with stakeholders it was concluded that the selection of option 1 -the measure of maintaining the baseline and permitting funfairs to open - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this Level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded that, given the robust mitigation measures in the guidance together with the Regulations, funfairs could remain open from 5 June 2021 in Level 2.

### **Options for Level 3**

Within Level 3, we would expect to see increased incidence of the virus relative to Level 2, with multiple clusters and increased community transmission. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue to accelerate its spread, ultimately resulting in direct harms to health.

At Level 3, there is an increased series of protective measures required across all sectors to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place, areas with higher concentrations of separate households, and venues where maintaining hygiene is more difficult due to the number of shared surfaces or equipment which would need to be continually cleaned between uses. The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

#### Level 3

The options considered at Level 3:

1. Maintain baseline



## 2. Close funfairs

### Option 1. Maintain baseline

This option would mean that funfairs, whilst applying the mitigating actions that are required at all Levels could open to the public. It would have a positive impact on the revenue generation, employment of staff and on customers' socialising, although customer numbers would still be limited by physical distancing requirements.

### Option 2. Close funfairs

Given the increased incidence and community transmission of the virus at this Level compared to Level 2 and the high risk factors of funfairs (including sometimes being an indoor facility, being a venue where high number of households could mix, with difficulty in maintaining physical distancing and the difficulty in keeping shared equipment and surfaces clean), keeping funfairs open at this Level would present high risk in relation to increasing virus transmission.

It is recognised that the closure of funfairs at Level 3 has economic consequences on businesses and individuals. It is also recognised that the closure of funfairs has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of Covid-19, the decision to close funfairs is proportionate and necessary in order to restrict social interaction and protect public health.

### **Conclusion**

In considering the evidence around options for Level 3 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that given the high risk factors for funfairs, such as high number of households mixing and difficulties with maintaining physical distancing, and keeping shared equipment and surfaces clean, funfairs should continue to be closed in Level 3. Whilst some other businesses remain open at Levels 3 it is not considered possible to open funfairs because of the particular difficulties in maintaining social distancing, the amount of surfaces being touched, the particular difficulties in cleaning them between customers and the limited ability to introduce further effective mitigating measures. In addition at Level 3 there are still restrictions on socialisation.

### **Options for Level 4**

Level 4 will be deployed only if a high level of intervention is required to address high transmission rates and suppress the virus.

Within this Level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this Level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in Level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

In considering the evidence around options for Level 4, we weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, the economic and social harms of intervention. It is concluded that given the high level of transmission at Level 4, closure of funfairs is the best option to meet public health objectives. It is recognised that the closure of funfairs at Level 4 has economic consequences on businesses and individuals. It is also recognised that the closure of funfairs has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of Covid-19, the decision to close funfairs is proportionate and necessary in order to restrict social interaction and protect public health.

### **Scottish Firms Impact Test:**

There has been engagement with Scottish funfair businesses in developing the guidance for re-opening and support package for businesses during closure. This engagement is set out within the consultation section of this BRIA.

Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?

Theme parks and travelling funfairs in England have been able to reopen since April 12 2021, though indoor rides have remained closed.

How many businesses and what sectors is it likely to impact on?

Travelling Funfairs - The Showmen's Guild in Scotland currently has 322 members. Each member will have funfair equipment and is usually a business in their own right. Membership of the Guild is normally held by the head of the household with all the family involved in the day to day operations. Members must declare each piece of funfair equipment that they intend to operate with the Guild and all have test certificates and insurances. Data provided by the Showmen's Guild lists 915 separate pieces of equipment, although some are mothballed and others have no operational status given. Travelling funfairs can vary from one or two rides to over twenty and in the case of Kirkcaldy Links Market (the largest fair in Scotland) with over 100 attractions.

Static funfairs - OCEA estimates that there are around 25 amusement parks and theme parks currently operating which collectively employ around 900 people. The ONS Business Register and Employment Survey 2018: sets out that there were approximately 900 employees worked in activities covered by 93.21 - Activities of Amusement Parks and Theme Parks in Scotland. The largest concentrations of workers were located in North Lanarkshire (400), Aberdeen (200) and Inverclyde (100).

Static funfairs were eligible for Non-Domestic Rates Relief and will have been eligible for a Retail, Leisure and Hospitality Grant if their rateable value was below £51,000. They were so eligible for funding through the SFBF. The SFBF closed in March 2021. On 19 April 2021, all SFBF recipients automatically received a combined final 2-week supplement and a one-off [restart grant](#) to help them open.

### **Competition Assessment:**

Closing funfairs from protection Level 3 onwards is only likely to impact on competition between businesses in Scotland where particular local authorities are in Level 3 when the rest of the country is in Level 2. The impact of this will be wider than just on funfairs.

- Will the measure directly or indirectly limit the number or range of suppliers?

The impact on business viability may mean that some businesses cease to trade and this will reduce the number of suppliers if there is a widespread return to Level 3 or 4. Such a scenario might also limit the ability of new businesses to enter the market, but the Showmen's Guild notes that it has a distinct cultural heritage over centuries, so this is unlikely to be an issue.

- Will the measure limit the ability of suppliers to compete?

It is likely that the restrictions on funfairs in terms of visitor numbers due to distancing requirements will limit the ability of some suppliers to compete. It is difficult to assess whether the restrictions are likely to have an advantageous effect on other businesses – although sports, visitor attraction, hospitality and leisure venues who are able to remain open at Level 3 who may benefit while funfairs are closed, were we to return to such a scenario.

- Will the measure limit suppliers' incentives to compete vigorously?

Allowing funfairs to open in Level 2 will improve the opportunities for suppliers to compete vigorously, as they will be able to take greater advantage of the warmer summer months.

- Will the measure limit the choices and information available to consumers?

Yes. Opening funfairs at Level 2 will provide increased opportunities for children and families to visit funfairs earlier in the timetable

### **Consumer Assessment:**

The following sets out the Scottish Government's view on the impact of the Leisure and entertainment (funfair) sector measures within the Strategic Framework on consumers.

- Does the policy affect the quality, availability or price of any goods or services in a market?

The restrictions within the Strategic Framework will restrict choice and price, as business operating costs will be ongoing while capacity and income will be reduced. It is possible that some funfairs in Level 2 may choose not to reopen, if they feel physical distancing restrictions would impact on viability. This would result in reduced availability of facilities, but seems an unlikely scenario as businesses have been unable to operate for most of the last year and there are no other current grant support schemes to provide income.

- Does the policy affect the essential services market, such as energy or water?

There is no expected impact on markets for essential services.

- Does the policy involve storage or increased use of consumer data?

No

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

This is unlikely to occur as a consequence of the Strategic Framework

**Test run of business forms:** n/a

**Digital Impact Test:** n/a

**Legal Aid Impact Test:** n/a

### **Enforcement, sanctions and monitoring:**

Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

### **Implementation and delivery plan and post-implementation review:**

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. The Regulations must be reviewed by the Scottish Ministers at least every 21 days. We are continuing our constructive engagement with the sector.

### **Summary and recommendations:**

#### **Introduction**

This BRIA has examined the measures within each Level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.

## Background

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.

Whilst this BRIA is focused on funfairs, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view funfair measures in the context of this wider package of actions.

## Options Appraisal

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. It compares these measures against the baseline / Level 0 option. More detailed discussion of each of the Levels and other options that have been considered by Scottish Ministers within Levels is contained within the main body of this document.

### Option 1: Baseline

The baseline option (effectively Level 0 of the Strategic Framework) would have a positive economic impact on funfairs through their revenue generation and employment of staff, and on any supply chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission in funfair settings.

Funfairs are characterised by many of the high-risk factors associated with transmission of the virus. The health risks would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on the industry as trade may be reduced due to customers being anxious about social interaction in hospitality settings, including funfairs, particularly where there are significant numbers of individual groups.

### Option 2: Strategic Framework

Measure	Benefits	Costs
Funfairs open in Level 0, 1 and 2 (guidance and Regulations in place)	Funfairs are characterised by many of the high-risk factors associated with transmission of the virus. However, with robust guidance in place to mitigate the risks together with the restrictions set out in the Regulations, funfairs could remain open in areas with low incidence of virus.	There will be costs associated with complying with guidance including enhanced cleaning regime and reducing capacity to ensure physical distancing can be maintained which will result in increased costs to the businesses.
Funfairs closed in Level 3-4	As above, given the high risk factors associated with funfairs in relation to virus transmission, keeping funfairs closed would contribute to reducing the R number and community transmission. At Levels 3 and 4 there is a high prevalence of the virus. It is necessary for the	There will be costs for funfair operators which will be required to close and increasing concerns over financial viability of businesses in the sectors and jobs put at risk. There will also be impact in relation to reduced opportunity for social interaction and which will mainly but not

	protection of public health to close funfairs at Levels 3 and 4.	exclusively be for younger children and their families.
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## Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

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. Whilst it has been necessary to take these extraordinary measures to respond to the pandemic, in order to protect the health of Scotland's population, the unequal impact of the pandemic and the need to respect human rights and take an integrated and balanced approach to ensuring the proportionality and necessity of these measures taken, have also been at the forefront of consideration of these actions. This has included balancing the needs of funfairs against the finite amount of resources available to the Scottish Government.

The Strategic Framework and levels approach are intended to balance the restrictions necessary to protect people from the direct harms to health from catching the virus, with the unintended potential harms the restrictions may have on isolation, wellbeing, the impact on businesses, individuals and the economy.

The different restrictions recognise the different risks and needs of the people of Scotland and balances these according to understanding of how the virus is transmitted. We have considered the wide range of impacts, both intended and unintended, of the restrictions across all the levels and have sought to mitigate them wherever possible, while simultaneously protecting the health of employees and the public, and focusing on our primary objective reducing the spread of the virus.

We have set out a comprehensive package of financial support for funfairs to mitigate the negative impacts of the restrictions. This is in addition to the UK Government Coronavirus Job Retention Scheme.

We continue to keep the levels and restrictions under review, and take all decisions based on the best available evidence. Our approach to funfairs will continue to be informed by assessments under the impact of the four harms, while also taking into account other important considerations, including human rights and equality impacts.

We continue to work with sector representatives and other stakeholders to ensure we are doing everything possible to support the funfair sector, its customers and employees – including those with protected characteristics – as we take measures necessary to continue to suppress the virus and save lives.

All these support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented

## Snooker/pool halls and bowling

**Title of Legislation:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021

### **Purpose and intended effect:**

This Business and Regulatory Impact Assessment (“BRIA”) is focused on the measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”), as amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 and most recently in relation to tenpin bowling facilities and snooker/pool halls by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 (“the amending Regulations”). The Regulations reflect Scotland’s Strategic Framework. This BRIA addresses the impact of the measures in the Regulations that impact on tenpin bowling facilities and snooker/pool halls, including changes made by the amending Regulations.

Under the amending Regulations, tenpin bowling facilities and snooker/pool halls are permitted to open to the public at level 2 in line with the measures provided for in the Regulations and guidance.

The objective of Scotland’s Strategic Framework is to set out a sustainable response to the pandemic to be implemented until whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission against emerging variants. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five levels of protection.

This BRIA is focused on the measures included within Scotland’s Strategic Framework which relate to tenpin bowling facilities. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The key measures relating to tenpin bowling facilities and snooker/pool halls are outlined in the table below:

	<b>Level 0</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>
<b>Tenpin bowling facilities</b>	Open (mitigations and restrictions in place)	Open (mitigations and restrictions in place)	Open (mitigations and restrictions in place)	Closed	Closed
<b>Snooker/Pool Halls</b>	Open (mitigations and	Open	Open	Closed	Closed

	restrictions in place)	(mitigations and restrictions in place)	(mitigations and restrictions in place)		
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**Policy Objectives:**

As set out in the Strategic Framework update in February 2021, the levels work by limiting members of different households from interacting in different settings and activities, where those settings and activities pose different risk factors for transmission of the virus. Difficult decisions must be made about which activities and settings to restrict in order to achieve the required suppression of the virus. When different restrictions would have similar effects on transmission, difficult decisions must be made about which restrictions to apply. To help to make those difficult decisions, we consider the impacts on the four harms of the different options as well as impacts on particular groups in society, including those with protected characteristics. This is consistent with the principles and approach set out in our Framework for Decision Making in April 2020.

**Introduction**

Tenpin Bowling centres are an important part of community leisure. Information provided by the Tenpin Bowling Proprietors Association suggests that the sector employs around 600 people in Scotland and has a total value of around £18 million. There are 26 bowling centres in Scotland including those affiliated to national chains and local independent businesses.

The sector has indicated that closure of bowling centres has had a significant financial impact, with turnover reduced and high rents remaining, despite financial support provided such as business support grants and the furlough scheme.

There are a few hundred snooker and pool clubs in Scotland of varying sizes. There has been a financial impact of closure on owners as well as wider impacts on those who play including increased isolation and reduced socialisation.

**Policy Objective**

In common with the wide range of other countries who have implemented similar measures, the objective of the restrictions set out within the Strategic Framework is to ensure that the operation of tenpin bowling facilities and snooker/pool halls is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

**Transmission**

Transmission is very much more likely in indoor than outdoor settings, with increased risk associated with the duration, directionality and proximity of potential exposure, hygiene behaviours, touching surfaces (including equipment), ventilation and use of toilet facilities.

**Current position of Tenpin bowling and Snooker/Pool Halls**

Currently, levels 0-2 restrictions apply in Scotland.

**Consultation:**

**Public Consultation:** None

**Business:** Discussions have taken place between officials and the Tenpin Bowling Proprietors Association. In addition Ministers have received letters outlining the concerns of the sector.

The sector has highlighted the various mitigations and Covid-safe protocols that have been introduced to reduce risks of Covid transmission in venues. They have also suggested that the closure of bowling facilities in Level 2 and above was inconsistent with measures applying to other similar sectors such as amusement arcades and bingo halls which can open at Level 2, as well as the wider ability for hospitality premises such as bars, restaurants and so on to operate with restrictions under Level 3, and under fewer restrictions in Level 2.

In calling for the Scottish Government to revisit the decision for bowling facilities to be closed at Level 2 and above, the sector also noted that, in their view, there was no evidence to support the proposition that a bowling premises is a riskier environment than similar venues such as amusement arcades or bingo halls.

Input from the bowling sector highlighted:

- the opportunity the sector provides for opportunity for families in particular to be physically active together.
- size of premises (the typical bowling centre being over 25,000 sq ft);
- ventilation (typically well-ventilated spaces);
- ease of separating groups of customers (including through the use of alternate bowling lanes);
- Covid-safe protocols including:
  - use of screen fitted between lanes and lane seating area
  - floor and balls being sanitised between groups
  - use of own shoes
- comparison with other indoor sport and leisure restrictions.

For snooker/pool halls, Scottish Snooker is the Scottish Governing Body of the sport, and has made representations through **sportscotland** and directly to Ministers and the Scottish Parliament Petitions Committee to be considered in the same way as indoor sport. These have also queried statements in previous impact assessments regarding the ventilation in venues and ability to provide physical distancing measures. As with other sports, Scottish Snooker has agreed guidance with **sportscotland**, and any clubs/venues are required to have a named Covid Officer to ensure Covid-safe processes are in place.

**Options:**

This section sets out the range of options that have been considered.

**Sectors and groups affected**

These Regulations will affect individuals who participate in tenpin bowling and snooker/pool, the businesses which own and operate the venues and the facilities and services associated with the provision and support of the businesses.

**Our approach to assessing options**

Within this BRIA we have compared the package of measures within each level against the baseline approach of Level 0. This has allowed us to present the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on the tenpin bowling sector. We have also set out some other key options considered at each Level. Throughout these measures we



have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

The Strategic Framework levels are designed to suppress the virus to the lowest possible level and to keep it there, whilst returning to as much normality as possible for as many people as possible. The principles that guided this levels update process included a need to maintain proportionality and suppress the virus in each level and to maintain the effectiveness of the levels. In particular, the emergence of the new more transmissible variants of the virus meant there was very limited headroom to make any easings within the levels framework.

As set out in the Strategic Framework update in February 2021, the levels work by limiting members of different households from interacting in different settings and activities, where those settings and activities pose different risk factors for transmission of the virus. Decisions must be made about which activities and settings to restrict in order to achieve the required suppression of the virus. When different restrictions would have similar effects on transmission, difficult decisions must be made about which restrictions to apply. To help to make those difficult decisions, we consider the impacts on the four harms of the different options as well as impacts on particular groups in society, including those with protected characteristics. This is consistent with the principles and approach set out in our Framework for Decision Making in April 2020.

The emergence of new variants has increased the transmissibility of the virus. This means that it is now more challenging to effectively suppress the spread of the virus. It is worth noting that although we do take the transmission risk of settings into account, in order to prioritise re-opening settings and activities we take a broader view across all four harms in order to make judgements about the sequencing of any re-opening.

In assessing the relevant options for each level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

Following representation from the tenpin bowling and snooker/pool sectors regarding the nature of the activities and their premises, the mitigations and Covid-safe protocols that have been introduced, and points of comparison with other indoor sports and leisure and entertainment facilities, it was agreed that the approach set out previously of tenpin bowling centres and snooker/pool halls being open in Levels 0 and 1 and closed in Levels 2-4 should be revised to enable these facilities to be open in Level 2 as well as Levels 0 and 1.

### **BASELINE – (LEVEL 0)**

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality. At Baseline, all tenpin bowling centres and snooker/pool halls, would be able to operate in line with the guidance and Regulations. This would have a positive impact on the revenue generation of tenpin bowling centres and snooker/pool halls, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Despite the costs of mitigations and the restrictions on numbers due to distancing, this option maintains the economic benefit of allowing tenpin bowling centres and snooker/pool halls to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for sport, entertainment and leisure.

### **LEVEL 1**

Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

### **Option 1: Open with restrictions in place (Baseline)**

Under Option 1, snooker/pool halls and indoor bowling alleys, would be able to operate in line with the guidance and Regulations. This would have a positive impact on the revenue generation of tenpin bowling centres and snooker/pool halls, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Despite the costs of mitigations and the restrictions on numbers due to distancing, this option maintains the economic benefit of allowing tenpin bowling centres and snooker/pool halls to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for sport, entertainment and leisure.

### **Option 2: Closure of facilities**

Option 2 was to close indoor bowling alleys, snooker and pool halls. While these venues do have inherent risk as set out above (within the section on transmission), it is considered that at the level of prevalence of the virus at Level 1 these risks can be adequately mitigated by requiring adherence to socialising rules, face coverings and maintenance of physical distancing. Businesses would be required to adhere to hospitality rules and strict hygiene measures. As such, taking into account these mitigation measures together with the benefits to mental health and social interaction associated with participation in these activities and the potential serious economic impact of closure on business, it is considered on balance that further restrictions are not warranted at this Level.

The option of closure needs to take account of the effectiveness of these measures in reducing the risk to the public health as well as the costs and benefits to individuals and businesses in closing these venues. These mitigations support the suppression of the virus in these settings and are sufficient in Level 1, given low prevalence and transmission levels of the virus, not to require allowing tenpin bowling centres and snooker/pool halls to be closed.

### **Conclusion**

In considering the evidence around options for Level 1 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of this measure of maintaining the baseline and permitting tenpin bowling centres and snooker/pool halls to open - in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other measures implemented at this Level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded in line with clinical advice that, given the robust mitigation measures in the guidance together with the requirements of the Regulations, tenpin bowling centres and snooker/pool halls could remain open at this Level.

## **LEVEL 2**

Within Level 2, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

### **Options for Level 2**

#### **Option 1: Open with restrictions in place (Baseline)**

Under Option 1, snooker/pool halls and indoor bowling alleys, would be able to operate in line with the guidance and Regulations. This would have a positive impact on the revenue generation of tenpin bowling centres and snooker/pool halls, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Beyond the risk-reduction benefits achieved from the mitigating actions for tenpin bowling centres and snooker/pool halls, as explained above, there would be no further public health benefits compared to baseline and Level 1. Given increased incidence of the virus and increased risk of transmission in Level 2, maintaining the Baseline as in Level 1 with similar numbers of customers would provide an increased risk of transmission.

Despite the costs of mitigations and the restrictions on numbers due to distancing, this option maintains the economic benefit of allowing tenpin bowling centres and snooker/pool halls to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for sport, entertainment and leisure.

However, given mitigations are already in place to reduce the possibility of virus transmission, and combined with the increasing level of vaccination across the country, the representations from the sector, the option of keeping tenpin bowling centres and snooker/pool halls open at Level 2 could be considered.

### **Option 2: Closure of facilities**

Option 2 was to close indoor bowling alleys, snooker and pool halls at Level 2. Given the increased incidence and community transmission of the virus at this Level and the risk factors keeping tenpin bowling centres and snooker/pool halls open at this Level would present and increased risk in relation to increasing virus transmission. Closing tenpin bowling centres and snooker/pool halls eliminates this risk. At Level 2, with increased incidence of the virus and community transmission, the detailed public health measures remain in place. The option of closure needs to take into account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits to individuals and businesses from tenpin bowling centres and snooker/pool halls.

### **Conclusion**

In considering all of the evidence around options for Level 2, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection and the social and economic harms of intervention. Initially, it was considered appropriate to maintain the closure of tenpin bowling centres and snooker/pool halls in Level 2. However, after further considering matters and following representation from the sectors providing additional information relating to the sector and premises, mitigations and Covid-safe protocols that have been introduced as well as points of comparison with other indoor sports and leisure and entertainment facilities, it was agreed that the approach previously set out of tenpin bowling centres and snooker/pool halls remaining closed in Level 2 should be revised.

Given the additional information provided and the comparison with other leisure and sport restrictions, it was considered that at the level of prevalence of the virus at level 2 these risks can be adequately mitigated within tenpin bowling centres and snooker/pool halls by requiring adherence to socialising rules, face coverings and maintenance of physical distancing. The Strategic Framework has therefore been revised accordingly to enable tenpin bowling centres and snooker/pool halls to be open in Level 2.

### **LEVEL 3**

Within Level 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue to accelerate its spread, ultimately resulting in direct harms to health.

At Level 3, there is an increased series of protective measures required across all sectors to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place, areas with higher concentrations of separate households, and venues where maintaining hygiene is more difficult due to the number of shared surfaces or equipment which would need to be continually cleaned between uses. The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

### **Options for Level 3**

#### **Option 1: Open with restrictions in place (Baseline)**

Under Option 1, snooker/pool halls and indoor bowling alleys, would be able to operate in line with the guidance and Regulations. This would have a positive impact on the revenue generation of tenpin bowling centres and snooker/pool halls, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Despite the costs of mitigations and the restrictions on numbers due to distancing, this option maintains the economic benefit of allowing tenpin bowling centres and snooker/pool halls to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for sport, entertainment and leisure.

Maintaining baseline at Level 3 was considered to be insufficient in circumstances where there is increased incidence of the virus, with multiple clusters and increased community transmission.

#### **Option 2: Closure of facilities**

In an indoor setting, the risks of virus transmission are increased due to activities taking place in a more confined space and potentially including people from different households coming together for prolonged periods. Pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge and there are risks around the common use of equipment and surfaces such as bowling balls, snooker cues, balls and tables. There is also a degree of socialisation and interaction in these activities which, in itself, carries risk. Fundamentally, venues which are attended by many people, typically from different households, specifically to meet for long periods of time, all amplify the risk of transmission.

While at the level of prevalence of the virus present in Level 1 and Level 2, the social and economic benefits of allowing these venues to remain open is considered to outweigh these risks, in the conditions of Level 3, this is no longer the case given the significantly higher levels of community transmission, and closure is therefore considered necessary to minimise transmission of the virus even if mitigating measures such as distancing, face coverings and hygiene are in place. We recognise that this restriction is likely to cause major issues for those businesses which support and supply snooker/pool halls and indoor bowling alleys and may result in some businesses being unable to continue to operate.

It is recognised that the closure of bowling facilities and snooker/pool halls at Level 3 has economic consequences on businesses and individuals. It is also recognised that the closure of bowling facilities and snooker/pool halls has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of Covid-19, the decision to close tenpin bowling centres and snooker/pool halls is proportionate and necessary in order to restrict social interaction and protect public health.

#### **Conclusion**

In considering the evidence around options for Level 3 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention.

Whilst some other businesses remain open at Levels 3 it is not considered possible to open snooker/pool halls and indoor bowling alleys because of the particular difficulties in maintaining social distancing, the amount of surfaces being touched, the particular difficulties in cleaning them between customers and the limited ability to introduce further effective mitigating measures. In addition at Level 3 there are still restrictions on socialisation and indoor leisure facilities are closed, to reduce opportunities for transmission.

When considering the four harms of Covid-19, the decision to maintain the closure of tenpin bowling centres and snooker/pool halls is proportionate and necessary in order to restrict social interaction and protect public health.

#### **LEVEL 4**

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. Measures in level 4 are intended to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, and deaths, allow key services to continue such as education and avoid overwhelming the NHS.

#### **Options for Level 4**

##### **Option 1: Open with restrictions in place (Baseline)**

Under Option 1, snooker/pool halls and indoor bowling alleys, would be able to operate in line with the guidance and Regulations. This would have a positive impact on the revenue generation of tenpin bowling centres and snooker/pool halls, employment of staff and on customers' socializing, although customer numbers will be limited by physical distancing.

Despite the costs of mitigations and the restrictions on numbers due to distancing, this option maintains the economic benefit of allowing tenpin bowling centres and snooker/pool halls to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for sport, entertainment and leisure.

Maintaining baseline at Level 4 was considered to be insufficient in circumstances where there is very high or rapidly increasing incidence of the virus, and widespread community transmission which may pose a threat to the NHS to cope.

##### **Option 2: Closure of facilities**

As set out above, in an indoor setting, the risks of virus transmission are increased due to activities taking place in a more confined space and potentially including people from different households coming together for prolonged periods. For the above reasons closure is therefore considered necessary to minimise transmission of the virus even if mitigating measures such as distancing, face coverings and hygiene are in place.

It is recognised that the closure of tenpin bowling centres and snooker/pool halls at Level 4 has economic consequences on businesses and individuals. It is also recognised that the closure of tenpin bowling centres and snooker/pool halls has a potential impact on the human rights of individuals and businesses.

##### **Conclusion**

At the degree of prevalence of the virus and risk of community transmission present in Level 4, Ministers took the decision that bowling facilities and snooker/pool halls, along with other indoor leisure facilities, should remain closed to reduce opportunities for transmission.

When considering the four harms of Covid-19, the decision to maintain the closure of tenpin bowling centres and snooker/pool halls is proportionate and necessary in order to restrict social interaction and protect public health.

### **Scottish Firms Impact Test:**

Information provided by the Tenpin Bowling Proprietors Association suggests that the sector employs around 600 people in Scotland and has a total value of around £18 million. There are 26 bowling centres in Scotland including those affiliated to national chains and local independent businesses. The sector has indicated that closure of bowling centres has had a significant impact on the sector with turnover reduced and staff on furlough.

We understand there are a few hundred pool and snooker clubs in Scotland of varying sizes.

### **Will the policy have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

Introducing restrictions on businesses at Levels 1-4 of the Strategic Framework may inhibit business growth and expansion into the UK and Europe in the medium term (although this will be highly dependent on what restrictions are introduced in other countries to reduce transmission of COVID-19).

### **How many businesses and what sectors is it likely to impact on?**

The measures outlined within this BRIA are likely to affect all 26 bowling centres in Scotland and 600 direct employees in addition to an unknown number of ancillary businesses and employees who support the sector (and the corresponding impact on Article 1 Protocol 1 rights and Article 8 rights). They will also affect snooker and pool halls, which tend to operate either as independent businesses, part of a larger leisure facility, or within licensed premises, holiday parks or hotels.

### **What is the likely cost or benefit to business?**

We recognise the strain that restrictions place on the sector. Where facilities have to be closed this may affect the viability of the business with a consequent effect on staff, employers and the wider economy. Closing snooker halls, pool halls and bowling alleys will result losses and costs for businesses (for example):

- loss of earnings / refunds for future bookings
- ongoing costs in relation to wages
- ongoing costs relating to premises (rent, heating, maintenance, security, insurance, rates and water)

Continued closure will exacerbate cash flow problems for business and potentially threaten viability of businesses putting jobs at risk and leading to higher unemployment. In cases where staff have either been furloughed or redeployed to other areas, there is an immediate and continuing impact of managing ongoing costs and resources. There may also be wider economic impacts through loss of associated consumer spending on memberships of clubs. In turn this may affect financial viability of businesses and threaten jobs. There may also be negative impacts on supply chains and supply services (e.g. cleaning companies etc.).

### **Competition Assessment:**

None

### **• Will the measure directly or indirectly limit the number or range of suppliers?**

It is possible that restrictions within the Strategic Framework may lead to some businesses ceasing trading or limit the ability of new businesses to enter the market.

### **• Will the measure limit the ability of suppliers to compete?**

It is possible that some restrictions may prove particularly difficult for some businesses. Thus, guidance against non-essential travel in and out of level 3 and level 4 areas may impact on facilities in town and city centres as people will be discouraged from traveling into these areas.

• **Will the measure limit suppliers' incentives to compete vigorously?**

It is unlikely that measures will limit incentives to compete vigorously.

• **Will the measure limit the choices and information available to consumers?**

There is a possibility that the measures in the strategic framework will limit the choices available to consumers if facilities are closed.

**Consumer Assessment:** The following sets out the Scottish Government's initial view on the impact of the bowling sector measures within the Strategic Framework on consumers.

**Does the policy affect the quality, availability or price of any goods or services in a market?**

If business operating costs are increased as a result of restrictions within the strategic framework this may impact on price. For example, the costs of attending may rise to compensate for increased costs. Quality and availability may also be impacted by restrictions if facilities or services are not available.

**Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

**Does the policy involve storage or increased use of consumer data?**

No

**Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the strategic framework

**Test run of business forms:**

N/A

**Digital Impact Test:**

N/A

**Legal Aid Impact Test:**

N/A

**Enforcement, sanctions and monitoring:**

Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. These Regulations must be reviewed by the Scottish Ministers at least every 21 days.

We continue to speak to and meet with members of the Tenpin Bowling Proprietors Association, and to engage with Scottish Snooker via **sportscotland**.

**Summary and recommendations:**

**Introduction**

This BRIA has examined the measures within each Level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.

**Background**

The Scottish Government’s strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus. Whilst this BRIA is focused on bowling and snooker/pool, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view sport and physical activity measures in the context of this wider package of actions.

**Options Appraisal**

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the impacts on individuals, business, jobs and livelihoods. We recognise that restrictions on the bowling/snooker and pool sectors represents interference on the fundamental rights of individuals and businesses (particularly Article 8, Article 1, Protocol 1 of the European Convention on Human Rights and UNCRC rights for children). Easing of restrictions mitigates the impact on fundamental rights and restrictions are only in place where it is proportionate and necessary to protect public health. We have endeavoured to provide information to businesses to facilitate them operating in safe way, once they are able to open.

The text and table below brings together the benefits and costs by option as set out in this BRIA. It compares these measures against the baseline / Level 0 option. More detailed discussion of each of the Levels and other options that have been considered by Scottish Ministers within Levels is contained within the main body of this document.

***Option 1: Baseline***

The baseline option (effectively level 0 of the Strategic Framework) would have a positive economic impact on those businesses which provide facilities and service for people to be physically active through their revenue generation, employment of staff, and on supply chain businesses. We are aware of the importance of tenpin bowling and snooker/pool halls in addressing issues such as social isolation. Maintaining the conditions in which people can gain these benefits is an important factor in balancing the risk of allowing activity to continue as far as possible. Some settings are more susceptible to higher risk of transmission where proximity, lack of physical distancing and participation by people from many different households are common factors. There may also be potential pinch points where people might gather (e.g. toilets, entrances and exits to facilities).

***Option 2: Strategic Framework***

<b>Measure</b>	<b>Benefits</b>	<b>Costs</b>
Bowling facilities and snooker/pool halls open in Level 0,1 and 2 (guidance and Regulations in place)	Bowling facilities and snooker/pool halls are characterised by many of the high-risk factors associated with transmission of the virus. However, with robust guidance in place to mitigate the risks together with the restrictions set out in the Regulations, bowling	There will be costs associated with complying with guidance including enhanced cleaning regime and reducing capacity to ensure physical distancing can be maintained which will result in increased costs to the businesses.



	facilities and snooker/pool halls could remain open in areas with low incidence of virus.	
Closure of bowling facilities and snooker/pool halls at Levels 3-4	In an indoor setting, the risks of virus transmission are increased due to activities taking place in a more confined space and potentially including people from different households coming together for prolonged periods. Pinch points (at areas such as toilets) all contribute to risk. Closure of facilities at higher levels of virus prevalence will control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming the NHS.	The main cost will be in terms of financial viability, risk of businesses closure and associated job losses.

### Conclusion

**This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.**

Limiting people mixing as much as possible in all settings is the most effective measure against transmission of the virus whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission against emerging variants.

The Scottish Government recognises that restrictions represent a significant interference on the freedom of businesses to conduct their usual activities and that measures require very careful consideration in terms of fundamental rights, particularly, Article 1, Protocol 1 of the European Convention on Human Rights, Article 8, the right to private and family life and the United Nations Convention on the Rights of the Child. Restrictions are only put in place where we are confident that they are proportionate and necessary to protect public health.

We have set out a comprehensive package of financial support. This is in addition to the UK Government Coronavirus Job Retention Scheme. The final four-weekly payment of the Strategic Framework Business Fund (SFBF) was made on 22 March 2021. As in previous months, this consisted of: £2,000 for businesses with a rateable value up to £51,000; and £3,000 for businesses with a rateable value of £51,001 or above.

On 19 April 2021, all recipients automatically received a combined final 2-week supplement and a one-off restart grant to help them reopen.

Hospitality and leisure businesses in receipt of SFBF on 22 March will be eligible for grants up to £19,500 based on rateable value:

- for properties with a rateable value of £15,000 or under: £9,000 (£8,000+£1,000)
- for properties with a rateable value between £15,001 and £51,000: £13,000 (£12,000+£1,000)
- for properties with a rateable value of £51,001 or over: £19,500 (£18,000+£1,500)

In common with the wide range of other countries who have implemented similar measures, the Strategic Framework seeks to limit business operation as part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the restrictions on these sectors. Similarly as the risk falls, restrictions will ease.

Across all of the five levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing
- Enabling as many businesses as possible to remain open safely, in ways that enable firms to remain viable and reduce the likelihood of redundancies
- The important role that these businesses and venues play in maintaining our wellbeing
- The risk of people gathering elsewhere in less safe environments
- The economic costs, including wider costs and the impact on the supply chain.

We continue to keep the levels and restrictions under review, and take all decisions based on the best available evidence. Our approach continues to be informed by assessments under the impact of the four harms, while also taking into account other important considerations, including human rights and equality impacts. This has led to further limited easing in other sectors being brought forward, for example in relation to snooker and pool halls being permitted to open at level 2. This stemmed from the gradually reducing risk in terms of Harm 1 (the direct impact of COVID-19) and Harm 2 (the indirect health impacts), primarily associated with the reducing prevalence of the virus and the growing proportion of the population that is vaccinated. As part of the four harms process, this sector was compared to other sectors. There was grounds to prioritise the opening of both snooker/pool halls and bowling alleys, ahead soft-play centres. The decision to open both snooker/pool halls and bowling alleys at Level 2 was necessary and proportionate. The decision to close snooker/pool halls and bowling alleys at Levels 3 and 4 is necessary and proportionate.

## Nightclubs and adult entertainment

**Title of Legislation:** Scotland's Strategic Framework: Nightclubs,(including Dancehalls and Discotheques) and Sexual Entertainment Venues

### **Purpose and intended effect:**

This Business and Regulatory Impact Assessment (BRIA) is focused on the measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 ("the Regulations"), in relation to nightclubs and sexual entertainment venues (SEVs)". Within this BRIA when we refer to nightclubs we are also including dancehalls and discotheques. For the purposes of the Regulations, a SEV has the meaning given by section 45A of the Civic Government (Scotland) Act 1982.

The Regulations reflect Scotland's Strategic Framework. This BRIA addresses the impact of the measures in the Regulations that impact on nightclubs and SEVs.

Under the Regulations, nightclubs and SEVs are not permitted to open to the public at any Level from 0-4.

Measures contained within the Regulations which impact on nightclubs and SEVs need to be viewed within the broader context of the package of measures within each Level, as a number of measures that are in place in a given Level are not specific to these venues. The measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

### **Policy Objectives:**

The objective of Scotland's Strategic Framework is to set out a sustainable response to the pandemic to be implemented to allow the continued suppression of the virus as we move out of lockdown, and to allow the vaccination programme time to be rolled out to the general population. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five Levels of protection.

**Title of proposal:** Scotland's Strategic Framework: Nightclubs and Sexual Entertainment Venues

### **Purpose and intended effect:**

#### **Introduction**

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

Across all of the five levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing

- Enabling as many businesses as possible to remain open safely, in ways that enable firms to remain viable and reduce the likelihood of redundancies
- The important role that these businesses and venues play in maintaining our wellbeing
- The risk of people gathering elsewhere in less safe environments
- The economic costs, including wider costs and the impact on the supply chain.

The key measures relating to nightclubs and sexual entertainment venues are set out in the table below:

<b>Nightclub and Sexual Entertainment Venues</b>	<b>Level 0 (baseline)</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>
Measures	Closed	Closed	Closed	Closed	Closed

Nightclubs and sexual entertainment venues are closed across all levels of the Strategic Framework. However, there are minor permitted exceptions in terms of events and activities that are allowable in Levels 0 – 1. These include recording or broadcasting a performance or sporting event, rehearsing or training for a performance or sporting event, opening to host blood services, or opening for any purpose requested by the Scottish Ministers, a health board, a local authority or the Scottish Courts and Tribunals Service. These exceptions are permitted subject to compliance with all guidance and mitigations outlined for the tourism and hospitality sector and set out in its guidance. Hybrid venues, which may have dancing facilities as part of their facilities, or offer different functions at different times ie restaurant during the day, cocktail bar and then nightclub, may operate the non nightclub operations.

The nightclub entertainment sector, while minimal to Scotland’s economy overall, is an important part of its night time economy, helping support other associated businesses such as fast food establishments and bars as well as the wider supply chain. Sexual entertainment venues are far more limited in terms of numbers, but can also contribute to the economy in terms of their economic output, including support to the wider night time economy.

It is estimated, based on the Inter-Departmental Business Register 2020 and 2019 Business Register and Employment Survey that there were 120 businesses under the heading non-charity licensed clubs. Nightclubs and sexual entertainment businesses in Scotland fall under this classification. These businesses operated across 145 sites (as some businesses may have more than one site) and are estimated to employ around 2,500 people. It is not possible to separate out sexual entertainment venues from this, and we do not hold information centrally, though it is understood around 20 operate in Scotland at present, mostly within Scotland’s larger cities. The vast majority of nightclub and sexual entertainment businesses are small (employing less than 50 people). We currently have no specific data on supply chains for these businesses. It is likely that most of these are based in cities and larger towns although it is not possible to obtain detailed data at this time.

### **COVID-19 and the Nightclub and Sexual Entertainment Sector**

Nightclubs and sexual entertainment venues have been closed since March 2020. Under the Strategic Framework they remain closed under all of the levels.

Scotland’s hospitality industry has been particularly hard-hit by the pandemic because of its customer – facing nature.

Registered enterprises within the sustainable tourism sector accounted for around 8% of all registered businesses in Scotland in 2020 with over 15,000 tourism businesses in Scotland. Within the sustainable tourism growth sector, restaurants comprise the highest proportion (52%) while pubs/clubs and hotels account for 18% and 11% respectively.

Guidance for the Tourism and Hospitality Industry, developed in partnership with industry and unions, was published on 18 June 2020, and has been revised on a regular basis to take account of changing circumstances. It advises businesses that are able to on what they need to do to open and operate safely. <https://www.gov.scot/publications/coronavirus-covid-19-tourism-and-hospitality-sector-guidance/>. The guidance does not apply to nightclubs or sexual entertainment venues, since they are not yet considered safe to reopen, nor is it drafted to reflect their varied requirements.

The people-centred nature of the hospitality sector, including nightclubs and sexual entertainment venues, means that the prolonged closure has had a significant impact, not only those who are employed or operate businesses within the sector, but also in terms of the health and wellbeing of its customers.

It is not possible to derive data currently for nightclubs and sexual entertainment venues specifically. These fall within the data collected for accommodation and food services. In some cases, given the more severe impact of the measures on nightclubs and sexual entertainment venues, the data below can only serve to give a wider picture of the overarching sector. For accommodation and food services as a whole:

- The Scottish Government's Monthly GDP statistics for March show Accommodation and Food as 70.2% lower in March 2021 than in February 2020, compared with 5.4% lower for the economy overall [source: <https://www.gov.scot/publications/monthly-gdp-march-2021/>]
- The Scottish Government's analysis of ONS's BICS statistics for Scotland includes information on the impact of COVID-19 on the Accommodation and Food Sector [source: <https://www.gov.scot/publications/bics-weighted-scotland-estimates-data-to-wave-31/>]. Key points include:
  - The overall share of businesses 'currently trading' in the Accommodation & Food Services sector was estimated as 83.0% in the period 17 May to 30 May 2021, compared with 94.6% for the economy overall. This will not include nightclubs or sexual entertainment venues, as these have not been trading.
  - In the period 3 May to 30 May 2021, 69.7% of businesses in the Accommodation & Food Services sector reported experiencing a decrease in turnover compared with what is normally expected for this time of year. The comparable proportion for the economy overall is 35.3%. Again, as nightclubs and sexual entertainment venues have not been open, turnover will have been minimal.
  - The share of the workforce on furlough leave in the Accommodation & Food Services sector was estimated as 30.9% in the period 3 May to 30 May 2021, compared with 9.6% for the economy overall.
  - 34.2% of businesses in the Accommodation & Food Services sector that had not permanently stopped trading reported having no or less than 3 months cash reserves in the period 17 to 30 May 2021, compared with 24.0% for the economy overall.
  - 18.2% of businesses not permanently stopped trading in the Accommodation & Food Services sector reported facing a moderate to severe risk of insolvency in the period 17 to 30 May 2021, compared with 9.9% for the economy overall.

However, the almost total closure since the start of lockdown last year means that the impact on nightclubs and sexual entertainment venues will have been far greater than the accommodation and food services sector as a whole. In engagement with the sector, it has noted that it is experiencing substantial cashflow problems and fears for its long-term survival. For example, the Night Time Industries Association, which have members from both sectors, have stated that three quarters of members are trading below zero, up to a half could face bankruptcy, and have debt at present equivalent to three years' worth of profit.

### **International hospitality restrictions in response to COVID-19**

A number of European countries have introduced a range of restrictions on their hospitality industries, which cover similar actions for supporting a reduction in transmission of the virus as have been considered in Scotland and other parts of the UK. This includes curfews for night-time entertainment. Nightclubs in England have been closed since March. Wales and Northern Ireland also have had varying restrictions in place on nightclub and sexual entertainment operation. During the week commencing 19th October the following were identified:

- Belgium – from 19 October, all bars and restaurants across the country were closed for four weeks and a curfew will be in force from midnight to 5am, with the sale of alcohol banned after 8pm
- Denmark – in Copenhagen and surrounding areas, bars, restaurants and nightclubs must now shut at 10pm
- France – from 17 October, a curfew in Paris and eight other cities (population c.22m) was introduced prohibiting people leaving their homes from 9pm to 6am. This is intended to be in place for 4 weeks
- Ireland – Ireland has moved to the highest level of its restrictions, to last for 6 weeks and be reviewed after 4. Restrictions include: bars/restaurants takeaway only
- Italy – on 18 October, Italian Prime Minister Giuseppe Conte announced that Mayors across Italy can close public squares after 9pm. Restaurants and bars must operate by table service after 6pm (but can stay open until midnight)
- Netherlands – on 13 October, partial national lockdown was announced with all bars and restaurants closing for a month, a maximum of 4 people allowed to meet together

The UK Government had indicated in current guidance that nightclubs and sexual entertainment venues would not be considered for reopening earlier than 21 June. The statement of 14<sup>th</sup> June put this back to, potentially, 19<sup>th</sup> July. We are awaiting the outcomes from the nightclub pilot schemes undertaken by the UK Government.

### **Transmission**

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus.

Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres. The Delta variant has higher transmissibility among previous variants.

We know from contact tracing, international evidence and scientific research that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters.

### **Risk Factors**

High-risk factors associated with transmission of the virus include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Risks are further compounded by speaking loudly and the effects of alcohol consumption. This is likely in both adult entertainment and nightclub venues.

Another risk factor is when a 2m distance cannot be maintained, as evidence suggests that 1m distancing carries between 2 and 10 times the risk of 2m distancing. Risks outdoors are lower, with the risk of aerosol transmission considered to be very low outdoors due to high dilution of virus carrying aerosols and UV inactivation of the virus.

Depending on the venue, issues of ventilation (with recirculation of air being particularly problematic), crowding (where it is hard to regulate the distance between people), and pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge. Fundamentally, venues which are attended by many people, typically from different households, specifically to meet for long periods of time, all amplify the risk of transmission. The risks in some venues may be exacerbated by some behaviours – whether this be drinking alcohol (e.g. in

nightclubs), which can cause people to lose their inhibitions, increase risk-taking and to make decisions they would usually would not. The sectors covered in this document rely on people from many households coming together for prolonged periods (e.g. in nightclubs) and it is important to understand that the number of potential transmission events increase much more quickly than the number of people gathering.

Each place an individual visits brings different risks depending on a range of factors, such as:

- the mix and number of people present,
- the amount of time individuals are likely to spend there,
- the ability to maintain 2m distancing,
- the likelihood of pinch points where people might gather (e.g. toilets, entrances and exits),
- the standard and type of ventilation,
- the likelihood of people touching surfaces and goods, and
- the potential for significant aerosol projection activity.

The risk factors vary between these sectors and between different types of businesses operating within these sectors. Each sector's risk factors are considered in more detail within the relevant section of this document.

Risk factors for different businesses in different sectors vary hugely and most will have a number of risk factors to consider. Some places are riskier due to touch points, some due to limited ventilation, some due to the mix and number of people coming and going, some due to pinch points at which people may gather. Others may cause people to speak more loudly, breathe heavily or cheer, potentially projecting aerosol particles further. Businesses which rely on close contact or on people from different households visiting or coming together are inherently at a high risk of spreading the virus.

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. The specific measures, as set out in the Regulations and guidance, reflect the assessment of risk factors associated with a particular activity. Each of the Strategic Framework's levels are designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

## **Alcohol**

It is well established that alcohol is a psychoactive substance which inhibits judgement. The WHO Global Strategy recognises that intoxication with alcohol is associated with high-risk behaviours. Alcohol intoxication is associated with a number of well-characterized changes in psychological function, including disinhibition and reduced conscious, as well as changes in mood and feelings of intoxication as well as impairments in psychomotor performance and cognitive processes such as memory, divided attention, and planning. It can cause people to lose their inhibitions, increase risk-taking and to make decisions they would usually would not.

In relation to the specific risk of transmission of Covid-19, the direct effects of alcohol impair consumers' ability to comply with transmission control measures in hospitality settings. 'Drinking even small amounts of alcohol affects people's decision-making and lowers inhibitions. It can change the way people think and feel, and influence how they act. It impairs hearing, meaning people have to lean in closer to hear or shout, which increases aerosolization of the virus. It impairs vision, affecting the ability to judge distances. It lowers the immunity to infection. It is a diuretic, resulting in people needing to urinate more frequently. Separately and together, these effects will reduce the ability (and potentially willingness) of people to physically distance and comply with safety measures, creating an increased risk of virus transmission.'<sup>6</sup> All of these risks are thought to increase proportionately, the greater the amount of alcohol sold and consumed.

<sup>6</sup> [Collins A and Fitzgerald N \(2020\)](#)

Given this evidence that alcohol consumption alters your thoughts, judgement, decision-making and behaviour, advice from the World Health Organisation during the Covid-19 pandemic is to ‘stay sober so that you can remain vigilant, act quickly and make decisions with a clear head, for yourself and others in your family and community’. It adds that ‘if you drink, keep your drinking to a minimum and avoid getting intoxicated’.<sup>7</sup>

### **Test and Protect**

Understanding where transmission takes place and the modes of transmission is a very challenging task. Data from contact tracing provides initial clues as to the environments where people spend time, but does not give definitive information on where, when and how transmission occurred.

Test and Protect data in Scotland is examined on a weekly basis to analyse attendance of a range of settings, including shopping, ‘personal care’, exercising, entertainment and day trips, and sporting events. It of course does not cover sectors which have not yet reopened. It is important to note that due to the way the data is collated, there may be some overlap between settings and whilst a case mentions that they have been at a particular venue or gathering event this does not imply nor guarantee that they acquired infection at that location.

It is accepted that some potential patrons of sexual entertainment venues may be less willing to provide contact details due to potential concerns over privacy.

### **Nightclubs and Sexual Entertainment Venues: Transmission risks**

Nightclubs and sexual entertainment venues form part of the wider hospitality sector. However, they have been identified as posing a greater risk. This is because they bring together groups of people in restricted spaces where distancing and ventilation are likely to be more difficult and where activity can often take place with people very close to each other. They are normally open later at night, when it is likely that greater amounts of alcohol have been consumed, and are often a destination after visiting other establishments. There is also likely to be loud music, leading to greater noise levels in general and communication using raised voices. Dancing is considered particularly high risk due to likelihood of close contact, mixing between groups and the difficulties complying with physical distancing. Given the nature of activities that are permitted in sexual entertainment venues, activities that occur in bringing people together in very close proximity is a key element of the main activities that are carried out.

The nightclub and sexual entertainment venue sector fulfils many of the high-risk criteria for COVID-19 transmission, as transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments. The highest risks of transmission are in crowded spaces over extended periods.

Nightclubs and sexual entertainment venues score highly on the risks outlined above. In particular nightclubs and sexual entertainment venues are characterised by:

- Noise – causing people to speak more loudly or breathe heavily, potentially projecting aerosol particles
- Movement – due to a mix and number of people coming and going
- (For nightclubs) dancing – bringing people close together
- Alcohol consumption - which can cause people to lose their inhibitions and undertake riskier behaviours.
- Poor ventilation – increasing the risk of virus transmission
- Multi household group participation – either dancing in groups or arriving at adult entertainment venues in one ie stag weekend

<sup>7</sup> [World Health Organisation: Alcohol and COVID-19: what you need to know](#)



- Pinch-points – for example when entering and leaving buildings and at toilet
- Intimate activity
- (For some adult entertainment venues) – small rooms for more intimate performances

It is recognised that risks may be slightly lower in some types of sexual entertainment venues, where physical distancing may be possible, and where noise levels may be lower.

### **Current position of nightclubs and sexual entertainment venues**

High transmission risks mean all nightclubs and sexual entertainment venues have been subject to closure since the start of the lockdown. The current Strategic Framework position allows the reopening post Level 0, once restrictive measures and vaccine roll out had significantly reduced the risk of transmission<sup>8</sup>. There has been a very high degree of compliance amongst the sector, in spite of the significant impacts it is experiencing.

There has been some repurposing of nightclub venues by operators, for example removing /closing dance floors and operating without music, to enable these to operate in line with other hospitality premises, for example pubs and restaurants. It is not known how extensive or successful this has been, though it is thought this has been quite limited. Many hybrid models are operating, but the NTIA have stated funding for these has been more problematic and with existing physical distancing and removal of a key facility, demand and turnover have been less.

### **Conclusion**

Limiting social mixing as much of possible, in all settings, is the most effective measure against transmission of the virus until vaccine roll out has suppressed the risk of transmission.

The risks associated with nightclubs and sexual entertainment venues outline above means that closure (except for very limited permitted events and activities) is the most effective measure against transmission of the virus whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on emerging variants..

The Scottish Government recognises that the protective measures (including the closure of nightclubs and SEVs), have increased social isolation for many, which can often have a detrimental impact on well-being and physical and mental health. The easing of wider socialisation measures allows people to see more of their family and friends to protect human rights and benefit people's mental well-being, recognising that it is necessary to continue to be constrained in other areas because of the need to limit opportunities for transmission and the other risks of harm from COVID-19.

In common with the wide range of other countries who have implemented similar measures, we know there will be significant financial hardships and risks for businesses as a result of any further protective measures that minimise the wider harm to our health and wellbeing as well as minimising the wider social and economic harms. The levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the protective measures in these sectors. Similarly as the risk falls, the protective measures will ease.

Across all of the five levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing
- Enabling as many businesses as possible to remain open safely, in ways that enable firms to remain viable and reduce the likelihood of redundancies
- The important role that these businesses and venues play in maintaining our wellbeing

<sup>8</sup> <https://www.gov.scot/publications/coronavirus-covid-19-scotlands-strategic-framework-update-june-2021/>

- The risk of people gathering elsewhere in less safe environments
- The economic costs, including wider costs and the impact on other sectors in the night time economy and the supply chain

**Rationale for Government intervention:**

**Consultation:**

**Public Consultation:**

A public consultation has not been undertaken on these measures.

**Business:**

There has been frequent and ongoing official and Ministerial engagement with the hospitality sector as a whole, both through our key stakeholders, the Scottish Tourism Alliance and UKHospitality and, specifically, with the Night-Time Industries Association. Within this there has been some discussion of the particular issues on nightclubs and related activity, although detailed discussion. Engagement on the sexual entertainment venues has generally taken place in correspondence with individual businesses – this reflects the much smaller scale of operation of sexual entertainment venues in Scotland. There has also been regular engagement with representatives of the licensed trade around the development of the tourism and hospitality guidance and regulations including the Scottish Licensed Trade Association, the Scottish Beer and Pub Association, UKHospitality, the Scottish Hospitality Group and sector legal representatives and press.

There has been ongoing engagement with the NTIA, the main body for nightclubs, both at Ministerial and official level. NTIA have provided details and assessments of the impact of the measures on both their members and wider businesses and these have been considered directly in policy recommendations, and by analysts and clinicians..

The Scottish Tourism Alliance is the main stakeholder organisation for all aspects of the tourism and hospitality industry and its members include UKHospitality and the Scottish Licensed Trade Association amongst others. The Scottish Tourism Alliance is also a member of the Scottish Tourism Emergency Response Group, which has met weekly since March. In addition, the Scottish Tourism Recovery Taskforce, a short-life working group brought together over Summer 2020 and chaired jointly by the Cabinet Secretary for Tourism and the Minister for Business. It comprised over 30 members from across the tourism sector, including relevant trades unions. It published a suite of recommendations on 23rd October, which were considered by the Scottish Cabinet on 1st December and have resulted in an announcement of business support schemes for the tourism and hospitality sector in 21<sup>st</sup> December and a £25m package of recovery measures announced by the First Minister on 24<sup>th</sup> March 2021.

The then Tourism Minister met with Glasgow’s Night-Time Economy Commission on 18 June 2020 and considered range of issues around the sector, including safe reopening (including mitigations such as physical distancing, restricted numbers etc.), financial support, rates relief, licensing fees and the furlough scheme. There were also a number of meetings between the previous Minister for Business and the NTIA, and the current Tourism Minister will be meeting NTIA in June.

There also continues to be regular NTIA meetings with officials – most recently on 9 June 2021. The key focus of these discussions was around economic support, the impact on the sector, reduction in restrictions – particularly around physical distancing and clarity on when nightclubs and sexual entertainment venues could reopen, as well as further regular engagement. The First Minister’s statement of 22 June 2021 set out the indicative dates for the implementation of changes to physical distancing requirements:

<b>19 July Conditional on a review of the epidemic ahead of this date</b>	All areas move down to Level 0	Reduce outdoors to 0m Reduce indoors to 1m
<b>9 August Conditional on over 40s being fully vaccinated and a review of the epidemic ahead of this date</b>	All areas move beyond Level 0 (Levels restrictions lifted)	All physical distancing regulations lifted

The NTIA has produced research that reveals the extent of financial risk the industry is facing as a result of COVID-19.

In a meeting with the Glasgow Night-time Industries Commission, the sector has acknowledged that it should not open before it was safe to do so, but hoped this could be done in a practical way, that was financially viable. It has significant concerns around physical distancing and the regulatory aspect of that. Examples have been provided of the impact of reduced capacities in clubs and nightclubs, which would lead to job losses. Egress from venues also makes it difficult to maintain distancing. Other support seen as beneficial would be the continuation of rates reliefs, a suspension of licensing fees, continued access to loans and an extension, or replacement, of the furlough scheme. It was noted that it was no longer possible to get insurance for Coronavirus. All of these concerns had also been shared with the Scottish Tourism Alliance and considered as we have moved through our response to the pandemic. The potential need for booking systems in some cases, and the need for some smaller venues to wait for a vaccine until they could open were also acknowledged. Retaining the vibrancy and vitality of Glasgow was vital, and it is likely that these views will be echoed across other cities and towns. The key change needed would be the removal of physical distancing, or a move to 1m, along with a tapering of furlough support. The latter is within the gift of the UK Government. Other pop-up/outdoors relaxations would also be helpful, e.g. facilitating the use of back lanes, which could be expedited through the licensing authority. Appreciation was expressed for the clear messaging that had been displayed by the Scottish Government. Concerns have also been raised on the impact on niche clubs that may provide entertainment for particular audiences.

**Options:**

Within this BRIA we have considered two options.

**Option 1: Closing nightclubs and sexual entertainment. (Baseline)**

**Option 2: Allowing nightclubs and sexual entertainment venues to open with guidance and protective measures**

This has allowed us to present the clinical evidence for intervention, whilst acknowledging the potential impacts on nightclub and sexual entertainment venues. Throughout the strategic framework we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

In assessing the relevant options for each level we have considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits both economic and social.

The high risk of transmission associated with nightclubs and sexual entertainment venues means that the range of options open for consideration have necessarily been limited.

## **Sectors and groups affected**

These Regulations will affect nightclubs and SEVs. The Regulations also affect employees of such venues, suppliers as well as individuals who visit nightclubs and SEVs.

### **Level 0**

At level 0 we would expect to see low incidence of the virus with isolated clusters, and low community transmission. Broadly, level 0 is the closest we can get to normality . We assessed two options at level 0.

#### **Option 1: Closing nightclubs and sexual entertainment (Baseline)**

Option 1 (the Baseline) involves the closing of nightclubs and sexual entertainment venues.

Closing nightclubs at level 0 would mitigate against the risks associated with both nightclubs and sexual entertainment venues. Nightclubs and sexual entertainment venues present significant risks associated with COVID 19 transmission.

This is due to a number of reasons:

- the high prevalence of the use of alcohol (and potentially other legal and illegal substances) in nightclubs, and some other sexual entertainment settings. Although some venues have been repurposed, nightclub opening without alcohol may be seen by some businesses and patrons as either financially viable or culturally desirable.
- the inability to ensure effective physical distancing. This is likely to be a particular issue in nightclubs where there is more likely to be significant numbers on individuals congregating on dancefloors. Sexual entertainment venues may also find it difficult to manage distancing between performers and clientele, depending on the nature of the premises used, and would need to stop offering certain activities where dancers and patrons are in close proximity and which is likely to generate much of the income from the operation of a sexual entertainment venue. In addition, such a restriction may remove much of the appeal for those attending.
- the noise levels in nightclubs and some sexual entertainment venues (removal of music in nightclubs and, to some extent, sexual entertainment venues would in general negate the venue's purpose)
- the types of activities undertaken in many premises, for example dancing and other, more intimate, activities.

We are acutely aware of impact the closure has had on the financial viability of these premises, and the Scottish Government has sought to provide support to sustain businesses in the sector. The sector has been closed since the beginning of the pandemic and this has caused significant financial hardship for all of those businesses in this group, with the NTIA stating (June 2021) that around half of its sector could face bankruptcy. There has been almost no opportunity to adapt within the very limited range of permitted activity, as has been possible with other business types within the hospitality sector. In mitigation, we have provided a wide range of support for businesses impacted by the pandemic, with general financial support through Non-Domestic Rates grants and rates relief, and UK Government, support through the Job Retention and Self-Employed support schemes.

In addition, in September 2020 we put in place specific support through grants from our £15 million Culture Organisations and Venues Recovery Fund. This aimed to provide emergency support to organisations that provide opportunities for cultural engagement and have been unable to trade due to the impact of Covid-19. Nightclubs were among those eligible to apply for this fund depending on their meeting the criteria. Its primary aim is to protect jobs and to support the sustainability of organisations threatened by insolvency in the short to medium term. We made sure that the fund had significant publicity and this support was welcomed by the sector. Nightclubs which met the criteria could apply for

the Strategic Framework business fund and get closure grants of up to £3000 for every 4 weeks of restrictions.

On the issue of background noise, we have received significant levels of feedback on the lack of background music and other noise contributing to the lack of viability of other types of hospitality businesses.

Under Option 1 nightclubs and sexual entertainment venues are only allowed to open for certain permitted purposes: These are:

- (i) record a performance or sporting event,
- (ii) broadcast a performance or sporting event to persons outside the premises, whether over the internet or as part of a radio or television broadcast, or
- (iii) rehearse, train, practise or otherwise prepare for a performance or sporting event

For nightclubs and SEVs, these will have an extremely limited impact.

### **Option 2: Opening nightclubs and sexual entertainment venues with protective measures and guidance in place**

We considered the possibility of allowing nightclubs and sexual entertainment venues to open in level 0. In order to do this we would need to put in place exceptionally strong mitigations, particularly in relation to physical distancing, and for nightclubs specifically, restrict the playing of music pending a review of the evidence on the impact of noise in venues (this review is currently ongoing). There was also consideration of some adult entertainment – such as pole dancing – where distance from the audience is possible – to go ahead. This would have the advantage of ostensibly allowing economic recovery for the sector but the severity of the mitigations required is likely to mean that venues would continue to be financially unsustainable in practice. There would be some degree of differing level of risk, depending on the exact nature of the premises. There is also the potential for businesses to miss out on certain types of financial support, if these are only available when a business is subject to closure. For these reasons this was not considered to be a viable, or desirable option.

We continue to engage with the sector on exploring financial support to ensure ongoing business survival throughout the period of restriction.

### **Conclusion**

In considering the evidence around opening at level 0, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection and the social and economic harms of intervention. It was concluded, that whilst there is a very low instance of the virus and even with mitigations in place, the risk factors for nightclubs and SEVs mean that these venues should continue to be closed at level 0. Whilst some other businesses are open at level 0, it is not considered possible for nightclubs and SEVs due to the risk factors. At level 0, physical distancing and restrictions on social gatherings are still in place. However, as explained above, it was agreed that certain exemptions should be applied in order to permit venues to open in certain limited situations. Option 1 applies for level 0. It is recognised that the closure of nightclubs and SEVs has economic consequences on businesses and individuals. It is also recognised that the closure of such venues has a potential impact on the human rights of individuals. However, the decision to continue to close nightclubs and SEVs at level 0 is proportionate and necessary in order to protect public health.

### **Level 1**

The two options outlined above were considered in relation to level 1. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

## **Conclusion**

In considering the evidence around options for level 1, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection and the economic and social harms of intervention. It was concluded, that whilst there is a very low instance of the virus and even with mitigations in place, the risk factors for nightclubs and SEVs mean that these venues should continue to be closed at level 1. Whilst some other businesses are open at level 1, it is not considered possible for nightclubs and SEVs due to the risk factors. At level 1, physical distancing and restrictions on social gatherings are still in place. Nightclubs and sexual entertainment venues present significant risks associated with COVID 19 transmission. As such it was felt that on the balance of evidence nightclubs and sexual entertainment venues should remain closed at level 1 and that it would not be possible for these venues to open up at level 1 even with mitigations in place. However, as explained above, it was agreed that certain exemptions should be applied in order to permit venues to open in certain limited situations. Option 1 applies for level 1. It is recognised that the closure of nightclubs and SEVs has economic consequences on businesses and individuals. It is also recognised that the closure of such venues has a potential impact on the human rights of individuals. However, the decision to continue to close nightclubs and SEVs at level 1 is proportionate and necessary in order to protect public health.

## **Level 2-4**

The two options outlined above were considered in relation to levels 2 - 4. Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. At Level 4, we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope.

## **Conclusion**

Given the decision to continue to close all nightclubs and sexual entertainment venues at level 0 due to the significant transmission risks presented by these venues, we concluded that nightclubs and sexual entertainment venues should remain closed through levels 2-4. We recognise the negative financial impact these closures will have on businesses.

In considering the evidence around options Scottish Ministers carefully considered whether nightclubs and sexual entertainment venues should be opened at any level while the vaccine roll out continues. The risks outlined above meant that this was not an acceptable option. Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that closing nightclubs and sexual entertainment venues across all of the levels could both reduce interactions and have the desired impact on the R rate.

Adopting this approach has allowed us to consider the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on the nightclub and sexual entertainment. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

In assessing the relevant options, we considered current and previous restrictions, international best practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

Closing nightclubs and sexual entertainment venues across all of the levels (except for limited permitted purposes) offers the safest approach to the prevention of transmission, given the varied and significant risks attached to these types of venues. It also, however, attracts the most significant levels of cost and the highest risk of closure and job losses, along with a reduced hospitality offer upon recovery. When considering the four harms of COVID-19, the decision to maintain the closure of nightclubs and SEVS at all levels is proportionate and necessary in order to restrict social interaction and protect public health.

**Scottish Firms Impact Test:**

There has been engagement with Scottish nightclub and sexual entertainment businesses, specifically through the NTIA, in developing the provisions within the Strategic Framework. This engagement is set out within the consultation section of this BRIA.

- **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

The majority of Scottish nightclubs and sexual entertainment venues are registered in Scotland. Closing nightclubs and sexual entertainment venues at all levels of the Strategic Framework will inhibit business growth and expansion into the UK and Europe in the medium term.

- **How many businesses and what sectors is it likely to impact on?**

It is estimated, based on the Inter-Departmental Business Register (IDBR) 2020 and 2019 Business Register and Employment Survey (BRES) that there are 120 businesses under the heading ‘non-charity licensed clubs’. Nightclubs and sexual entertainment businesses in Scotland fall under this classification. It is not possible to break this down further. These businesses operate across 145 sites and are estimated to employ around 2,500 people (see table 1). It is not possible to separate out sexual entertainment venues from this, though it is understood less than 20 operate in Scotland as of 2015.

**Table 1: Non- charity licensed clubs: Employment and registered businesses**

Sector	Employment (2019)	Number of registered businesses (2020)	Number of registered business sites (2020)
SIC (2007) 56.301 Licensed clubs (non-charity to isolate nightclubs from licensed club group)	2,500	120	145

Source: IDBR 2020 and BRES 2019.

The vast majority of nightclub and sexual entertainment businesses are small (employing less than 50 people) – see table 2.

**Table 2: Non- charity licensed clubs: Number of businesses and size**

	Number of registered businesses	Small Registered Businesses (<49 employees)	Medium-Sized Registered Businesses (50- <249 employees)	Large Registered Businesses (250+)
SIC (2007) 56.301 Licensed clubs (non-charity to isolate)	120	110	10	-

nightclubs from licensed club group)				
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Source: IDBR 2020.

Closing nightclubs and sexual entertainment venues is likely to impact on supply chains. This will primarily impact on hospitality related supply chains – however there may be knock on effects on other businesses such as taxi firms, fast food outlets etc.

- **What is the likely cost or benefit to business?**

The financial impacts of closure are likely to have a significant impact on the nightclub and SEV sector, although this is difficult to fully quantify, given the inability to obtain detailed data. A survey of members carried out by Scotland’s Night Time Industries Association in August indicated that 83% of businesses were set to make staff redundant, with 76% of businesses set to make more than half of their workforce redundant in only a matter of weeks. The survey also indicated that 58% of businesses within Scotland’s Night-Time did not expect to survive longer than two months without further Government support. Since then there have been a number of funding streams made available however if nightclubs remain closed, this gives a likely indication of the impact.

As noted above, nightclubs and sexual entertainment venues fall within the data collected by the Scottish Government for accommodation and food services. In some cases, given the more severe impact of the measures on nightclubs and sexual entertainment venues, the data below can only serve to give a wider picture of the overarching sector. However, the Moffat Centre at Glasgow Caledonian University undertook research to assess the economic impact of the night time economy. This demonstrated that, in 2015, Glasgow’s Night Time Economy (NTE) contributed £2.19 billion to the Glasgow economy. This sector constitutes 13.5% of City Centre GDP and was responsible for supporting 16,200 full time equivalent employment positions or 10.8% of city employment. 97 This serves to give some scale to the impacts of the restrictions, with similar figures for the remainder of Scotland cities and, to a lesser extent, its larger towns.

In August 2020, Scotland’s Night-Time Industries Association (SNTIA) surveyed its membership of nightclubs, late night bars and live music venues to assess the impact of the coronavirus pandemic since lockdown. Survey results showed 83% of businesses are set to make staff redundant, with 76% of businesses set to make more than half of their workforce redundant in a matter of weeks. The survey data also showed 58% of businesses within Scotland’s night-time economy fear they will not survive longer than two months without further Government support. In engagement with the sector, it has noted that it is experiencing substantial cashflow problems and fears for its long-term survival.

Losses and costs for businesses will have included:

- loss of earnings / refunds for future bookings
- ongoing costs in relation to wages
- ongoing costs relating to premises (rent, heating, maintenance, security, insurance, rates and water).

Continued closure will exacerbate cash flow problems for business and potentially threaten viability of businesses putting jobs at risk and leading to higher unemployment.



In addition to the business support outlined above, a new Contingency Fund will provide one-off grants to two sectors that that have been closed by law since March 2020: nightclubs and soft-play centres.

- Award levels take account of those exceptional circumstances.
- This first phase of Contingency Fund grants will operate as a three-tiered scheme, with awards dependent on Rateable Value. Eligible businesses will receive a:
- £10,000 grant for a property from which they operate with a rateable value of £18,000 or under; or
- a £25,000 grant for a property from which they operate with a rateable value between £18,001 and £51,000; or
- a £50,000 grant for a property from which they operate with a rateable value above £51,001.
- Businesses operating multiple premises will be eligible for each one, with second and subsequent locations payable at 75% of the standard rates set out above.

### **Competition Assessment:**

All businesses within the nightclub and sexual entertainment sector have been required to close since March 2020.

- **Will the measure directly or indirectly limit the number or range of suppliers?**

It is likely that prolonged closures of nightclubs and sexual entertainment venues will lead to some businesses ceasing trading. This will depend on businesses cash flow and motivation to continue trading in the face of a prolonged shutdown. Nightclubs and sexual entertainment venues also attract visitors to towns and cities. If nightclubs and/or SEVs open in other parts of the UK, closure in Scotland could encourage participants to go elsewhere i.e. stag/hen nights choosing Newcastle rather than Edinburgh.

- **Will the measure limit the ability of suppliers to compete?**

We understand that some nightclubs or hybrid establishments may have continued to operate using their alcohol premises licence to operate as a pub and are operating in accordance with hospitality guidance. All businesses within the nightclub and sexual entertainment sector will have been adversely affected by the requirement to close their businesses.

It is difficult to know if certain types of businesses within the sector have been disproportionately affected and this is likely to depend on cashflow and levels of overheads.

Other leisure and entertainment sectors that are able to remain open in level 1 and 2 may benefit to a limited extent from restrictions on the nightclub and sexual entertainment sector.

- **Will the measure limit suppliers' incentives to compete vigorously?**

These measures will not impact on suppliers' incentives to compete vigorously.

- **Will the measure limit the choices and information available to consumers?**

There is a likelihood that the hospitality measures in the strategic framework will limit the choices and information available to consumers through limited availability and lack of alternatives'.

### **Consumer Assessment:**

The following sets out the Scottish Government's initial view on the impact of the nightclub and sexual entertainment measures within the Strategic Framework on consumers.

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

The measures within the strategic framework impact on the availability as all nightclubs and sexual entertainment venues will remain closed.

- **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

- **Does the policy involve storage or increased use of consumer data?**

N/A

- **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the strategic framework

**Test run of business forms:** N/A - No new forms are required as a result of this policy.

**Digital Impact Test:** N/A These restrictions will not affect online events. It is unlikely that these businesses will be able to diversify operations into online events, particularly in the short term

**Legal Aid Impact Test:** N/A

**Enforcement, sanctions and monitoring:** Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. These regulations came into force on the 2nd November 2020. We are continuing our constructive engagement with the sector.

**Summary and recommendations:**

**Introduction**

This BRIA has examined the nightclub and sexual entertainment measures within each level of the Strategic Framework and compared these measures with the option of allowing nightclubs and sexual entertainment venues to open with guidance and protective measures in place.

**Background**

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.

Whilst this BRIA is focused on nightclubs and sexual entertainment venues, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view nightclub and sexual entertainment measures in the context of this wider package of actions.

**Options Appraisal**

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA.

<b>Option</b>	<b>Benefits</b>	<b>Costs</b>
Option 1: Closing nightclubs and sexual entertainment venues	Nightclubs and sexual entertainment venues are characterised by many of the high risk factors associated with transmission of the virus. Closing nightclubs and sexual entertainment businesses for all but permitted events in Level 0 and 1 reduces opportunities for virus transmission.	Closing all nightclubs and sexual entertainment businesses will reduce revenue and turnover.  Closing businesses is very likely to lead to businesses failure, and the loss of jobs. The economic costs will however be mitigated to some extent by government financial support and allowing venues to open for some permitted events will enable some minimal income generation.
Option 2: Allowing nightclubs and sexual entertainment venues to open at Level 0 or Level 1 with guidance and protective measures in place	Allowing nightclubs and sexual entertainment venues to stay open with protective measures in place could help protect jobs and businesses – allowing businesses to continue to trade. This would also have knock on benefits for supply chains. Some sexual entertainment venues could remain open where physical distancing is possible especially between customers and performers	The measures required to be put in place to support nightclubs and sexual entertainment venues to remain open would place large additional costs on businesses, and undermine their business model, meaning that businesses would struggle to make a profit.  Opening nightclubs and sexual entertainment venues (even with strict protections in place) would increase risks of further transmission of COVID-19.

## Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

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. Whilst it has been necessary to take these extraordinary measures to respond to the pandemic, in order to protect the health of Scotland's population, the unequal impact of the pandemic and the need to respect human rights and take an integrated and balanced approach to ensuring the proportionality and necessity of these measures taken, have also been at the forefront of consideration of these actions. This has included balancing the needs of nightclubs and SEVs against the finite amount of resources available to the Scottish Government.

The Strategic Framework and levels approach are intended to balance the restrictions necessary to protect people from the direct harms to health from catching the virus, with the unintended potential harms the restrictions may have on isolation, wellbeing, the impact on businesses, individuals and the economy.

The different restrictions recognise the different risks and needs of the people of Scotland and balances these according to understanding of how the virus is transmitted. We have considered the wide range of impacts, both intended and unintended, of the restrictions across all the levels and have sought to mitigate them wherever possible, while simultaneously protecting the health of employees and the public, and focusing on our primary objective of reducing the spread of the virus.

We have set out a comprehensive package of financial support for soft play centres to mitigate the negative impacts of the restrictions. This is in addition to the UK Government Coronavirus Job Retention Scheme.

We continue to keep the levels and restrictions under review, and take all decisions based on the best available evidence. Our approach to nightclubs and SEVs will continue to be informed by assessments under the impact of the four harms, while also taking into account other important considerations, including human rights and equality impacts.

We continue to work with sector representatives and other stakeholders to ensure we are doing everything possible to support the soft play industry, its customers and employees – including those with protected characteristics – as we take measures necessary to continue to suppress the virus and save lives.

All these support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented

**Title: Scotland’s Strategic Framework: Leisure and Entertainment: SOFT PLAY CENTRES**

**Purpose and intended effect:**

This Business and Regulatory Impact Assessment (“BRIA”) is focused on the measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”). The Regulations reflect Scotland’s updated Strategic Framework<sup>9</sup>. This BRIA addresses the impact of the measures in the Regulations that impact on soft play centres. This BRIA also considers the proposals put to Scottish Ministers on 7 June 2021 by representatives of the sector.

As well as the measures provided for in the Regulations, there is guidance produced by the Scottish Government. The guidance emphasises in particular the importance of undertaking a robust and ongoing risk-based assessment with full input from workforce representatives, and to keep all risk mitigation measures under regular review so that soft play centres continue to feel, and be, safe.

Measures contained within the Regulations which impact on soft play centres need to be viewed within the broader context of the package of measures within each level, as a number of measures that are in place in a given level are not specific to soft play centres.

The updated Strategic Framework updates the original Strategic Framework to take account of important developments, including new and highly infectious strains of the virus and progress with the vaccination roll-out. Our strategic intent remains to suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible. The Framework explains how we will use all of the tools we have available to get coronavirus to the lowest possible level and keep it there, including the revised local protection levels.

This BRIA is focused on the set Leisure and entertainment measures included within Scotland’s Strategic Framework. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

The Strategic Framework<sup>10</sup> includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The key measures relating to **Soft play centres** are set out in the table below:

<b>Leisure and Entertainment Sector Measures (socialising rules apply)</b>	<b>Level 0 (Baseline)</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>

<sup>9</sup> <https://www.gov.scot/publications/coronavirus-covid-19-strategic-framework-update-february-2021/>

Soft play centres	Open (mitigations and restrictions in place)	Open (mitigations and restrictions in place)	Soft play centres must close	Soft play centres must close	Soft play centres must close
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**Background:**

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 first regulations”), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 came into force on 14 September 2020 and revoked and replaced the first regulations. They make provision which is substantially similar to the first regulations, as amended at the date on which they were revoked.

On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 (“the additional temporary restrictions”) set out additional restrictions, both nationally and specific to the central belt. These regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 while the additional temporary restriction regulations were in force. The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach.

The Regulations came into effect on 2 November 2020 and implemented the new Strategic Framework which was published on 30 October 2020.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.21) Regulations 2020 implement the system of levels of protection which are set out in the updated Strategic Framework, published on 22 February 2021. The provisions relating to soft play centres remain unaltered, with soft play centres required to close in levels 2,3 and 4.

Regular reviews of the levels system take place and as soon as Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the spread of COVID-19, they must revoke that restriction or requirement.

Following recent engagement with sector representatives, Scottish Ministers have further considered the decisions in relation to soft play centres. As explained in this BRIA, soft play centres are required to close in levels 2,3 and 4.

The Leisure and Entertainment sector is a very important part of Scotland’s economy and society.

Soft play centres across Scotland form part of a more aggregated sector on “Other amusement and recreation activities” and as such statistics are not readily available at a more detailed breakdown for this sub-sector. Soft play centres can vary quite a lot – some operate as ‘standalone’ facilities whilst others are part of a bigger visitor attraction (such as a leisure centre) or hospitality venue. As such, it is also difficult to fully ascertain the number of other businesses that provide soft play facilities within them (e.g. cafes or bars which have soft play facilities which are also covered by the soft play guidance).

The official statistics on sectors of the economy rely on Standard Industrial Classification (SIC) codes. Soft Play activity is not specifically defined in the international SIC classification system hence it is not possible to obtain official data on the sector.

We have engaged with the soft play sector in Scotland through the Scottish Chambers of Commerce and the Scottish Indoor Play Centres Owner & Management Group. The Scottish Indoor Play Centres Owner & Management group estimates that there could be up to 145 small and medium enterprises in Scotland providing soft play facilities. The Group estimates that the sector provides up to 4,500 jobs and employs proportionately more women than men.

### **COVID-19 and the Soft play Sector**

Soft play centres were closed in March 2020. Since 2 November 2020, soft play centres have been able to open in areas in protection level 0 and 1, having regard to specific [guidance](#) published on 30 October (updated on 28 May 2021). This came into practical effect on 2 November when certain areas in Scotland were moved into protection level 1. However, this was then reversed on 26 December 2020, when mainland Scotland and Isle of Skye went into level 4 and those soft play centres that re-opened in protection levels 0 and 1 had to close. On 17 May 2021, certain areas were moved back into protection level 1 and additional areas were moved to protection levels 0 and 1 on 5 June 2021, while other areas remain in level 2. Therefore the current position is that some soft play centres have been able to reopen while others remain closed.

The guidance which has been developed in collaboration with the sector, regulators and clinicians, sets out clear mitigation measures to reduce the risk of virus transmission, such as enhanced cleaning regime, restricting numbers at the centre at any point to ensure physical distancing can be maintained and any equipment which may be more difficult to clean (such as ball pits) would be removed or closed off.

Due to the size of the sector, we do not have independent and validated data on the loss of earnings/jobs in the sector but the industry has expressed concerns about financial viability given the period of time they have been unable to open, and provide information when making their cases for specific sectoral support as part of ongoing engagement. The information from the Scottish Indoor Play Centres Owner & Management Group estimated that if they remained closed without additional support provided, many businesses may have to close. In terms of wider impact on society, the closure of the soft play sector has contributed to reduced opportunities for indoor play and socialising, particularly for younger children and their parents / carers. Closing soft play centres may contribute to social isolation and loneliness, though other provisions have been made to facilitate peer support groups for families with babies and toddlers to support their mental health and wellbeing

The Leisure and Entertainment sector, and soft play centres in particular, fulfils many of the high-risk criteria for COVID-19 transmission, as transmission of COVID-19 is most strongly associated with close and prolonged contact in indoor environments.

The World Health Organisation has advised that current [evidence](#) suggests that the virus spreads mainly between people who are in close contact with each other. [The Scientific Advisory Group for Emergencies](#) have said that infection can occur when aerosols or droplets containing the virus are breathed in or come into contact with the eyes, nose, or mouth. Further, that [transmission risk](#) is increased in indoor places that are poorly ventilated or crowded, and where people tend to spend longer periods of time. This is because aerosols remain suspended in the air and there is increasing evidence of airborne transmission over longer distances in some situations.

In addition, as set out in the below graphs, current evidence indicates that case numbers are currently highest in younger people, with the 5-11 age category having a weekly case rate of over 150 cases per 100,000.

Chart: 7 Day Case Rate (Positive PCR Testing Results) in Scotland by Age Band (PHS)

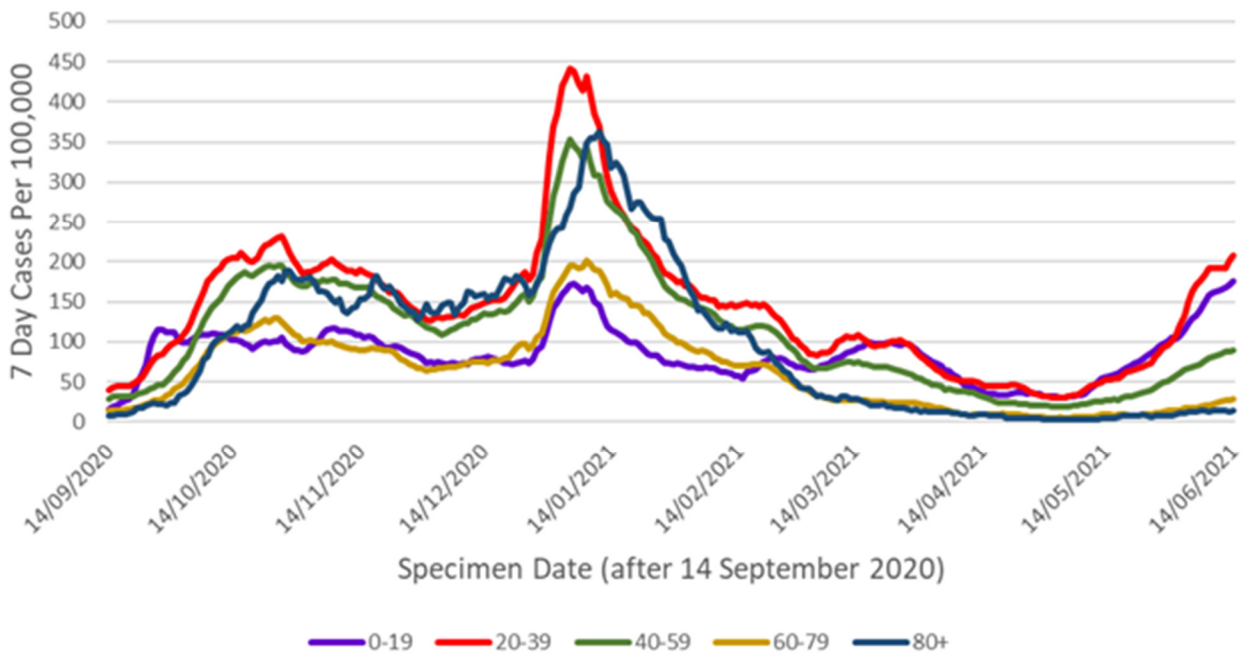
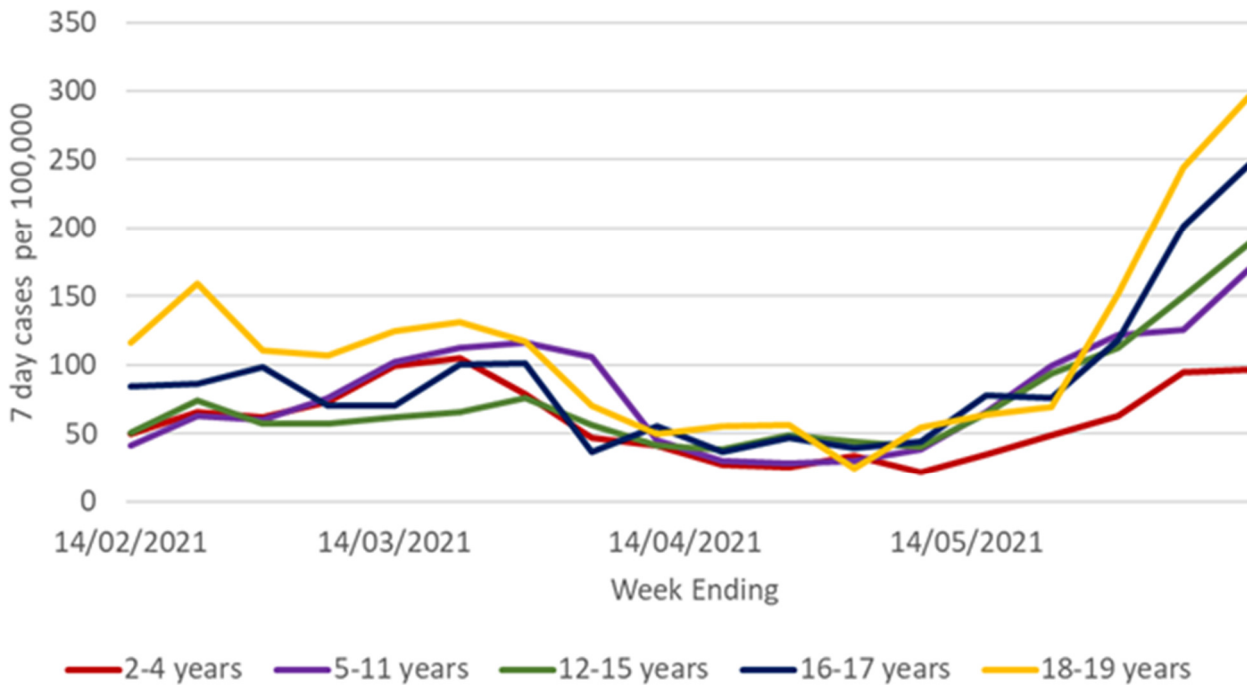


Chart: 7-day case rate of children and young people per 100,000 (PHS)





## Policy Objective

The objective of Scotland's Strategic Framework is to set out a sustainable response to the pandemic to be implemented to allow the continued suppression of the virus as we move out of lockdown, and to allow the vaccination programme time to be rolled out to the general population. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five Levels of protection. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

## Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.<sup>11</sup>

We know from contact tracing, international evidence and scientific research that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters<sup>12,13</sup>.

The main risk factors (in relation to COVID-19 transmission) in soft play centres include:

- The indoor, close-proximity inter-household mixing between children within the soft-play structures
- The potential for transmission from/to children and families
- Minimal ability to ensure physical distancing within the play structures
- Minimal ability to clean equipment after single use by child
- High level of bodily secretions on the equipment due to age of children and physical exertion whilst playing both droplets and aerosols are key routes for transmission in this setting which may not be able to be mitigated against fully
- Difficulty in applying face coverings (under 5s are exempt from the requirement to wear face coverings) to mitigate against transmission in light of reduced physical distancing
- Difficulty in ventilating the closed indoor environment

## Current position of Leisure and Entertainment (Soft play centres)

Soft play centres are currently open in areas under protection levels 0 and 1, in line with guidance published on 30 October 2020 (updated on 28 May 2021). Other areas of Scotland remain under level 2 measures, and soft play centres in these areas remain closed.

Engagement with the industry has been ongoing. The industry have and continue to work hard to ensure high levels of cleaning and adherence to all the guidance provided. On 8 June 2021, Ministers received a proposal from representatives of the soft play sector which proposed a series of mitigations which could allow soft play centres to open in areas under protection level 2. These were:

<sup>11</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>12</sup> Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

<sup>13</sup> Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

- General controlled capacity
  - operating capacity of 45% accounting for 2m spacing
- Controlled distancing of parents
  - max of 8 adults at a time in toddler area
  - parents are told that there is to be no moving around except for in the case of toileting in which case a mask must be worn to navigate through the centre. Parents are not permitted on to the apparatus (apart from a child in distress event)
- Face coverings
  - all children and adults over age of 11 are to wear a face mask
- Temperature taking
- Controlled booking system
- Adults banned from being on play frame
- Enhanced cleaning
  - play slots are 90 minutes and at the end of the session the equipment is closed down for 30 minutes for a deep clean
  - in the mornings, the play area is deep cleaned by our cleaning team.
  - "Risk Assessment Form" detailing specific cleaning protocol for apparatus and toddler areas
- Ventilation
  - Enhanced ventilation to the site
- Physical distancing
  - parent responsibility to supervise children and ensure 2m physical distancing
  - floor marking for queuing at café
  - One way system from entry to exit

Clinical advice is that while they recognise the robustness of processes in the areas outwith the playframes, they do not sufficiently cover the key risks within the playframes themselves namely:

- The indoor, close-proximity inter-household mixing between children within the soft-play structures.
- Contact to last over 15 minutes for a session and sessions could occur daily
- Minimal ability to ensure physical distancing within the play structures
- Minimal ability to clean equipment after single use by child
- High level of bodily secretions on the equipment due to age of children and physical exertion whilst playing - both droplets and aerosols are key routes for transmission in this setting which may not be able to be mitigated against fully
- Difficulty in applying face coverings (children under 5 are exempt from the requirement to wear a face covering) to mitigate against transmission in light of reduced physical distancing

In addition, given the young ages of the children involved, there are currently no plans to provide vaccination for this group. With the increased transmissibility of recent variants and the trend in data showing an increase in cases in the age group 0-17, there remains a concern that these settings pose a significant risk of transmission of the virus at this time. The data in relation to the role that children play in transmission is a subject of ongoing research and as complicated by the fact that many children can have infections with no symptoms<sup>14</sup>.

<sup>14</sup> <https://post.parliament.uk/latest-evidence-on-impacts-of-covid-19-in-children-march-2021/>

These risks are also considered within the context of the current data and scientific evidence which shows a heightened risk of transmission between children and then on to families in the context of the Delta variant. Based on data analysed from 5.4 million people in Scotland, the Delta variant is now the dominant form of COVID-19 in the country, overtaking the Alpha variant<sup>15</sup>.

Soft play centres were permitted to reopen in England and Wales on 17 May and in Northern Ireland on 24 May and after the initial lockdown last year. Internationally if soft plays centres are open they are open with restrictions or with measures such as testing and vaccine certificates (for adults) adopted by that country such as Denmark and Israel.

We have approached the UK Government for data but the UK Government did not have data specifically on transmission risks associated with having soft play open but suggested an appropriate comparison might be with public play areas or play areas in schools or early learning centres. UK Government data suggests that play areas are the source of many outbreaks, which may indicate, that opening up the similar soft play areas will increase opportunities for outbreaks to occur.

The latest four harms assessment considers the proposals put forward by sector representatives on 7 June 2021. The four harms assessment shows that soft play continues to be an inherently high risk option in levels 3 and 4 given the indoor environment, the likely difficulty in physical distancing between accompanying adults and difficulties in practising good hygiene routines between users. The users of these facilities are also less likely to be vaccinated. However, as we move through the levels this risk reduces to moderate in level 2 and lower in levels 1 and 0. Whilst Harm 2 and 4 are considered low and very low respectively, the societal impact harm is moderate. However, with the increased transmissibility of recent variants, there remains a concern that these settings still pose a significant risk of transmission of the virus at this time. As such the clinical advice supports opening from level 1 onwards and for soft play centres to remain closed from level 2 onwards.

Therefore, having carefully considered the proposal, at this time, Scottish Ministers have decided that there should be no change to the Regulations and that accordingly soft play centres must close from level 2. We will continue to engage with the sector and keep the position under review.

## **Consultation**

**Public Consultation:** No (precluded by urgent implementation timescales)

**Business:** We engaged with the soft play sector, regulators and clinicians on developing the guidance. This included the Scottish Indoor Play Centres Owner & Management Group, the Scottish Chambers of Commerce, the Association of Scottish Visitor Attractions and the British Association of Leisure Parks, Piers and Attractions. The sector suggested a number of changes to the technical details and mitigating measures, based on specific examples from the industry and the feedback from this consultation shaped the guidance, which continues to be kept under review.

There was a consultation and engagement with the soft play sector (including the Scottish Indoor Play Centres Owner & Management Group, the Scottish Chambers of Commerce and individual soft play owners and operators) that took place to inform publication of the Strategic Framework Update, Timeline for Easing Measures and Protective Levels Framework. This also included physical visits to some soft play centres by clinical advisers and public health officials. We are in ongoing discussions with the sector about the strategic framework and the specific protection levels which are kept under constant review while we monitor developments in Scotland, UK and elsewhere. Proposals from the sector about potential mitigations to allow reopening in level 2 have been considered and the clinical advice is detailed above.

<sup>15</sup> <https://www.ed.ac.uk/news/2021/delta-variant-increases-risk-of-hospitalisation>

There has also been ongoing engagement with the sector on business support available and the sector was involved in developing the October 2020 support package for the sector, recognising the challenges resulting from ongoing closure.

### **Options:**

This section sets out a range of options that have been considered, and we continue to work constructively with the industry to explore and assess alternatives.

Coronavirus measures are kept under ongoing review by the Scottish Ministers and are adapted as new evidence becomes available or if circumstances change. Conversations with stakeholders also form part of the analysis of existing restrictions and to identify appropriate mitigations. In the case of soft play centres, as explained above, the Scottish Ministers together with clinical advisors have recently considered the proposals put forward by sector representatives.

Across all levels there are a number of mitigating actions required, including:

- Taking reasonably practical measures to maintain physical distancing (although there is recognition that this may be difficult to implement with very young children)
- wearing of face coverings by adults (exemption applies for children under the age of 5 and children or adults engaging in physical activity, including soft play)
- reducing the risk of inter-household mixing in indoor settings (again this is difficult to enforce in soft play centres where young children must be supervised by adult carers)

Social gathering rules in place across Scotland also apply across all levels, but the rules vary between the various levels. Additionally, guidance against non-essential travel applies in the various levels and again, varies between the various levels. In addition, members of the public are advised that in order to help suppress the spread of the virus, where possible, people should not utilise facilities or services in other areas that are closed within their own areas in line with their current level of restriction<sup>16</sup>.

### **Sectors and groups affected**

The measures taken in the regulations will affect:

- Soft play centre owners and operators (private businesses or third sector). The Article 1 Protocol 1 rights (right to enjoyment of property) on businesses and those of the third sector are engaged.
- Families with young children, the Article 8 (right to a private and family life) are engaged for individuals and UNCRC rights are engaged for children.
- Suppliers. The Article 1 Protocol 1 rights are engaged for suppliers.

We recognise that the human rights of both individuals and businesses are engaged. As part of this BRIA, we have considered and balanced the human rights of individuals and businesses in our decision making process. Scottish Ministers consider the interference of the human rights of those within the soft play sector to be proportionate, justified and necessary to protect public health.

### **Our approach to assessing options**

Within this BRIA we have compared the package of measures within each level against the baseline approach of level 0. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

<sup>16</sup> <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-travel-and-transport/>

Our objective is to get all parts of the country to Level 1 and then to Level 0, and then move to Phase 4 of the Route Map and then back to normality. In assessing the relevant options for each Level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

### **Options for 'Baseline' / Level 0**

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality, while the vaccine programme is rolled out.

At Baseline, all soft play centres will be able to open having regard to the published guidance and in accordance with the restrictions and mitigations required at all levels. The guidance which has been developed in collaboration with the sector, regulators and clinicians, sets out clear mitigation measures to reduce the risk of virus transmission, such as enhanced cleaning regime, restricting numbers at the centre at any point to ensure physical distancing can be maintained and any equipment which may be more difficult to clean (such as ball pits) would be removed or closed off.

Despite the costs of mitigations and the restriction on numbers due to distancing, this option maintains the economic benefit of allowing soft play centres to continue to trade, employ staff and generate income, and maintains the social benefit of providing children with an opportunity for entertainment and leisure. Baseline is proportionate and necessary, whilst the vaccine programme continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission against emerging variants.

### **Options for Level 1**

Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

The main options considered for this level include:

1. Maintain Baseline
2. Close soft play centres

#### Option 1

For the reasons already set out above, soft play centres are high risk settings. This option would mean that soft play centres whilst having regard to the published guidance and in accordance with the restrictions and mitigations required at all levels could open to members of the public.

Despite the costs of mitigations this option maintains the economic benefit of allowing soft play centres to continue to trade, employ staff and generate income, and maintains the social benefit of providing people with an opportunity for entertainment and leisure.

#### Option 2

Given the low incidence of the virus, the evidence doesn't support closing soft play centres or only allowing partial opening at this level. Soft play centres can provide an interactive indoor play space and opportunity for social interaction for families with young children. Whilst most of soft play centres are run for profit and may not be accessible to all families, some soft play centres in community settings are run by third sector and provide a low or no cost indoor play opportunity for families who may not have access

to other services. The guidance which has been developed in collaboration with the sector, regulators and clinicians, sets out clear mitigation measures to reduce the risk of virus transmission, such as enhanced cleaning regime, restricting numbers at the centre at any point to ensure physical distancing can be maintained and any equipment which may be more difficult to clean (such as ball pits) would be removed or closed off. The option of closure needs to take account of the effectiveness of these measures in reducing the risk to the public health as well as the costs and benefits to individuals and businesses in closing soft play centres. These mitigations support the suppression of the virus in soft play centres and are sufficient in level 1, given low prevalence and transmission levels of the virus, not to require soft play centres to be closed.

### **Conclusion**

In considering the evidence around options for level 0 and level 1 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of this measure of maintaining the Baseline- in preference to mandatory closures – dilutes the effectiveness in reducing the R rate, but this reduced effectiveness is offset by other mitigation measures implemented at this level and the fact that the degree of reduction needed to bring the spread of virus back until control will be less extreme. They concluded that, given the robust mitigation measures in the guidance, soft play centres could remain open at this level.

### **Options for Level 2 and 3**

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a series of protective measures across all sectors to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

### **Options for Level 2**

The options considered at level 2:

1. Maintain Baseline
2. Allow partial opening of soft play centres
3. Close soft play centres

### **Option 1**

This option would mean that soft play centres whilst having regard to the published guidance and in accordance with restrictions and mitigations required at all levels, could open to members of the public. This would have a positive impact on the revenue generation of soft play centres, employment of staff and on children and families socialising, although customer numbers may be limited by physical distancing.

The advantages of keeping soft play centres open include additional opportunities for socialising and active indoor play for young children and their families which have clear benefits for general health and wellbeing of families using the soft play centres. The disadvantages include an increased risk of transmission, given the high risk factors involved, including being an indoor facility where children from a high number of different households could mix for a prolonged period, with difficulty in maintaining physical distancing and wearing of face coverings for children, higher levels of bodily secretions given the age of the children and the physical exertion of soft play, and difficulty to keep shared equipment and surfaces clean between single uses. It is recognised that it would be extremely difficult to implement any measures to mitigate these risks in full due to the age of children using these facilities, which would pose

high risk of community transmission in level 2, when the prevalence of virus is higher. These risks are also considered within the context of the current data on transmission, where the risk of transmission between children and then on to families has increased in the context of the Delta variant.

### **Option 2**

Partial opening of soft play centres to limit occupancy to a small number of households, with longer periods between sessions to allow for enhanced cleaning of all equipment, would help mitigate higher risk of transmission. As explained above, the Scottish Ministers considered the proposals put forward by sector representatives. At level 2 there are restrictions on socialisation and protective measures are in place. The clinical advice is that this option would not sufficiently mitigate the risks of harm from COVID-19.

### **Option 3**

This option would require soft play centres to close. Given the increased incidence and community transmission of the virus at this Level and the high risk factors of soft play centres, keeping soft play centres open at this level 2 would present and increased risk in relation to increasing virus transmission. Closing soft play centres eliminates this risk. At level 2, with increased incidence of the virus and community transmission, the detailed public health measures remain in place. The option of closure needs to take into account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits to individuals and businesses from closing soft play centres.

Closing soft play centres would reduce the social interaction between households in indoor settings thus contributing to reducing the risk of community transmission. However, this has an impact on families with young children who will not be able to access soft play facilities and financial implications for the sector and their suppliers.

### **Conclusion**

In considering the evidence around options for level 2 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that given the high risk factors for soft play centres, such as being an indoor facility with children from a high number of different households mixing and difficulties with maintaining physical distancing and wearing of face coverings for children; higher levels of bodily secretions given the age of the children and the physical exertion of soft play; and difficulties keeping shared equipment and surfaces clean after single use, soft play centres should be closed in level 2.

Whilst some other businesses remain open at levels 2 (such as hospitality) it is not considered possible to open soft play centres because of the higher risk factors outlined above, recognising the difficulty of enforcing key mitigation measures due to the age of the children using these facilities.

It is recognised that the closure of soft play centres at level 2 has economic consequences on businesses and individuals. It is also recognised that the closure of soft play centres has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of COVID-19, the decision to close soft play centres is proportionate and necessary to close soft play centres in order to restrict social interaction and protect public health.

### **Options for Level 3**

Within Level 3, we would expect to see increased incidence of the virus relative to Level 2, with multiple clusters and increased community transmission. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue to accelerate its spread, ultimately resulting in direct harms to health.

At Level 3, there is an increased series of protective measures required across all sectors to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place, areas with higher concentrations of separate households, and venues where maintaining hygiene is more difficult due to the number of shared surfaces or equipment which would need to be continually cleaned between uses. The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable level.

The options considered at level 3:

1. Maintain Baseline
2. Allow partial opening of soft play centres
3. Close soft play centres

### **Option 1**

This option would mean that soft play centres, whilst applying the mitigating actions that are required at all levels could open to the public. It would have a positive impact on the revenue generation, employment of staff and on children and families socialising, although customer numbers may be limited by physical distancing requirements.

The advantages of keeping soft play centres open include additional opportunities for socialising and active indoor play for young children and their families which have clear benefits for general health and wellbeing of families using the soft play centres.

The disadvantages include an increased risk of transmission, given the high risk factors involved, including being an indoor facility where high number of households could mix for a prolonged period, with difficulty in maintaining physical distancing and wearing of face coverings and difficulty to keep shared equipment and surfaces clean between use. It is recognised that it would be extremely difficult to implement any measures to mitigate these risks in full due to the age of children using these facilities, which would pose high risk of community transmission in level 2, when the prevalence of virus is higher.

### **Option 2**

Partial opening of soft play centres to limit occupancy to a small number of households, with longer periods between sessions to allow for enhanced cleaning of all equipment, would help mitigate higher risk of transmission. As explained above, the Scottish Ministers considered the proposals put forward by sector representatives. At level 2 there are restrictions on socialisation and protective measures are in place. The clinical advice is that this option would not sufficiently mitigate the risks of harm from COVID-19. .

### **Option 3**

This option would require soft play centres to close. Given the increased incidence and community transmission of the virus at this Level and the high risk factors of soft play centres, keeping soft play centres open at this level would present and increased risk in relation to increasing virus transmission. Closing soft play centres eliminates this risk. At level 3, with increased incidence of the virus and community transmission, the detailed public health measures remain in place. The option of closure needs to take into account the effectiveness of these measures in reducing the risk to public health as well as the costs and benefits to individuals and businesses from closing soft play centres.

Closing soft play centres would reduce the social interaction between households in indoor settings thus contributing to reducing the risk of community transmission. However, this has an impact on families with young children who will not be able to access soft play facilities and financial implications for the sector and their suppliers.



## **Conclusion**

In considering the evidence around options for level 2 Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that given the high risk factors for soft play centres, such as being an indoor facility with children from a high number of different households mixing and difficulties with maintaining physical distancing and wearing of face coverings for children; higher levels of bodily secretions given the age of the children and the physical exertion of soft play; and difficulties keeping shared equipment and surfaces clean after single use, soft play centres should be closed in level 2.

Whilst some other businesses remain open at levels 2 (such as hospitality) it is not considered possible to open soft play centres because of the higher risk factors outlined above, recognising the difficulty of enforcing key mitigation measures due to the age of the children using these facilities.

It is recognised that the closure of soft play centres at level 2 has economic consequences on businesses and individuals. It is also recognised that the closure of soft play centres has a potential impact on the human rights of individuals and businesses. However, when considering the four harms of Covid-19, the decision to close soft play centres is proportionate and necessary to close soft play centre in order to restrict social interaction and protect public health.

## **Options for Level 4**

Level 4 will be deployed only if a high level of intervention is required to address high transmission rates.

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this level would see the introduction of measures close to a return to full lockdown.

## **Conclusion**

Given the decision to close all soft play centres from level 2 due to the significant transmission risks presented by these venues, we concluded that soft play centres should remain closed at level 4. We recognise the negative financial impact these closures will have on businesses.

In considering the evidence around options Scottish Ministers carefully considered whether soft play centres should be opened at level 4 while the vaccine roll out continues. The risks outlined above meant that this was not an acceptable option. Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that closing soft play centres venues from level 2 could both reduce interactions and have the desired impact on the R rate.

Adopting this approach has allowed us to consider the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on the soft play centres. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

Closing soft play centres at level 4 offers the safest approach to the prevention of transmission, given the varied and significant risks attached to these types of venues. When considering the four harms of COVID-19, the decision to maintain the closure of soft play centres from level 2 is proportionate and necessary in order to restrict social interaction and protect public health.

### **Scottish Firms Impact Test:**

There has been engagement with Scottish soft play businesses in developing the guidance for re-opening and support package for businesses during closure. This engagement is set out within the consultation section of this BRIA.

### **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

Notwithstanding the respective December 2020 lockdowns in other parts of the UK, soft play centres in other parts of the UK were previously able to reopen (10 August 2020 in Wales, 15 August 2020 in England and 14 September 2020 in Northern Ireland). Further to the second lockdown in December 2020, indoor soft play centres in England re-opened on 17 May 2021.

Some soft play owners operate multiple facilities in different parts of the UK and have been affected by different respective measures and support.

### **How many businesses and what sectors is it likely to impact on?**

According to the information we have received from the Scottish Indoor Play Centres Owner & Management Group, there could be up to 145 small and medium enterprises in Scotland providing soft play facilities. The Group estimates that the sector provides up to 4,500 jobs and employs proportionately more women than men. There is no statistical collection of soft play sector data so this data is unable to be validated.

Based on the feedback from the sector, many soft play centres are likely to be SMEs, some are part of broader chains. Some hospitality settings which incorporate soft play centres will often similarly be small businesses although some may be part of larger network. The other parts of the supply chain possibly affected are the manufacturers of the soft play equipment.

### **• What is the likely cost or benefit to business?**

At Levels 2-4, soft play centres will have to close (most have been closed since March 2020). Closed businesses have incurred a number of on-going costs relating to, for example, accommodation costs (rent, insurance, maintenance, security etc.) and wage costs. Closure will also result in revenue forgone and threaten financial viability of the businesses and associated jobs. We do not have data available on the loss of earnings/jobs in the sector but the industry has expressed concerns about financial viability given the period of time they have been unable to open.

At levels 0-1 soft play centres can open, but adhering to the new soft play guidance will incur additional costs and reduce profits for soft play centres as social distancing measures will reduce the capacity at which centres can operate and the number of customers who are able to visit at any one time. Enhanced cleaning and safety requirements will also increase costs for businesses.

Following engagement with the soft play sector in October 2020, funding was available for pay to play soft play centres through the £11 million COVID-19 Contingency Fund which was introduced as part of the £48 million COVID-19 Restrictions Fund. One-off grants of up to £50,000, based on rateable value, were available to businesses in soft play sector through the COVID-19 Contingency Fund.

Soft play centres were also eligible to apply for funding through the Strategic Framework Business Fund (SFBF) which provided recurring grants of up to £3,000 every four weeks (depending on Rateable Value) to businesses required to close or modify their operations as a result of COVID-19 Restrictions. In January all businesses operating in the leisure sector and receiving support through the SFBF were

eligible for a Top Up payment in January of up to £9,000 and in April 2021, automatically received a combined final two-week payment from SFBF and a one-off restart grant of up to £19,500.. Soft play centres in areas subject to Protection Level 2 restrictions as of 5<sup>th</sup> June are also eligible for a further £750 a week.

This support is in addition to the UK Government Coronavirus Job Retention Scheme. The UK Government Coronavirus Job Retention Scheme applies to all countries and regions of the UK and is not linked to specific tiers or restrictions. From July 2021, the UK Government will fund a percentage of wages for hours not worked alongside employer contributions up to at least 80%.

### **Competition Assessment:**

Closing soft play centres from protection level 2 onwards could impact on competition between businesses in Scotland where particular local authorities are in Level 0 and 1 if other local authorities are in level 2 or above. The impact of this will be wider than just on soft play centres.

#### **• Will the measure directly or indirectly limit the number or range of suppliers?**

The impact on business viability may mean that some businesses cease to trade and this will reduce the number of suppliers. Industry reports at least one soft play business with several venues in Scotland and around 300 staff started a redundancy process in September 2020 We do not have any further update from the sector. t the UK level, latest research from the Association of Indoor Play shows that out of 1,100 play centres in the UK and Northern Ireland, 107 were closed between September and October 2020, with 2,000 job losses.<sup>17</sup> As soft play centres are open in England, closure in Scotland at level 2 (when travel is permitted to England) could encourage families to go elsewhere.

The restrictions are likely to limit the ability of new businesses to enter the market.

#### **• Will the measure limit the ability of suppliers to compete?**

It is likely that the restrictions on soft play sector will limit the ability of some suppliers to compete. It is difficult to assess whether the restrictions on soft play centres are likely to have an advantageous effect on other businesses – although there are some sports, visitor attraction, hospitality and leisure venues who are able to remain open at level 2 who may benefit.

#### **• Will the measure limit suppliers' incentives to compete vigorously?**

It seems unlikely that measures will limit incentives to compete vigorously.

#### **• Will the measure limit the choices and information available to consumers?**

Yes. It will mean that children and families in some local areas may have reduced opportunity for socialising and indoor play.

### **Consumer Assessment:**

The following sets out the Scottish Government's initial view on the impact of the Leisure and entertainment (soft play) sector measures within the Strategic Framework on consumers. Again, please consider the impacts of cross-cutting restrictions and guidance within the Strategic Framework.

<sup>17</sup> <https://www.bbc.co.uk/news/uk-england-south-yorkshire-54621770>

• **Does the policy affect the quality, availability or price of any goods or services in a market?**

The restrictions within the Strategic Framework may restrict choice and price, as business operating costs will be increased while capacity and income will be reduced. Some soft play centres may choose not to reopen which will result in reduced availability of soft play facilities.

• **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

• **Does the policy involve storage or increased use of consumer data?**

No

• **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the Strategic Framework.

**Test run of business forms:** N/A

**Digital Impact Test:** N/A

**Legal Aid Impact Test:** N/A

**Enforcement, sanctions and monitoring:** Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. These regulations came into effect from the 2<sup>nd</sup> November 2020 and must be reviewed by the Scottish Ministers at least every 21 days. We are continuing our constructive engagement with the sector.

**Summary and recommendations:**

**Introduction**

This BRIA has examined the measures within each level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.

**Background**

The Scottish Government's Strategic Framework includes a package of measures which collectively are designed to suppress transmission of the virus.

Whilst this BRIA is focused on soft play sector, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view soft play measures in the context of this wider package of actions.

**Options Appraisal**

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. It compares these measures against the baseline / level 0 option.

**Option 1: Baseline**

The baseline option (effectively level 0 of the Strategic Framework) would have a positive economic impact on soft play centres through their revenue generation, employment of staff, and on supply chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission in soft play settings.

Soft play centres are characterised by many of the high-risk factors associated with transmission of the virus. The health risks would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on the soft play industry as trade made be reduced due to customers being anxious about social interaction, particularly in indoor venues. The workforce could be affected by higher levels of sickness due to high rates of COVID-19, or larger numbers of staff self-isolating for 14 days.

**Option 2: Strategic Framework**

<b>Measure</b>	<b>Benefits</b>	<b>Costs</b>
Soft play centres open in Level 0 and 1 (guidance and Regulations in place)	Soft play centres are characterised by many of the high-risk factors associated with transmission of the virus. However, with robust guidance in place to mitigate the risks, soft play centres could remain open in areas with low incidence of virus.	There will be costs associated with complying with guidance including enhanced cleaning regime and reducing capacity to ensure physical distancing can be maintained which will result in increased costs to the businesses.
Soft play centres closed in Level 2-4	As above, given the high risk factors associated with soft play centres in relation to virus transmission, keeping soft play closed would contribute to reducing the R number and community transmission. At levels 2 and above, there is a high prevalence of the virus. It is necessary for the protection of public health to close softplay centres at these levels.	There will be costs for soft play centres which will be required to close and increasing concerns over financial viability of businesses in the sectors and jobs put at risk. A support package has been developed to mitigate this. There will also be impact in relation to reduced opportunity for social interaction and play indoors for younger children and their families. Wider activity has been developed to support the right to play, including a £500k outdoor play fund and a £20m Summer Programme of activities to support the wellbeing of children and young people.

## Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

Limiting social mixing as much of possible in all settings is the most effective measure against transmission of the virus. It is particularly important to focus on settings which have high risk factors. It is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside big increases in mental health problems. The limitations on leisure and entertainment sector are part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the restrictions on the leisure and entertainment sector. Similarly as the risk falls, restrictions will ease.

Across all of the five levels we seek to balance:

- The impact on reducing the risk of transmission of the virus through restricting the opportunity for mixing of children and adults in soft play centres
- Enabling as much of the sector as possible to remain open safely in areas with low infection rates, in ways that enable businesses to remain viable and reduce the likelihood of redundancies
- The economic costs, including wider costs and the impact on the supply chain.

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. Whilst it has been necessary to take these extraordinary measures to respond to the pandemic, in order to protect the health of Scotland's population, the unequal impact of the pandemic and the need to respect human rights and take an integrated and balanced approach to ensuring the proportionality and necessity of these measures taken, have also been at the forefront of consideration of these actions. This has included balancing the needs of soft play centres against the finite amount of resources available to the Scottish Government.

In assessing the relevant options, we considered current and previous restrictions, international best practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

The measures balance the direct impact of COVID-19 against the other harms (indirect health impacts, societal impact, and the economic impact) and against also the impact on fundamental rights. When different restrictions would have similar effects on transmission, difficult decisions must be made about which restrictions to apply considering the four harms.

We acknowledge that the soft play industry have questioned why trampoline centres and other similar activities have been allowed to open in level 2 but that soft play is closed. These comparators are considered sporting activities and as such these activities and centres are covered under the sports guidance which is produced in consultation with the various sports bodies. In addition, the Scottish Ministers have prioritised education and play for children in other settings.

The Strategic Framework and levels approach are intended to balance the restrictions necessary to protect people from the direct harms to health from catching the virus, with the unintended potential harms the restrictions may have on isolation, wellbeing, the impact on businesses, individuals and the economy.

The different restrictions recognise the different risks and needs of the people of Scotland and balances these according to understanding of how the virus is transmitted. We have considered the wide range of impacts, both intended and unintended, of the restrictions across all the levels and have sought to mitigate them wherever possible, while simultaneously protecting the health of employees and the public, and focussing on our primary objective of reducing the spread of the virus.

We have set out a comprehensive package of financial support for soft play centres to mitigate the negative impacts of the restrictions. This is in addition to the UK Government Coronavirus Job Retention Scheme.

We continue to keep the levels and restrictions under review, and take all decisions based on the best available evidence. Our approach to soft play centres will continue to be informed by assessments under the impact of the four harms, while also taking into account other important considerations, including human rights and equality impacts. This has led to further limited easing in other sectors being brought forward, for example in relation to snooker and pool halls. This stemmed from the gradually reducing risk in terms of Harm 1 (the direct impact of COVID) and Harm 2 (the indirect health impacts), primarily associated with the reducing prevalence of the virus and the growing proportion of the population that is vaccinated. However, any additional headroom is limited, so some prioritisation is still required. The relevant 4 Harms assessments indicated that the Harm 1 risk score for soft-play centres is higher than that for snooker/pool halls and bowling alleys; and that, while the Harm 1 risk score for soft play is similar to that for snooker/pool halls and bowling alleys, the associated social benefits are lower. On each pair-wise comparison, therefore, there was grounds to prioritise the opening of both snooker/pool halls and bowling alleys, ahead soft-play centres.

We continue to work with sector representatives and other stakeholders to ensure we are doing everything possible to support the soft play industry, its customers and employees – including those with protected characteristics – as we take measures necessary to continue to suppress the virus and save lives.

All these support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented.

## *Performing Arts venues*

**Title of legislation:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021

### **Purpose and intended effect**

The Scottish Government's strategic intent remains to suppress the COVID 19 virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible. This strategic approach is being delivered through Scotland's Strategic Framework, which sets out how we plan to restore, in a phased way, greater normality to our everyday lives.

A strategic approach to outbreak management based on five graduated levels of restrictions was introduced in Scotland on 2 November. The Strategic Framework, which was [updated on 23 February 2021](#), covers the four key harms of the virus, how we will work to suppress the virus, and our strategic approach to outbreak management based on five Levels of protection.

The Scottish Government's Protection Levels framework, which was updated on 13 April, is a fundamental part of Scotland's strategic approach to Coronavirus.

This BRIA is focused on the set of LEISURE & ENTERTAINMENT measures for PERFORMING ARTS VENUES (indoor theatres, concert halls, comedy clubs and any other venue which— (i) normally opens at night, (ii) has a dance floor or other space for dancing or spectating by members of the public (and for these purposes, members of staff of the venue in question are to be considered members of the public), and (iii) provides music, whether live or recorded) set out in the Protection Levels framework, which are in turn linked to the measures in the Strategic Framework.

These include both the measures requiring performing arts venues to close, and also the measures that permit them to operate in some Levels, including mitigating actions that businesses must take to be able to operate in some Levels. However, individual measures need to be viewed within the broader context of the package of measures within each Level, with the Strategic Framework taking a four harms approach to considering which interventions are introduced at each Level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

The Protection Levels framework includes measures across a wide number of settings as part of a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

Please note outdoor theatres are covered within the BRIA for stadia and events under outdoor events.

To support the Protection Levels Framework, including in relation to performing arts venues, on 26 April the Scottish Government published guidance on calculating physical



distancing capacities in public spaces: [Coronavirus \(COVID-19\): calculating physical distancing capacity in public settings - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/coronavirus-covid-19-calculating-physical-distancing-capacity-in-public-settings/)

The key measures relating to Performing Arts Venues are set out in the table below:

Level 4	Level 3	Level 2	Level 1	Level 0
Closed	Closed	Maximum capacities* Indoors : 100 Outdoors seated: 500 Outdoors free-standing: 250	Maximum capacities* Indoors : 200 Outdoors seated: 1,000 Outdoors free-standing: 500	Maximum capacities* Indoors: 400 Outdoors seated: 2,000 Outdoors free-standing: 1,000

\* Higher capacities can be agreed through local authority/Scottish Government

### Policy Objectives

In line with the objective of the Scottish Government's overall strategic approach to COVID-19, the objectives in relation to performing arts venues are to restore, in a phased way, greater normality, while suppressing the virus to the lowest possible level and keeping it there. The principles that guided the Protection Levels update included a need to maintain proportionality and suppress the virus in each Level and to maintain the effectiveness of the Levels.

**Title of proposal:** Scotland's Strategic Framework: LEISURE & ENTERTAINMENT – PERFORMING ARTS VENUES (indoor theatres, concert halls, comedy clubs and any other venue which— (i) normally opens at night, (ii) has a dance floor or other space for dancing or spectating by members of the public (and for these purposes, members of staff of the venue in question are to be considered members of the public), and (iii) provides music, whether live or recorded)

### Purpose and intended effect

#### Background

The LEISURE & ENTERTAINMENT – PERFORMING ARTS sector makes a key contribution to Scotland's economy and society, enhancing Scotland's profile internationally, and also boosting creativity, wellbeing, community engagement, and inclusion.

Based on the data we have available, which is dependent on how businesses are registered, there are 590 registered businesses in the performing arts, support activities for performing arts and operation of arts facilities. Around 560 of these are classified as small businesses with 49 employees or less. These 590 businesses employ 4,600 people. Additionally, there is a very high proportion of freelancers/self-employed working in the sector.

The performing arts sector is closely interconnected with the wider events sector – more information on this wider sector is included in the section on events in this BRIA.

### **COVID-19 and the Performing Arts sector**

The Scottish Government recognises the negative impact that COVID-19 restrictions are having on the performing arts sector in Scotland, and the corresponding impact on the Article 1 Protocol 1 rights of businesses and suppliers operating in this sector. The sector was one of the first to go into lockdown on 15 March 2020 and will be one of the last to fully resume. Given the severe limitations on the sector, there have been significant losses to the sector and the Scottish economy across 2020 and 2021 so far.

In April 2020 the Office of National Statistics reported that over 80% of the UK's Arts, Entertainment and Recreation sector reported temporary closure or a pause in trading. Moreover, 13% of businesses in that sector reported no or less than 3 months cash reserves left in mid-October and 12% reported severe to moderate risk of insolvency in mid-October. (SG BICS analysis). Performing arts venues closed for performances with a live audience in March 2020 and many remain closed, having lost over a year's revenue. Some activity has moved to broadcast only or online, however, thus far online activity has proved difficult to monetise.

Performing arts venues and organisations make a large proportion of their income from ticket and associated sales, which largely ceased in March. Additionally, many were required to issue refunds for cancelled performances. Emergency funds have been put in place to support the sector and its freelancers and many organisations are using the Coronavirus Job Retention Scheme. However, redundancies have been made by a number of venues. With physical distancing and additional capacity restrictions in place, performing arts venues can open at levels 0 - 2, although it may not be economically viable for many venues to do so. There are still significant risks in planning future performances or tours with the possibility of closure if a local authority is moved to a higher level or a further lockdown is introduced or without some prospect for the reduction/removal of physical distancing.

#### Furlough

The arts, recreation and entertainment as a whole had 43% of staff on furlough in mid-October, reflecting the higher share of businesses in those sectors that are temporarily closed or operating below full capacity. (ONS BICS survey). Creative Scotland issued a COVID-19 impact survey to all 121 of its Regularly Funded Organisations (RFOs) in early May 2020. Although not covering the entire sector, this does give a representative sample. The purpose of the survey was to understand the current and prospective impact of the COVID-19 pandemic across the RFO network. In total 111 of the 121 RFOs responded to the survey, a response rate of 92%, recording a total of 1853 furloughed staff:

- 60 organisations had furloughed 1,378 permanent staff. Of those that have furloughed permanent staff, the number ranges between 1 and 264
- 25 organisations had furloughed a total of 475 contracted and freelance individuals. The number furloughed ranges from 1 to 97. The majority of furloughed staff were employed by building and venue-based organisations (just over 1,500 staff).

## Freelance / Self-employed

Creative Scotland's Bridging Bursary Programme provided financial support to individuals who were unable to sustain their creative work and practice. The Bridging Bursary Programme was in two strands:

- A £2m Creative Scotland Bridging Bursary Fund to help sustain freelance creative professionals who had lost earnings due to the cancellation of work as a result of COVID-19.
- A parallel £1.5m Screen Scotland Bridging Bursary Fund for freelance or self-employed screen practitioners who had lost income from their work due to COVID-19.

Across these funds, from March to May 2020, Creative Scotland made 2,293 awards (80% of applications) with a total value of £4,302,561.

More detail on these awards including art form and geographic breakdown can be found here: <https://www.creativescotland.com/funding/archive/bridging-bursary>

Creative Scotland's Hardship Funds for Creative Freelancers – totalling £17m – have supported freelance creative professionals working in the arts and creative sector in Scotland who have experienced immediate financial difficulty due to the loss of income as a result of COVID-19.

The Strategic Framework included financial support for business. For certain venues closed at levels 2 and above there was a grant of £2,000 or £3,000 (depending on rateable value) for businesses required to close by law, payable every four weeks for the duration protective measures are in place. This has provided support to theatres, comedy clubs, concert halls and music venues.

The fund closed to new applicants on 22 March 2021. The final four-weekly payment was made on 22 March 2021. As in previous months, this consisted of:

- £2,000 for businesses with a rateable value up to £51,000
- £3,000 for businesses with a rateable value of £51,001 or above

On 19 April 2021, all Strategic Framework Business Fund (SFBF) recipients received a combined final 2-week supplement and a one-off restart grant to help them reopen.

The Scottish Government has provided more than £140 million in COVID-19 [culture, events and historic environment support](#) since March 2020. This is in addition to support provided through business grants, rates relief and the UK Government's furlough scheme. The Scottish Government together with Creative Scotland and stakeholders from across the culture and creative sectors have been working hard to ensure that the funding is distributed to those who need it most. Funding has supported performing arts venues and organisations including the £15 million Culture Organisations and Venues Recovery Fund; £17m Creative Freelancer Hardship Fund; £12.5m Performing Arts Venue Relief Fund; and £6.2m Grassroots Music Venues Stabilisation Fund. The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

The industry has had almost no income apart from that provided through UK Government and Scottish Government support schemes, and if this continues more businesses will cease to exist. Although figures are not available separately for the performing arts sector, provisional figures from a snapshot as at 28th February 2021 show that Arts, entertainment and recreation is the sector with the third highest number of employments furloughed across Scotland with 29,130, or 8.0% of all employments furloughed in

Scotland, behind the Accommodation and food services and Wholesale and retail sectors. This reflects the higher share of businesses in those sectors that are not currently trading or operating below full capacity (Source ONS BICS data).

There is a long lead in time to plan and prepare for most performances. As such, fluctuating levels of restrictions are particularly difficult for the performing arts as organisers have little certainty about whether their performances will actually be able to take place, resulting in them carrying significant risk. Parts of the sector have indicated that even when they are permitted to resume, as will be possible at Levels 2, 1 and 0, reopening will not be commercially viable while physical distancing and attendance caps are in place. The Scottish Government is aware of the difficulties and impact on commercial viability of physical distancing restrictions. The First Minister announced a review of the current physical distancing requirements on 11 May which is ongoing.

Closure of the sector has resulted in economic insecurity for businesses and their workforce; and reduced wellbeing and increased isolation for people who would usually attend the performing arts. Although extremely difficult to quantify, the impact of cancelling performances is likely to have a negative impact on morale and wellbeing in affected communities.

As the operations of the performing arts sector have been restricted since March 2020, we assume that almost all of the GVA generated by this activity has been lost. Many performing arts organisations have accessed the Coronavirus Job Retention Scheme and Self-Employed Support Scheme, although the sector has indicated there are gaps in this support.

### **Objective and rationale for Government intervention**

In common with the wide range of other countries who have implemented similar measures, the objective of the restrictions set out within the Strategic Framework is to ensure that the operation of performing arts settings is appropriate to the level of COVID-19 risk, also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Some of the activities that take place within the category of performing arts involve many of the high-risk criteria for COVID-19 transmission, as transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments or in crowded spaces over extended periods.<sup>18</sup>

#### Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at

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<sup>18</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#) <sup>56</sup> See further information in 'Current Status of Stadia and Events Sector' below.

distances of more than 2 metres.<sup>19</sup> The Scottish Government has set out further details about transmission and how this is considered in its 4 harms assessment.<sup>20</sup>

We know from contact tracing, international evidence and scientific research, that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and where no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters<sup>21,22</sup>.

The Government recognises that transmission of the virus within households presents the highest risk, which is why gatherings in private dwellings were targeted first and remain a key focus.

However, other settings also have the potential to transmit the virus due to related risk factors. Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, has been and continues to be important in controlling the pandemic.

Performing arts activities and venues bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high risk factors associated with transmission of the virus<sup>23</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread from person to person. Performances that involve the audience standing may carry a greater risk due to difficulty maintaining distance and the possibility of mixing with a range of people, thus increasing the risk of transmission. We also know that performance venues carry challenges around pinch points where people might gather (e.g. toilets, entrances and exits) which could increase the risk of transmission. Performances that usually involve singing/shouting, are considered to have a higher risk of aerosol and droplet transmission. It is possible to have control of and mitigate many of the risks in a venue.

Outdoor performances are covered by the Events guidance, and the Events and Stadia BRIA. Non-professional performing arts activity for adults is permitted outdoors at level 2.

Our vaccination programme is, of course, a game-changer in terms of combatting Covid-19 and reducing transmission rates. Vaccines are a critical part of suppressing the virus to the lowest possible level, both in order to save lives and also to allow us to gradually ease restrictions and return to a more normal life. The Scottish Government has set out further

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<sup>19</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>20</sup> [Coronavirus \(COVID-19\): framework for decision making - assessing the four harms - gov.scot \(www.gov.scot\)](#)

<sup>21</sup> Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

<sup>22</sup> Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

<sup>23</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

detail about the approach to vaccine rollout.<sup>24</sup> Rollout continues to see strong progress; as at 12 May 2021, 2,948,604 people had received the first dose of the Covid vaccination and 1,526,889 had received their second dose. Balanced against this is the continued threat from new strains of the virus, and indeed this is reflected in the emergence of the new more transmissible B.1.1.7 variant, which is now the dominant variant in Scotland.

Furthermore, other new variants have been identified which pose new risks to Scotland (including around the potential for vaccine escape)<sup>25</sup>.

### Risk Factors

High-risk factors associated with transmission of the virus<sup>26</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Risks are further compounded by speaking loudly and the effects of alcohol consumption<sup>27</sup>. Another risk factor is when a 2m distance cannot be maintained, as evidence suggests that 1m distancing carries between 2 and 10 times the risk of 2m distancing<sup>28</sup>.

Depending on the venue, issues of ventilation (with recirculation of air being particularly problematic), crowding (where it is hard to regulate the distance between people), and pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge. Fundamentally, venues which are attended by many people, typically from different households, specifically to meet for long periods of time, all amplify the risk of transmission. The risks in some venues may be exacerbated by some behaviours – whether this be drinking alcohol (e.g. in nightclubs), which can cause people to lose their inhibitions, increase risk-taking and to make decisions they would usually not<sup>29</sup> or breathing heavily (e.g. due to exercising in gyms).<sup>30</sup> The performing arts sector relies on people from many households coming together for prolonged periods (e.g. in theatres, concert halls, music venues and comedy clubs) and it is important to understand that the number of potential transmission events increase much more quickly than the number of people gathering.<sup>31</sup>

<sup>24</sup> Coronavirus (COVID-19): Strategic Framework update - February 2021 - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>25</sup> Coronavirus (COVID-19): Strategic Framework update - February 2021 - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>26</sup> COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020

<sup>27</sup> Collins A and Fitzgerald N (2020)

<sup>28</sup> Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020

<sup>29</sup> <https://www.nhsinform.scot/healthy-living/alcohol/the-risks-of-drinking-too-much>

<sup>30</sup> SAGE papers 21 September 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925856/S0770\\_NPIs\\_table\\_pivot.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925856/S0770_NPIs_table_pivot.pdf) and

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925854/S0769\\_Summary\\_of\\_effectiveness\\_and\\_harms\\_of\\_NPIs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925854/S0769_Summary_of_effectiveness_and_harms_of_NPIs.pdf)

<sup>31</sup> SPI M paper 20 August 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf)



Each place an individual visits brings different risks depending on a range of factors, such as<sup>32</sup>:

- the mix and number of people present,
- the amount of time individuals are likely to spend there,
- the ability to maintain 2m distancing,
- the likelihood of pinch points where people might gather (e.g. toilets, entrances and exits),
- the standard and type of ventilation,
- the likelihood of people touching surfaces and goods, and
- the potential for significant aerosol projection activity.

Risk factors for different businesses in different sectors vary hugely and most will have a number of risk factors to consider. Some places are riskier due to touch points, some due to limited ventilation, some due to the mix and number of people coming and going, some due to pinch points at which people may gather. Others may cause people to speak more loudly, breathe heavily, or cheer, potentially projecting aerosol particles further.

Businesses which rely on close contact or on people from different households visiting or coming together are inherently at a high risk of spreading the virus.<sup>3334</sup>

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. The specific measures, as set out in the Regulations and guidance, reflect the assessment of risk factors associated with a particular activity. Each of the Protection Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary. It is worth noting that although we do take the transmission risk of settings into account, in order to prioritise re-opening settings and activities we take a broader view across all four harms in order to make judgements about the sequencing of any re-opening.

### Alcohol

It is well established that alcohol is a psychoactive substance which inhibits judgement. The WHO Global Strategy recognises that intoxication with alcohol is associated with high-risk behaviours.<sup>35</sup> Alcohol intoxication is associated with a number of well-characterised changes in psychological function, including disinhibition and reduced consciousness<sup>36</sup>, as well as changes in mood, feelings of intoxication and impairments in psychomotor performance and cognitive processes such as memory, divided attention, and planning<sup>37</sup>. It can cause people to lose their inhibitions, increase risk-taking and make decisions they would usually not<sup>38</sup>.

<sup>32</sup> COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020

<sup>33</sup> SAGE papers 21 September 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925856/S0770\\_NPIs\\_table\\_pivot.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925856/S0770_NPIs_table_pivot.pdf) and

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925854/S0769\\_Summary\\_of\\_effectiveness\\_and\\_harms\\_of\\_NPIs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925854/S0769_Summary_of_effectiveness_and_harms_of_NPIs.pdf)

<sup>34</sup> SPI M paper 20 August 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf)

<sup>35</sup> <https://apps.who.int/iris/handle/10665/44395>

<sup>36</sup> [https://www.shaap.org.uk/images/shaap\\_developing\\_adolescents\\_brain\\_press.pdf](https://www.shaap.org.uk/images/shaap_developing_adolescents_brain_press.pdf)

<sup>37</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2999764/>

<sup>38</sup> <https://www.nhsinform.scot/healthy-living/alcohol/the-risks-of-drinking-too-much>

In relation to the specific risk of transmission of COVID-19, the direct effects of alcohol impair consumers' ability to comply with transmission control measures in hospitality settings. Drinking even small amounts of alcohol affects people's decision-making and lowers inhibitions. It can change the way people think and feel, and influence how they act. It impairs hearing, meaning people have to lean in closer to hear or shout, which increases aerosolisation of the virus. It impairs vision, affecting the ability to judge distances. It lowers the immunity to infection. It is a diuretic, resulting in people needing to urinate more frequently. Separately and together, these effects will reduce the ability (and potentially willingness) of people to physically distance and comply with safety measures, creating an increased risk of virus transmission. All of these risks are thought to increase proportionately, the greater the amount of alcohol sold and consumed<sup>39</sup>.

Given this evidence that alcohol consumption alters your thoughts, judgement, decision-making and behaviour, advice from the World Health Organisation during the COVID-19 pandemic is to 'stay sober so that you can remain vigilant, act quickly and make decisions with a clear head, for yourself and others in your family and community'. It adds that 'if you drink, keep your drinking to a minimum and avoid getting intoxicated'.<sup>40</sup>

We know that alcohol forms a part of the hospitality offering in many performing arts settings. Although it is not a primary reason for attendance at a performance, a consideration of this risk in relation to COVID-19 transmission should form part of any impact assessment.

### Performing Arts Venues

Performing arts venues bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>41</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Venues where people are seated are generally considered to carry a lower risk of transmission as physical distancing between groups can be maintained relatively easily. Venues that involve standing may carry a greater risk due to difficulty maintaining distance and the possibility of mixing with a range of people, thus increasing the risk of transmission.

There is also a risk associated with public transport travel to venue, which will naturally bring larger groups of people into closer proximity indoors. Additionally audiences accessing the venue through shared entrances creates potential pinch points there, at toilets and at concessions increasing the likelihood of more people coming into contact with the same surfaces.

### Current position of Performing Arts Venues

Most of the sector has been completely closed since mid-March 2020, with only a brief period in November 2020 when indoor venues could open in a very small number of local authority areas (Highland, Moray and the Islands) and some outdoor performances in summer 2020. This means that the majority of the sector has been unable to operate in any way for nearly 14 months.

<sup>39</sup> [Collins A and Fitzgerald N \(2020\)](#)

<sup>40</sup> [World Health Organisation: Alcohol and COVID-19: what you need to know](#)

<sup>41</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)



We have seen no evidence of transmission from Test and Protect data relating to the limited outdoor and indoor events that were permitted to resume. However, it is not possible to tell this conclusively from the categories listed by Test and Protect. We have not received any concerns about transmission at those performances, indoor and outdoor, that have taken place from local authority environmental health officers. It should be noted that the sector is highly controlled and regulated. It is well practised in managing risk and venues have been preparing for reopening with physical distancing and hygiene measures in place.

### Conclusion

The limitations on performing arts venues are part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The Levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, the restrictions on the performing arts sector increases. Similarly as the risk falls, restrictions will ease.

While we know that limiting social mixing as much as possible in all settings is the most effective measure against transmission of the virus, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside significant increases in mental health problems.

Given these factors, across all of the five Levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing in performing arts venues.
- Enabling performing arts venues to reopen safely wherever possible in ways that enable organisations to remain viable and reduce the likelihood of redundancies.
- The important role that the performing arts play in maintaining health and wellbeing as well as the broader economic and social benefits.
- The economic costs, including the impact on the supply chain.

## **Consultation**

### **Public Consultation**

In November 2020 Creative Scotland undertook a second [COVID19 Population Survey](#) (the first round of research having taken place in August 2020), looking at the attitudes of the general population in relation to cultural participation and attendance:

- 52% of those surveyed said they had missed attending cultural venues and events since COVID restrictions.
- Desire to attend arts and cultural venues remains polarised; while some are keen to attend when they can, others are wary. Most people feel that they will take their time or are reluctant to return to arts venues. The main concerns of the public are the desire to avoid crowds and being able to maintain social distance.
- 46% would accept a reduction to 1 metre physical distancing in venues, but additional protections would be vital.
- Were we to return to the same conditions as before lockdown, 52% would expect to attend arts and cultural events to 'about the same level as before lockdown', 14% 'a little more than before lockdown' and 9% 'a lot more than before lockdown'.

We have also made efforts to keep abreast of public thinking on the reopening of performing arts through monitoring press coverage and views expressed in correspondence from the public to the Scottish Government. We have also engaged with network organisations in the non-professional performing arts sector, including Making Music and Voluntary Arts Network Scotland.

### **Business**

We have engaged with performing arts stakeholders throughout the pandemic, including with a view to the reopening of performing arts venues and performances, supporting the sector and understanding the impact of restrictions on the sector.

Consultation on the development of guidance and on the Strategic Framework has been undertaken with performing arts sector stakeholders and trade union representatives, including: Creative Scotland, Federation of Scottish Theatre, Music Venues Trust, Scottish Chamber Orchestra, Celtic Connections, City of Edinburgh Council, National Theatre of Scotland, Royal Lyceum Theatre, Edinburgh Fringe Society, Dundee Rep and Scottish Dance Theatre, Eden Court Highlands, Aberdeen Performing Arts, Perth Concert Hall, Musicians Union, BECTU and Equity.

Stakeholders are clear that reduction and eventual removal for physical distancing for the sector at the earliest opportunity is critical. It is not commercially viable for most organisations to reopen with any physical distancing in place. As long lead-times are required to plan and prepare a production/tour, a clear roadmap to achieving the removal of physical distancing is also required. Until attendance restrictions are removed, continued financial support to sustain the sector will be required.

Performing arts organisations understand the need to take decisions on appropriate Levels using current information but have stressed that performing arts productions require a lengthy planning period and significant investment. Throughout the pandemic they have sought as much certainty as possible in order to undertake planning. Until there is a clear road map towards the removal of physical distancing, for many the measures effectively mean that they remain closed for business.

This links to the footnote included as part of the Protection Levels framework in relation to performing arts venues notes that “Higher capacities can be agreed through local authority/Scottish Government”.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 puts in place a process through which event organisers or venue operators may, through application to a local authority, seek approval to hold an event above the standard capacity limits. Further details about this are set out separately

Below is a summary, of stakeholder feedback on the Protection Levels table published on 13 April and the physical distance capacity in public settings guidance published on 26 April.

### **Physical distancing**

- For most performing arts venues, 2 metre distancing is not economically viable (nor is 1 metre distancing for many).
- Urgent need for a timetable for when the 2m is going to end/change and what a roadmap to zero distancing will be. At the moment the permitted numbers of attenders rise as we drop through the tiers, but with no reduction in distancing most performing arts venues are unable to achieve these numbers which are in any case too low for economic viability. It is impossible for organisations to plan for the autumn without a coherent timeline on this.
- Need for indication of the data levels required to remove physical distancing in total which is already a challenge for Autumn and Christmas programme planning.
- Concern regarding inconsistency between 1 metre with mitigations (i.e. no masks when eating) in restaurants and bars, but 2 metres and masks for cultural venues. Inside auditoria everyone is in a fixed seat, facing the same direction and many performing arts venues have air handling better than any pub or restaurant. The illogicality here is underlined in some venues which can have people front of house eating under 1 metre and then having to put a mask on to go into a 2m separated auditorium.
- Unreasonable to have standard limits for venues irrespective of normal venue capacity. Venues with a capacity of over 1000 can only have the same number of attendees as an event in a much smaller venue. Surely a proportion of overall capacity is logical even if mitigations are still in place.
- If venues have to maintain 2m clear routes for people to pass within the auditorium, then even the low numbers in the PDBC are not achievable. Sector needs clarity on how the Scottish Government sees routes for people to pass might work within an auditorium setting – typical layouts, routes in and out for individuals during performance etc?

### **Audience behaviours**

- For audience interactions with one another, the following factors reduce risk significantly compared to other settings like the workplace, restaurants, bars, transport, sporting activity etc:
  - Theatre is a more carefully controlled and managed environment. It is possible for performing arts venues to control when people arrive, when they take their seat and how they get to it etc.
  - Audiences are relatively passive throughout the show, apart from the occasional moment of laughter they are more passive than people talking/shouting in other social settings or partaking in sport for example.
- If you have to maintain 2m clear routes for people to pass within the auditorium, then even the low numbers in the PDBC are not achievable. I cannot think of a venue where

this would be practicable. Sector needs clarity on how the Scottish Government sees routes for people to pass might work within an auditorium setting – typical layouts, routes in and out for individuals during performance etc?

#### **Data and rationale for Scotland/England differences**

- What evidence is the PDBC based on?
- Is the Scottish Government using different data from England?
- What is the rationale for Scotland's policy vs England's 50% capacity from 17 May, potentially 100% post 21 June if both governments are using similar data.
- Concern regarding 'losing out to England'

#### **Implications for Scotland/England differences**

- UK producers are re-routing tours to exclude Scotland at present and sticking to just England where the limits are still difficult, but more achievable.
- Lack of touring to Scotland is already having an impact with severe (and possibly long-lasting) economic implications for major Scottish cities. UK touring circuit severely affected. Some UK tours are not viable with a 'gap' in their schedule caused by uncertainty around Scottish dates, thus jeopardising entire UK tour.
- Social distancing of any sort is a real barrier to commercial producers, and most are planning tours on the basis that it will be lifted in England (or at least be at 1m rather than 2m).
- Commercial producers are making plans for UK wide tours now and will just avoid Scotland which will exacerbate the plight of the venues further. Full (or very close to full) capacity with audiences sitting side by side to make touring commercial theatre viable. A number of commercial producers and some venue owners have fed back that, with capacity limits below 1,000, it doesn't make sense to re-open large scale theatres commercially.

#### **Forward planning and sector resilience**

- Is there a sense of what the long-term plan is for removing social distancing altogether? Is this just a short term measure or is this looking likely to continue into the autumn? Venues, companies and festivals need time to plan.
- What is needed is clear planning horizon of indicative dates for moving from 2m to 1.5m/1m/0m, and clarity on what criteria have to be met in order for the Scottish Government to reduce/lift social distancing.
- A more consistent national approach to guidance on key planning permission issues would be useful to avoid pushing risk and complexity down to local authorities and support coherent national recovery.
- What mitigations would make a difference to reducing social distancing - are they looking at patrons still wearing face-coverings but being able to reduce social distancing, along with testing, for example? The recovery of the sector from a commercial point of view is completely dependent on this as, under these restrictions, it's likely that only subsidised companies will be able to produce work and, even then, is there going to be additional subsidy to make up for reduced capacity?
- Can reduced distancing be offered to performers, if other mitigation (e.g. Covid testing) were in place and the performers were 2m (or more?) away from the audience?
- Why there are no plans for test events to gather data, when such events will take place in England.

#### **Support**

- Need for continued funding support while venues unable to reopen and performances resume.



## **Options**

This section sets out the range of options that have been considered, and we continue to work constructively with the sector to explore and assess alternatives.

### **Across Levels 0 to 2 there are a number of mitigating actions including:**

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of face coverings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing.
- Fixed entry and exit points to prevent bottlenecks arising as people arrive or leave
- Adequate ventilation
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to the standard limit in the levels or other number agreed following engagement with the local authority or Scottish Government.
- Using sectoral performing arts and venues guidance in conjunction with business and physical distancing guidance, and any other relevant guidance (for example, events guidance which covers outdoor performances).
- Capture of contact data for Test and Protect

A range of exceptions also apply at all levels, for example, for recording, broadcasting, rehearsals and other required preparatory activity prior to reopening, and for training and education. Social gathering and hospitality rules in place across Scotland also apply across all levels.

## **Sectors and groups affected**

### **The Regulations will affect:**

- Performing arts venues, including indoor theatres, concert halls, music venues, comedy clubs.
- Performing arts organisations and artists (those who perform in venues).
- Employees of venues and organisations, and freelancers engaged by them, including, but not limited to:  
performers, technical crew across all trades, food and drink wholesalers and food service providers, staging and equipment hire, security, logistics, media, cleaning and maintenance.
- Businesses and individuals that provide goods and services to the performing arts sector.
- Businesses providing services to customers for the performing arts sector (e.g. transport providers, restaurants and bars)
- Local Authorities who, in addition to operating venues themselves, have responsibilities for licensing and enforcement through their Environmental Health Officers.
- Audience members.

**The key measures that will affect the performing arts and venues sector are set out in the following table:**

<b>Level 4</b>	<b>Level 3</b>	<b>Level 2</b>	<b>Level 1</b>	<b>Level 0</b>
Closed	Closed	Maximum capacities* Indoors : 100 Outdoors seated: 500 Outdoors free-standing: 250	Maximum capacities* Indoors : 200 Outdoors seated: 1,000 Outdoors free-standing: 500	Maximum capacities* Indoors: 400 Outdoors seated: 2,000 Outdoors free-standing: 1,000

\* Higher capacities can be agreed through the application process to the relevant local authority.

Guidance on travel<sup>43</sup> also has a significant impact on the performing arts, which often rely on people travelling locally, nationally or internationally.

### **Our approach to assessing options**

Within this BRIA, we have compared the package of measures within each Level against the baseline approach of Level 0. This has allowed us to present the clinical evidence for intervention at each Level setting out the health benefits, whilst acknowledging the potential impacts on the live events and stadia sectors. We have also set out some other key options considered at each Level. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

The Scottish Government's objective is to get all parts of the country to Level 0 and remain there if we can. At Level 0 we would expect to see low incidence of the virus with isolated clusters and low community transmission. Broadly, this Level is the closest we can get to normality prior to a move to Phase 4 of the Route Map and then back to normality. The Baseline and Level 1 are designed to be sustainable for longer periods.

In assessing the relevant options for each Level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

### **OPTIONS FOR 'BASELINE' / LEVEL 0**

Compared to the previous Protection Levels framework considered for the Performing Arts and Venues BRIA in November 2020, the update published on 13 April 2021 set out changes to the Baseline/Level 0, as follows:

#### November 2020:

- Indoors seated and ambulatory – seated and ambulatory permitted (restricted numbers)

<sup>43</sup> [Coronavirus \(COVID-19\): guidance on travel and transport - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-travel-and-transport/pages/2021-04-13-13-april-2021-update.aspx)

- Indoor grouped standing not permitted

April 2021:

- Indoors – 400 attendees
- Outdoor seated – 2000
- Outdoor standing – 1000

Possibility to apply to exceed standard capacity limits

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters and low community transmission.

Option 1: Baseline

In the Baseline position, performing arts venues are permitted to reopen with restricted numbers (as set out above), while maintaining physical distancing. These numbers have been provided to give clarity and consistency for performing arts venues. Guidance has been published to assist with calculating a physical distance based capacity limit in public settings, including for performing arts venues. The cap on audience numbers (over and above that required for physical distancing compliance) is a tool to further control and reduce audience numbers in performing arts venues. However there is a process set out in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 which allows event organisers to make an application to exceed the standard capacity limit if they are able to satisfy local authorities that it is safe.

The capacity numbers for Level 0 may allow some performing arts venues to reopen, therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that many performing arts venues strongly contend that, with physical distancing based capacity in place at 2 metres (and even if reduced to 1 metre), they are unable to accommodate these numbers and the numbers they can accommodate are too low for them to operate viably. For those venues that can accommodate the standard capacity limit with physical distancing in place, it is still commercially unviable for them to reopen as this represents such a small proportion of their potential capacity. These economic harms were acknowledged, however the risk of increasing virus prevalence by reducing physical distancing and therefore increasing the risk of transmission was of greater concern. It was therefore determined that, in line with clinical advice, opening with physical distancing based capacity and a cap on audience numbers was appropriate.

In Level 0, where there is very low incidence of the virus, mitigating measures and continued restrictions on the numbers of people and households permitted to mix will still be in place. These mitigating measures support suppression of the virus at Level 0.

The numbers reflect the balance of factors outlined in the conclusion of the section on the rationale for Government intervention:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing in performing arts settings.
- Enabling performing arts venues to reopen wherever possible in ways that enable businesses to remain viable and reduce the likelihood of redundancies.
- The important role that the performing arts play in maintaining health and wellbeing and their wider social and economic benefits.



- The economic costs, including the impact on the many freelancers and self-employed working in the sector and the wider supply chain.

There is expected to be continued strong progress of the rollout of the vaccine to reach this Level, but this could be balanced to some extent by the need for caution around strains with high levels of transmissibility.

The approach taken in this option is for a standard capacity limit for indoor performing arts venues (400 maximum) as this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table is provided elsewhere. As stated above, we recognise that many venues cannot reopen viably with physical distancing in place. However there are venues which are planning to open once permitted to do so – the Scottish Federation of Theatre is collating information around venues which will be opening, and once this is completed the Scottish Government will consider that information as we continue to assess the ongoing impact of restrictions. It was, therefore, considered that the economic harms of restricting numbers in Level 0 for some venues would be comparable to those in all other Levels, including Levels 3 and 4, since restrictions on numbers to such a low level would mean they are not financially viable to operate and therefore are rendered effectively closed.

The numbers permitted at this Level for performing arts venues are based on an understanding of the latest clinical evidence, including vaccine rollout, variants and prevalence rates. As referenced previously, a balance has been sought between the need to continue focusing on virus suppression and a desire to reopen the sector as far as possible.

An ongoing review of physical distancing will assess whether there is any scope to alter the physical distancing requirements while still mitigating the risk of transmission in various settings. The First Minister will make an announcement on the outcome of the physical distancing review in the coming weeks.

The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

*Option 2: Tailored approach based on physical distancing only to determine capacity (physical distance based capacity)*

This approach would share many of the overall outcomes for option 1 above, however the model would be different. Rather than a numbers cap for a performing arts venue, this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, including usual liaison with local authority in advance of reopening.

### Option 3: open with reduced physical distancing (1m) and hygiene measures

With 1m physical distancing in place, it may be commercially viable for more (but definitely not all) venues to reopen. Transmission risk is significantly higher at 1 metre distancing than 2 metres distancing – 1 metre distancing carries between 2 and 10 times the risk of 2 metre distancing<sup>44</sup>.

### Option 4: Utilising mass testing and / or covid certification to open performing arts venues to larger numbers

There has been ongoing consideration as to whether mass testing would enable venues to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

Mass testing at events was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include: location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>45 46</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for performing arts venues.

## **Conclusion**

In considering the evidence around options for Level 0, Scottish Ministers weighed up the need to limit social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention.

They concluded that at Baseline / Level 0, restrictions on numbers permitted at performing arts venues could both reduce interactions and have a potential impact on the R rate. Such measures remain necessary given the emergence of the new more transmissible B1.1.7 variant, which is now the dominant variant in Scotland.

<sup>44</sup> Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020

<sup>45</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>46</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)  
[Coronavirus \(COVID-19\): guidance on travel and transport - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/coronavirus/covid-19/guidance-on-travel-and-transport)

Consideration was given to the option of utilising mass testing or covid-19 certification to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile, Option 3 was considered too high risk. The economic harms, while considerable for those unable to operate due to number or physical distance based capacity restrictions, were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers / reducing physical distancing at performing arts venues and therefore increasing the risk of social interactions was of greater concern.

It was therefore determined that, in line with clinical advice, performing arts venues would be permitted to operate at Level 0 with restricted numbers. As regards the approach taken, Option 1 (standard limits) was seen to have benefits over Option 2 (limit based only on physical distancing and venue capacity), as this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. As noted at Option 1, further detail on the process to agree higher numbers than those in the levels table will be provided.

An ongoing review of physical distancing will assess whether there is any scope to alter the physical distancing requirements while still mitigating the risk of transmission in various settings. The First Minister will make an announcement on the outcome of the physical distancing review in the coming weeks.

The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

### **OPTIONS FOR LEVEL 1**

Compared to the previous Protection Levels framework considered for the Performing Arts BRIA in November 2020, the update published on 13 April set out changes at Level 1, as follows:

#### November 2020:

- Small seated indoor events permitted (100 people)

#### April 2021:

- Indoors – 200 attendees
- Outdoor seated – 1000
- Outdoor standing – 500
- Possibility to apply to exceed standard capacity limits

Level 1 is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

### Option 1: Maintain baseline

This option would mean performing arts venues are permitted to reopen with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

The capacity numbers for Level 0 may allow some performing arts venues to reopen, therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that many performing arts venues strongly contend that, with physical distancing based capacity in place at 2 metres (and even if reduced to 1 metre), they are unable to accommodate these numbers and the numbers they can accommodate are too low for them to operate viably. For those venues that can accommodate the standard capacity limit with physical distancing in place, it is still commercially unviable for them to reopen as this represents such a small proportion of their potential capacity. These economic harms were acknowledged, however the risk of increasing virus prevalence by reducing physical distancing and therefore increasing the risk of transmission was of greater concern. There are venues which are planning to open once permitted to do so – the Scottish Federation of Theatre is collating information around venues which will be opening, and once this is completed the Scottish Government will consider that information as we continue to assess the ongoing impact of restrictions. It was therefore determined that, in line with clinical advice, opening with physical distancing based capacity and a cap on audience numbers was appropriate.

In Level 0, where there is very low incidence of the virus, mitigating measures and continued restrictions on the numbers of people and households permitted to mix will still be in place. These mitigating measures support suppression of the virus at Level 0. However, in Level 1, there would be slightly higher rates of virus prevalence and community transmission is starting to increase. Therefore there are greater public health risks associated with doing nothing further to restrict opportunities for household mixing and social gathering while attending performing arts venues.

The opportunity for virus transmission would therefore be higher than in Level 0 and more of a concern since, even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that performing arts venues continue to be relatively high-risk settings due to the gathering of groups of people, the likelihood of social interaction, and the difficulty in physically distancing people entering and exiting venues. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>47</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

An ongoing review of physical distancing will assess whether there is any scope to alter the physical distancing requirements while still mitigating the risk of transmission in various settings. The First Minister will make an announcement on the outcome of the physical distancing review in the coming weeks.

The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues

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<sup>47</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

Given the increased risk at Level 1, doing nothing and maintaining the baseline measures would not meet the public health objectives.

*Option 2: Numbers further restricted compared to Baseline / Level 0*

This option was considered to enable performing arts venues to operate, but with restricted numbers compared to Level 0, thus reducing the likelihood that there would be any impact on the current low incidence of the virus and low community transmission, from reopening performing arts venues. It would also represent a sensible phased transition from Level 2 to Level 1, and in turn from Level 1 to Level 0, which would allow clinicians to track how increasing the numbers at performing arts venues would affect transmission Levels, while also providing a gradual pathway back to operating performing arts venues with mitigations in place.

Mitigations we would expect to be in place are:

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of face coverings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing.
- Fixed entry and exit points to prevent bottlenecks arising as people arrive or leave
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to a number cap
- Adequate ventilation
- Using sectoral performing arts and venues guidance in conjunction with business and physical distancing guidance, and any other relevant guidance (for example, events guidance which covers outdoor performances)
- Capture of contact data for Test and Protect

It was considered that the economic harms of restricting numbers in Level 1 for some venues would be comparable to those in all other Levels, including Levels 3 and 4, since restrictions on numbers to such a low level would mean they are not financially viable to operate and therefore are rendered effectively closed.

*Option 3: Tailored approach based on physical distancing only to determine capacity*

As was the case for Level 0, a tailored approach to capacity setting was considered. Rather than numbers caps for all indoor performing arts venues, this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, including usual liaison with local authority in advance of reopening.

#### Option 4: Open with reduced physical distancing (1m) and hygiene measures

With 1m physical distancing in place, it may be commercially viable for more (but definitely not all) venues to reopen. Transmission risk is significantly higher at 1 metre distancing than 2 metres distancing – 1 metre distancing carries between 2 and 10 times the risk of 2 metre distancing<sup>48</sup>.

#### Option 5: Utilising mass testing and / or covid certification to open performing arts venues to larger numbers

There has been ongoing consideration as to whether mass testing or covid-19 certification would enable performing arts venues to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

Mass testing at events was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>49 50</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for performing arts venues.

#### **Conclusion**

In considering the evidence around options for Level 1, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. They concluded that at Level 1, tighter restrictions on numbers permitted at performing arts venues to those permitted at Level 0/Baseline could both reduce interactions and have a potential impact on the R rate.

Consideration was given to the option of utilising mass testing to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at

<sup>48</sup> Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020

<sup>49</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>50</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)

this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile the Baseline option was considered too high risk in relation to encouraging gatherings and social interaction. The economic harms were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers at performing arts venues and therefore increasing the risk of social interactions was of greater concern.

Option 4 was considered too high risk. The economic harms, while considerable for those unable to operate due to number or physical distance based capacity restrictions, were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers / reducing physical distancing at performing arts venues and therefore increasing the risk of social interactions was of greater concern.

It was therefore determined that, in line with clinical advice, performing arts venues would be permitted to operate at Level 1 with restricted numbers compared to Level 0.

As was the case for Level 0, an approach of setting limits for indoor performing arts venues rather than for each venue based on capacity and physical distancing was taken. Again, the rationale was that this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table will be provided. In addition, this option is the most straightforward way to limit attendance in comparison to the baseline of Level 0.

### **Options for Level 2 and 3**

Within Levels 2 and 3, as defined in the Strategic Framework, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable Level.

For performing arts venues there is a clear difference between measures in Levels 2 and 3 which are detailed in the following options.

#### **OPTIONS FOR LEVEL 2**

Compared to the previous Protection Levels framework considered for the Performing Arts Venues BRIA in November 2020, the update published on 13 April set out changes at Level 2, as follows:

##### **November 2020:**

- Indoor performing arts venues closed

April 2021:

- Indoors – 100 attendees
- Outdoor seated – 500
- Outdoor standing – 250
- Possibility to apply to exceed standard capacity limits

Option 1: Maintain baseline

This option would mean performing arts venues are permitted to reopen with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

The capacity numbers for Level 0 may allow some performing arts venues to reopen, therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that many performing arts venues strongly contend that, with physical distancing based capacity in place at 2 metres (and even if reduced to 1 metre), they are unable to accommodate these numbers and the numbers they can accommodate are too low for them to operate viably. For those venues that can accommodate the standard capacity limit with physical distancing in place, it is still commercially unviable for them to reopen as this represents such a small proportion of their potential capacity. However there are venues which are planning to open once permitted to do so – the Scottish Federation of Theatre is collating information around venues which will be opening, and once this is completed the Scottish Government will consider that information as we continue to assess the ongoing impact of restrictions. The ongoing economic harms are acknowledged, however the risk of increasing virus prevalence by reducing physical distancing and therefore increasing the risk of transmission was of greater concern. It was therefore determined that, in line with clinical advice, opening with physical distancing based capacity and a cap on audience numbers was appropriate.

In Level 2, there would be increasing community transmission and multiple clusters. Therefore there are greater public health risks of doing nothing to restrict opportunities for household mixing and social gathering at performing arts venues.

The opportunity for virus transmission would be relatively high, however, since even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that performing arts venues continue to be high-risk settings due to the gathering of groups of people, the likelihood of social interaction, and the difficulty in physically distancing people entering and exiting events venues. Performing arts venues can bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>51</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

An ongoing review of physical distancing will assess whether there is any scope to alter the physical distancing requirements while still mitigating the risk of transmission in various settings. The First Minister will make an announcement on the outcome of the physical distancing review in the coming weeks.

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<sup>51</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)



The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

Given the increased risk at Level 2, doing nothing and maintaining the baseline measures would not meet the public health objectives.

*Option 2: Numbers further restricted compared to Levels 0 and 1*

This option was considered to enable performing arts venues to reopen, but with more restricted numbers than in Levels 0 and 1, thus reducing the likelihood that there would be any impact on the incidence of the virus and community transmission from these events. It would also represent a sensible phased transition from Level 2 to Level 1, and in turn from Level 1 to Level 0, which would allow clinicians to track how increasing the numbers at performing arts venues would affect transmission Levels, while also providing a gradual pathway back to performing arts venues operating with mitigations in place.

Mitigations we would expect to be in place are:

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of face coverings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing.
- Fixed entry and exit points to prevent bottlenecks arising as people arrive or leave
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to a number cap
- Adequate ventilation
- Using sectoral performing arts and venues guidance in conjunction with business and physical distancing guidance, and any other relevant guidance (for example, events guidance which covers outdoor performances)
- Capture of contact data for Test and Protect.

It was considered that the economic harms of restricting numbers in Level 2 for many organisations would be comparable to those in all other Levels, including Levels 3 and 4, since for many performing arts venues, restrictions on numbers to such a low level would mean they are not financially viable to operate and therefore are rendered effectively closed.

*Option 3: Tailored approach based on physical distancing only to determine capacity limits*

As was the case for Levels 0 and 1, a tailored approach to capacity setting was considered. Rather than numbers caps for all indoor performing arts venues, this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, including usual liaison with local authority in advance of reopening.

*Option 4: open with reduced physical distancing (1m) and hygiene measures*

With 1m physical distancing in place, it may be commercially viable for more (but definitely not all) venues to reopen. Transmission risk is significantly higher at 1 metre distancing than 2 metres distancing – 1 metre distancing carries between 2 and 10 times the risk of 2 metre distancing<sup>52</sup>.

#### Option 5: Utilising mass testing and / or COVID certification to open events and stadia up to larger numbers

There has been ongoing consideration as to whether mass testing or covid-19 certification would enable performing arts venues to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

Mass testing at performing arts venues was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>53 54</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for performing arts venues.

#### **Conclusion**

In considering the evidence around options for Level 2, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. They concluded that at Level 2, tighter restrictions on numbers permitted at performing arts venues to those permitted at Level 0/Baseline and Level 1 could both reduce interactions and have a potential impact on the R rate.

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<sup>52</sup> Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020

<sup>53</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>54</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)

Consideration was given to the option of utilising mass testing to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile the Baseline option was considered too high risk in relation to encouraging gatherings and social interaction. The economic harms were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers at events and therefore increasing the risk of social interactions was of greater concern.

Option 4 was considered too high risk. The economic harms, while considerable for those unable to operate due to number or physical distance based capacity restrictions, were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers / reducing physical distancing at performing arts venues and therefore increasing the risk of social interactions was of greater concern.

It was therefore determined that, in line with clinical advice, events and stadia would be permitted to operate at Level 2 with restricted numbers compared to Levels 0 and 1.

As was the case for Levels 0 and 1, an approach of setting limits for indoor performing arts venues generally rather than for each venue based on capacity and physical distancing. Again, the rationale was that this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table will be provided. In addition, this option is the most straightforward way to limit attendance in comparison to the baseline of Level 0.

At Levels 0-2, exemptions are possible to agree higher capacities with the Scottish Government/local authorities.

### **OPTIONS FOR LEVEL 3**

There was no change to the previous Protection Levels framework considered for the Performing Arts Venues BRIA in November 2020, and the update published on 13 April – performing arts venues remain closed at Level 3.

Under Level 3, there would be increasing community transmission and multiple clusters. For example, more than 150 cases per 100,000 population<sup>55</sup>. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue and accelerate its spread, ultimately resulting in direct harms to health.

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<sup>55</sup> Decisions regarding which Level applies to each local authority will be informed by 5 key indicators: Numbers of new cases per 100,000 people, test positivity rate, future number of cases per 100,000 people, number of people likely to need acute hospital care in future weeks, number of people likely to need intensive care in future weeks. Further information on these indicators can be found at: <https://www.gov.scot/publications/coronavirus-covid-19-allocation-of-Levels-to-local-authorities/>

### Option 1: Maintain baseline

This option would mean performing arts venues are permitted to reopen with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that many performing arts venues contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

The opportunity for virus transmission would be very high, however, since even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that performing arts venues continue to be high-risk settings due to the gathering of groups of people, the likelihood of social interaction, and the difficulty in physically distancing people entering and exiting events venues. Performing arts venues bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>56</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

Given the increased risk at Level 3, doing nothing and maintaining the baseline measures would not meet the public health objectives.

### Option 2: Closure of all events

This option would mean that performing arts venues would remain closed in all Level 3 local authorities.

Evidence from the lockdown periods in 2020 and 2021 shows that the immediate closure of businesses led to a reduction in income and immediate cash flow and viability challenges for many sectors of the economy. Closure would exacerbate cash flow problems for performing arts venues and organisations and potentially threaten viability of businesses, putting jobs at risk and leading to higher unemployment. Contact with customers may be lost, which could impact on the longer term viability of the business. The performing arts sector has been clear that a prolonged period of closure in 2021 would mean venues and businesses would not be able to continue trading and will therefore be unable to support the resumption of the sector. Further closure would necessitate further financial support.

Closure would also have a negative impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and loneliness as people lose access to performing arts venues to socialise.

However, closure of all performing arts venues within a Level 3 area would have the most significant positive impact on transmission rates and spread of the virus. It would virtually eliminate opportunities for people to meet in performing arts settings which are characterised

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<sup>56</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

by many of the high-risk factors associated with transmission of the virus identified by scientific evidence and modelling.

### **Conclusion**

As the policy intention at Level 3 remains focused on limiting the opportunity for people to gather and mix, there is little doubt that the closure of performing arts venues has a mitigating effect on reducing virus transmission at this Level. Adopting the baseline approach at relatively high levels of transmission is clearly not a viable option.

The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

Option 2 is seen as the most impactful in stopping virus transmission in high risk settings such as performing arts venues, although the economic harms of closure in Option 2 would be substantial, and it is therefore the recommended option.

## **OPTIONS FOR LEVEL 4**

Compared to the previous Protection Levels framework, the update published on 13 April contained no change at Level 4: as before, performing arts venues would be closed.

Level 4 measures would be designed to be in place for as short a period as deemed necessary, to provide an agile response to quickly suppress the virus.

Within this Level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this Level would see the introduction of measures close to a return to full lockdown. Measures introduced in Level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services such as education to continue, and avoid the overwhelming of the NHS.

### **Option 1: Maintain baseline**

This option would mean performing arts venues could open with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would enable some performing arts venues to open, therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that many performing arts venues contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

The workforce may be affected by higher levels of sick workers due to high rates of COVID-19, or larger numbers of staff self-isolating for 10 days. Beyond the risk-reduction benefits achieved from the mitigating actions there would be no further public health benefits.

Under Level 4, we would expect to see very high or rapidly increasing incidence. The Baseline option of allowing performing arts venues to open at restricted levels would not deliver the policy objectives of ensuring that restrictions on operations help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS. With the Baseline permitting performing arts venues operating with restricted numbers, it would enable the circumstances under which evidence shows transmission is high<sup>86</sup> There are therefore greater public health costs of not restricting social interaction within a high risk setting such as performing arts venues.

### **Option 2: Closure of all events**

This option would mean that performing arts venues would be closed in all Level 4 local authorities.

Evidence from the lockdown periods in 2020 and 2021 shows that the immediate closure of businesses led to a reduction in income and immediate cash flow and viability challenges for many sectors of the economy. Closure would exacerbate cash flow problems for performing arts organisations and potentially threaten viability of businesses, putting jobs at risk and leading to higher unemployment. Contact with customers may be lost, which could impact on the longer term viability of the business. The performing arts sector has been clear that a prolonged period of closure in 2021 would mean that many businesses and supply chain businesses would not be able to continue trading and will therefore be

unable to support the resumption of the sector. Further closure would necessitate further financial support for the sector.

Closure would also have a negative impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and loneliness as people lose access to performing arts venues to socialise.

However, closure of all performing arts venues within a Level 4 area would have the most significant positive impact on transmission rates and spread of the virus. It would virtually eliminate opportunities for people to meet in event areas which are characterised by many of the high-risk factors associated with transmission of the virus identified by scientific evidence and modelling.

### Conclusion

As the policy intention behind changes to performing arts venues operation is about reducing the opportunity for people to gather and mix, there is little doubt that the closure of performing arts venues would have an immediate mitigating effect on reducing virus transmission at Level 4, where there is a very high rate of virus transmission. Adopting the Baseline approach at high Levels of transmission is clearly not a viable option and while the economic harms of closure in Option 2 would be substantial, Option 2 is seen as the most impactful in stopping virus transmission at Level 4 in high-risk settings such as performing arts venues. Despite the extremely positive impact the full closure option will have on the spread of the virus – as evidenced by the lockdown implemented in March 2020 – given the wider socio and economic negative impacts Level 4 would only be implemented where it is necessary to bring high transmission rates of the virus under control, and even then only for the necessary period of time.

The Scottish Government confirmed a further £25m of additional emergency funds to help cultural organisations and venues prevent insolvency or significant job losses due to the ongoing impact of the Covid-19 pandemic on 2 June 2021. £13m will be made available through a further round of Creative Scotland's Culture Organisations and Venues Recovery Fund and £12m through a further round of the Performing Arts Venues Relief Fund.

### **Scottish Firms Impact Test:**

The Scottish Government engaged with representatives of the Scottish performing arts sector, as set out within the consultation section of this BRIA.

#### **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

“Competition” with other businesses in this sector is not only related to audiences, but also to the attraction of high quality performing artists and technicians, as well as non-public financial support.

Across the rest of the UK restrictions have been in place for the events sector for most of 2020 and in to 2021. However, there is now a perception that England in particular is ahead of Scotland in terms of timing of and information about the resumption of events and performances. This is likely to impact on the competitiveness of the sector relative to the rest of the UK. Stakeholders have already reported that Scotland is being omitted from UK tours as there is not enough information available about a route to reopening viably compared to England. There are reports that some UK tours are threatened in their entirety by the lack of certainty around Scottish dates which puts at risk the viability of an entire tour. There is concern among stakeholders - due to the long lead-times for committing to touring productions and for creating a production- that this could have longer-term consequences, with full reopening of the sector further delayed due to lack of productions to present on Scotland's stages.



Likewise if restrictions in Scotland are tighter than in Europe or the rest of the world, then this could impact competitiveness as artists and those working in all other areas of the performing arts sector will be compelled to seek work elsewhere.

We will continue to engage with colleagues in England, Wales and NI to monitor activity and explore opportunities for shared learning.

### **Current operation, including of events, in rest of UK**

#### **England<sup>57</sup>**

- The Department for Digital, Culture, Media and Sport (DCMS) published 'Coronavirus (COVID-19): Organised events guidance for local authorities' on 6 April 2021<sup>58</sup> and [DCMS guidance for the performing arts](#) was last updated on 7 May.
- DCMS announced that the F.A. Cup Semi-Final and Final at Wembley stadium will be pilot events, as will the World Snooker Championships at the Crucible theatre in Sheffield, which concluded on May 3. The pilots will not be just sporting events and are supplemented via DCMS's partnership with Liverpool City Council ('Project Encore') to ensure the events cover a range of settings.
- No earlier than 17<sup>th</sup> May – indoor hospitality opens up along with entertainment venues (all venues) – restrictions on larger venues for performances or sporting events – indoor 1000 people max or 50% cap; Easing limit on social contact; multiple households can mix; most social contact rules will be lifted; indoor household mixing will be allowed.
- No earlier than 21<sup>st</sup> June – all limits removed; reopen final closed sectors – in particular nightclubs; lift restrictions on large events and performances and at this point decide if all limits can be removed (decision on festivals to be made in advance of this step)

#### **Wales<sup>59</sup>**

From 13 March:-

- Cinemas, theatres and concert halls - Performances may be broadcast without an audience, whether over the internet or as part of a radio or television broadcast.
- As set out in the revised Coronavirus Control Plan<sup>60</sup>, a small number of outdoor pilot events of between 200 and 1,000 people are also being planned.

From 12 April:-

- travel restrictions within the UK and Common Travel Area lifted
- wedding venues will be able to let prospective clients view their premises by appointment only

From 26 April - If public health conditions permit, the following relaxations can go ahead:

- organised outdoor activities will be permitted for up to 30 people
- outdoor wedding receptions will be permitted for up to 30 people
- outdoor visitor attractions can open

<sup>57</sup> <https://www.gov.uk/government/speeches/pm-statement-to-the-house-of-commons-on-roadmap-for-easing-lockdown-restrictions-in-england-22-february-2021>

<sup>58</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-organised-events-guidance-for-local-authorities/coronavirus-covid-19-organised-events-guidance-for-local-authorities>

<sup>59</sup> <https://gov.wales/business-closures-alert-level-4>

<sup>60</sup> <https://gov.wales/sites/default/files/publications/2021-03/coronavirus-control-plan-revised-alert-levels-in-wales-march-2021.pdf>

## **N.Ireland**<sup>61</sup>

From 23<sup>rd</sup> April

- Competitive outdoor sports can resume with a limited number of 100 participants and no spectators.
- Outdoor attractions may reopen including drive-in cinemas and performances, attendees will only be permitted the share a vehicle with their household or bubble.

No earlier than 17 May

- Sectors which will be reopening include some large events, including conferences, theatre and concert performances and sports events.
- Controlled indoor events of up to 1,000 people or 50% of a venue's capacity, whichever is lower, will be permitted, as will outdoor events with a capacity of either 50% or 4,000 people, whichever is lower. There will still be social distancing and other interventions for events.

### **• How many businesses and what sectors is it likely to impact on?**

Based on the data we have available, which is dependent on how businesses are registered, there are 590 registered businesses in the performing arts, support activities for performing arts and operation of arts facilities (IDBR 2019). Around 560 of these are classified as small businesses with 49 employees or less. These 590 businesses employ 4,600 people. Additionally, there is also a very high proportion of freelancers/self-employed working in the sector.

Apart from the direct effect on performing arts organisations and venues, the measures impact on associated, such as hospitality and travel, food and drink suppliers and a broad range of businesses in performing arts supply chains.

Relating to the wider events sector, VisitScotland Events Directorate asked businesses working closely with the events sector to complete an online survey (live from 16-22 June 2020) which requested feedback on the impact of COVID-19 on their business. The survey generated 315 responses from a wide range of businesses and organisations.

The survey underlined the breadth of organisations involved in the events supply chain with event organisers, production services and AV & technology companies providing the largest representation. The vast majority (96%) of respondents were from a micro or small sized businesses and most relied significantly on the support of freelancers, 69% of respondents were self-employed, either as a sole trader or via a Ltd Company, and 89% indicated that their head office is based in Scotland. Many of the suppliers provided specialist skills that, once lost, would not be easy to replace.

Over-arching summary findings highlighted:

- 57% of respondents were 100% reliant on the events sector for their business turnover, a further 26% were 61-

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<sup>61</sup> <https://www.visitbritain.org/covid-19-new-coronavirus-latest-information-and-advice-businesses-1>

99% reliant.

- 27% had lost over a quarter of a million pounds in revenue to date, with 11% of those losing over £1m. Average revenue loss was almost £650k.
- 43% of respondents stated that they could remain trading between 1 and 6 months, and 25% were unsure of how long they can remain in business. 4% had already ceased trading.
- 21% had not been eligible or had been unable to access any support funding.
- 55% of respondents had staff furloughed. 93% of those that had accessed the furlough scheme indicated that extending it beyond October 2020 would have a helpful/essential impact on their ability to operate.
- 69% of respondents were self-employed, either as a sole trader or via a Ltd Company.
- There was a significant reliance on freelance staff, particularly amongst small and micro businesses (the majority of respondents).
- The vast majority (96%) of respondents were from micro or small sized businesses. 44% had 2 or fewer FTE staff.
- 9% had already made or foresaw making redundancies with 16% expecting to make redundancies before October 2020.
- 44% of respondents stated that their income will not exceed expenditure until physical distancing restrictions are lifted.
- 34% had been able to diversify their product or client base, into areas including digital events and COVID19 protection measures.

In addition, verbatim feedback also emphasised a range of over-arching challenges including concerns around the loss of skilled workforce and how this would impact on the future of the sector; physical distancing bringing financial challenges;; and the need for a clearly defined restart plan for the sector.

While there are fewer restrictions on the sector as a result of the April 13 Local Protection Levels framework publication, on the basis of the data gathered during the earlier period of lockdown restrictions it is clear that the supply chain will continue to be adversely affected by ongoing restrictions, that there could be a particular impact on self-employed and freelance staff, and that a large proportion of the sector are small and micro businesses for whom the cost of additional mitigations to operate may be prohibitive.

#### • **What is the likely cost or benefit to business?**

The measures set out in the Protection Levels framework are will have costs for performing arts venues at all Levels. The most significant costs would be incurred at Levels 3 and 4 where all performing arts venues are required to close. This would result in a significant amount of revenue foregone and would threaten the financial viability of businesses in the sector and associated jobs.

There will be costs associated with reopening venues, where it is viable for them to do so at Levels 0 – 2 in order to ensure that they can do so safely, such as installation of screens, hygiene measures, signage for one-way and queuing systems and additional staff and staff training costs. Fixed costs remain whether open or closed, with no income to meet these costs during periods of closure and significantly reduced income when open due to restrictions on numbers. It will not be commercially viable for many venues to reopen with restricted numbers and physical distancing in place. For many, it will not be commercially viable to reopen with physical distancing in place, even without any further restriction on numbers. This may lead to business closures and risk jobs. Performing arts venues have been closed since March. This has resulted in some businesses closing,

redundancies and a loss of income for freelancers / self-employed. It is as yet unclear what further government support will be available for venues which are unable to reopen viably.

The nature of the Strategic Framework and that local authorities can move up or down levels may also mean that performing arts venues that have planned to reopen and have productions in place in a Level 0, 1 or 2 area, could be cancelled at short notice should the Level change before the performances takes place. Cancellation or postponement could mean the loss of revenue, potential loss of perishable stock and the likely possibility that some costs will still require to be covered. Producers have reported difficulties in obtaining cancellation insurance due to the uncertainty caused by COVID-19 and so, currently, they are exposed to all losses associated with cancellation.

Some of the costs to businesses may be partially off-set if further support funding schemes are put in place by the Scottish Government and the UK Government.

The performing arts sector has been hard hit by the restrictions having been unable to operate since the lockdown in March 2020 and a lack of confidence and uncertainty in when the sector will be able to safely recommence has meant that productions and tours have been postponed or cancelled. There has also been a shift to presenting performances online – however this has proven difficult to monetise.

As performing arts venues were instructed to close, they qualified for business grant support from the Scottish Government (depending on rateable value), as well as Coronavirus Job Retention Scheme support from the UK Government.

### **Competition Assessment**

Closing sections of the wider leisure and entertainment sector will likely impact on competition between businesses..

- **Will the measure limit suppliers' incentives to compete vigorously?**

It is not anticipated that the measures for events and stadia in the Protection Levels framework will impact on suppliers' incentives to compete vigorously.

Performing arts venues (indoors) have been closed since March. They rely on income from ticket sales and in-venue spend (bars, cafes, etc). With restrictions on audience numbers in place, over and above physical distancing requirements, and closure at level 2 and above some businesses may be at risk of insolvency and could limit the number and range of suppliers. Some venues which have been less reliant on public subsidy, may be disproportionately impacted. There is risk that businesses will cease to trade and the number of suppliers therefore reduced.

Restricted capacity measures may disadvantageously affect larger venues, as proportionately they are more severely impacted by cap on audience numbers. Guidance advising restricting movement between local authorities may impact on competitiveness - guidance against non-essential travel in and out of level 3 and level 4 areas may impact on city centre and rural venues as people are discouraged from traveling into town and city centres and visiting rural venues. Cinema and other leisure and entertainment business which are open at higher levels and/or have less onerous restrictions may benefit as a result of measures for performing arts and venues

- **Will the measure limit the choices and information available to consumers?**

There is a likelihood that the measures relating to performing arts venues and organisations in the strategic framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

**Consumer Assessment:**

The following sets out the Scottish Government's view on the impact of the performing arts sector measures within the Protection Levels framework on consumers.

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

Yes. Choice will be limited due to closures and, where venues are able to open, the restrictions on audience numbers will have a direct impact on the type of performances that can be staged. Lower ticket revenue from smaller audiences will mean that what is presented on stage has to be less expensive to present, and will limit choice. Due to the closure in March 2020 and the time (and money) needed to prepare many productions, there is a paucity of productions available for touring to venues. This is exacerbated by the lack of clarity on a road map towards the reduction / removal of physical distancing in performing arts venues in Scotland, which means that tour organisers and producers are disinclined to book future productions into Scottish theatres and producing theatres cannot risk the investment in new productions until they have more certainty as to when they can reopen viably. This will take some time to be addressed and will be difficult in a circumstance where a change in level or a further lockdown may occur. Producers cannot get insurance to cover them for this risk.

The restrictions will limit consumer choice in terms of social and entertainment activity but are necessary for protecting public health. This impact will be less in Levels 0, 1 and 2 compared to other Levels as some venues may be able to reopen, in greater numbers the lower the Levels. However, as there are restrictions on numbers and increased costs to of implementing COVID-19 safety measures, it is possible that at least some of these costs will be passed on to consumers through increased ticket prices.

As the performing arts sector has been almost entirely closed for a considerable period of time and as restrictions must remain in place, key suppliers or venues are increasingly likely to be lost. This may limit performing arts venues once the sector is permitted to restart at any scale.

- **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

- **Does the policy involve storage or increased use of consumer data?**

Data about audience members will need to be stored for Test and Protect purposes. Contact details are requested for each individual attending whereas usual procedure for performing arts venues is to secure booker's details only. Collecting data for each individual will be time-consuming and incur additional costs.

- **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the updated Protection Levels framework.

**Test run of business forms:**

No new forms are required as a result of this policy.

However, the regulations do create a request process where the Scottish Ministers, health boards, the Scottish Courts and Tribunal Service and local authorities can ask performing arts venues to undertake specific activity. This is expected to be used to permit activity that results in a public good.

**Digital Impact Test:**

These restrictions will not affect online events. Such events have increased as a result of the coronavirus pandemic but it is not necessarily easy for performing arts organisations to monetise them to replace income generated from live performances.

**Legal Aid Impact Test:**

N/A

**Enforcement, sanctions and monitoring**

Regulations have been put in place to support the implementation of the measures. Further details are contained in guidance, including events sector guidance and performing arts guidance. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

## **Implementation and delivery plan and post-implementation review**

Regulations and guidance have been put in place to support the implementation of the measures contained within the Protection Levels framework.

To support the sector we will issue guidance on how to assess capacity and the process for seeking greater capacity for an event than in the Protection Levels framework. We will consider further funding support.

We will continue to discuss the impact of these new measures with stakeholders and expect to receive feedback on these new measures from individual performing arts organisations and the public through correspondence. Discussion will take place with stakeholders to further understand the impact on businesses and the sector, and to continue to plot a route back to the resumption of live performing arts. Stakeholders, including the Federation of Scottish Theatre, will help provide continued feedback and challenge on how the implementation of measures is being felt across Scotland. Additionally, Creative Scotland is conducting public and industry questionnaires to gain an understanding of the main challenges to the sector.

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. We are continuing our constructive engagement with the sector in particular in relation to restricted numbers and physical distancing.

## **Summary and recommendations**

### **Introduction**

This BRIA has examined the measures within each Level of the updated Protection Levels framework for the performing arts sector and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.

### **Background**

The Scottish Government's Strategic Framework includes a package of measures which collectively are designed to suppress transmission of the virus, with the Protection Levels framework a key component.

Whilst this BRIA is focused on the performing arts sector, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view the measures for the performing arts sector in the context of this wider package of actions.

## Options Appraisal

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table outlines the benefits and costs, in comparison to the Baseline/Level 0 option, of:

- Restrictions on performing arts venues, especially restricted numbers (in Levels 0, 1 and 2)
- Performing arts venues closed at Levels 3 and 4

More detailed discussion of each of the Levels and the options that have been considered by Scottish Ministers within Levels is contained within the main body of this document.

### **Option 1: Baseline / Level 0**

The Baseline / Level 0 would mean that performing arts venues were able to operate with restricted numbers, though with the highest numbers allowed for any of the Levels given the low virus rates at Level 0. While the continuing restrictions at this Level would impact on financial margins, there would be a positive impact on revenue generation, employment of staff, and on supply-side businesses.

The nature of performing arts venues present some level of exposure to the high-risk factors associated with transmission of the virus, although as the vaccine rollout progresses and evidence is gathered indicating that vaccines positively impact on transmission rates this risk is likely to reduce. As at 7.30am on 15 April 2021, 2,708,691 people had received the first dose of the Covid vaccination and 661,975 had received their second dose.

However, there are transmission and other risk factors associated with performing arts venues, which bring a risk of increased community transmission and an ongoing need for restrictions at this time.

Higher rates of infection may ultimately impact negatively on the performing arts sector as consumer confidence could be affected through anxiety about social interaction, particularly in indoor venues.

### **Option 2: Protection Levels Framework**

<b>Measure</b>	<b>Benefits</b>	<b>Costs</b>
In relation to Baseline / Level 0, further restrictions on numbers attending performing arts venues – in Levels 1 and 2	Restrictions reduce opportunities for virus transmission.  Numbers are such that it can be hoped that the majority of performing arts venues that could proceed at Level 0 could also proceed at Levels 1 and 2.	Further restrictions on numbers will make it unviable for many performing arts venues to operate at Levels 1 and 2 (as is the case at Level 0) and, for those that do proceed, this will result in revenue foregone, potentially to a significant extent. Reduced revenue and turnover for performing arts venues will increase the risk of closure and job losses.



Performing arts venues closed at Levels 3 and 4	Restrictions reduce opportunities for virus transmission.	<p>The mandated closure of performing arts venues would affect sectoral businesses, their employees, customers and wider supply chains.</p> <p>Closing for any further significant length of time could lead to significant viability issues and result in business closures and redundancies. It could lead to a loss of competitiveness and damage Scotland's future reputation as a leader in the performing arts sector.</p>

## Conclusion

**This BRIA has set out the relative costs and benefits for performing arts venues of options relating to the Protection Levels framework published on 13 April, balancing the strategic imperative of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.**

Although the direction of travel is positive at the time of writing (mid-May 2021), in large part because of the vaccine rollout, we recognise the challenges facing the performing arts sector as a result of the ongoing restrictions, in terms of numbers caps and physical distancing. The Scottish Government is therefore committed to continuing to engage with and support the performing arts sector, including through guidance and financial support.

## Stadia and Events

**Title of legislation:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021

### **Purpose and intended effect**

The Scottish Government's strategic intent remains to suppress the COVID 19 virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible. This strategic approach is being delivered through Scotland's Strategic Framework, which sets out how we plan to restore, in a phased way, greater normality to our everyday lives.

A strategic approach to outbreak management based on five graduated levels of restrictions was introduced in Scotland on 2 November. The Strategic Framework, which was [updated on 23 February 2021](#), covers the four key harms of the virus, how we will work to suppress the virus, and our strategic approach to outbreak management based on five Levels of protection.

The Scottish Government's Protection Levels framework, which was updated on 13 April, is a fundamental part of Scotland's strategic approach to Coronavirus.

This BRIA is focused on the set of **Stadia and Events** measures set out in the Protection Levels framework, which are in turn linked to the measures in the Strategic Framework. These include both the measures requiring events to not take place and that stadia must close, and also the measures that permit them to operate in some Levels, including mitigating actions that businesses must take to be able to operate in some Levels. However, individual measures need to be viewed within the broader context of the package of measures within each Level, with the Strategic Framework taking a four harms approach to considering which interventions are introduced at each Level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

The Protection Levels framework includes measures across a wide number of settings as part of a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

To support the Protection Levels Framework, including in relation to Stadia and Events, on 26 April the Scottish Government published guidance on calculating physical distancing capacities in public spaces: [Coronavirus \(COVID-19\): calculating physical distancing capacity in public settings - gov.scot \(www.gov.scot\)](#)

The key measures relating to Stadia and Events are set out in the table below:

Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
Standard capacity limits* Indoors: 400 Outdoors seated: 2,000 Outdoors free-standing: 1,000	Standard capacity limits* Indoors: 200 Outdoors seated: 1,000 Outdoors free-standing: 500	Standard capacity limits* Indoors: 100 Outdoors seated: 500 Outdoors free-standing: 250	Closed with the exception of drive-in events	Closed

\*Higher capacities can be agreed through local authority/Scottish Government

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 puts in place a process through which event organisers may, through application to a local authority, seek approval to hold an event above the standard capacity limits. Further details about this are set out separately.<sup>62</sup>

[Guidance on travel](#) also has a significant impact on events, which often rely on people travelling locally, nationally or internationally.

### Policy Objectives

In line with the objective of the Scottish Government's overall strategic approach to COVID, the objectives in relation to stadia and events are to restore, in a phased way, greater normality, while suppressing the virus to the lowest possible level and keeping it there. The principles that guided the Protection Levels update included a need to maintain proportionality and suppress the virus in each Level and to maintain the effectiveness of the Levels.

### **Title of proposal: Scotland's Strategic Framework – Stadia and Events Protections**

#### **Purpose and intended effect**

##### **Background**

Events make a key contribution to Scotland's economy, enhance Scotland's profile internationally, and also boost community engagement, empowerment and inclusion.

The 2020 UK Events Report reported direct spend of £70 billion in the events sector in the UK in 2019. VisitScotland has estimated 9% of the UK total can be attributed to Scotland, representing £6 billion of direct spend to the Scottish economy and also accounting for approximately half of the country's total visitor spend. However, given the diverse nature of the sector and overlap with other sectors it is difficult to estimate economic impact.

The Business Register and Employment Survey indicates that, overall, more than 50% of employees in the sector work part-time (BRES, 2019).<sup>63</sup> The Annual Population Survey 2019 found that approximately 51% of the events workforce is under the age of 35 compared to around 35% for Scotland's workforce as a whole (APS, 2019).<sup>64</sup>

<sup>62</sup> [Coronavirus \(COVID-19\) stadia and live events guidance - gov.scot \(www.gov.scot\)](#)

<sup>63</sup> Business Register and Employment Survey (BRES), 2019, Scottish Government and ONS

<sup>64</sup> Annual Population Survey (APS), Jan-Dec 2019, ONS

The proportion of women working in the events industry is similar to the proportion in the overall workforce – 46.6% and 48.8% respectively. However, for Events Catering Activities, women make up 55.4% of the workforce and for Other Reservation Service and Related Activities they make up 72.9% of the workforce. Approximately 6,300 (11.1%) of workers in the events industry were self-employed. This is a slightly lower proportion than for the workforce as a whole (12.4%) (APS, 2019).

The ONS Standardised Industrial Classifications (SIC) does not provide a category or division for the events sector. A list of SICs has been compiled by the Scottish Government which may plausibly be judged to constitute the sector, based on a description of these activities. Note that a number of the SIC codes selected for analysis as part of the events sector overlap with existing Growth Sectors including Tourism; Finance and Business Services; and Creative Industries. The activities identified as part of the core events sector are those in which it is assumed that a large proportion of their output can be attributed to the staging of events. However, the supply chains for stadia and events as well as businesses providing services directly to event audiences and participants extend beyond those identified by SIC code. This wider range of activities include not only food, accommodation and transportation services but also a diverse range of businesses in supply chains.

The Events Industry\* in Scotland as defined by SG assessment of SIC codes comprised 3,830 businesses (IDBR, 2020) and 4,634 individual units (SABS, 2018).<sup>65</sup> It contributed approximately £978 million GVA to the Scottish economy in 2018 (SABS, 2018). In 2019 it employed approximately 57,000 part-time and full time employees as well as approximately 6,300 self-employed workers (APS, 2019). Around 25% of business units in the Events Industry are concentrated in Glasgow and Edinburgh (SABS, 2018). There were 3,830 businesses that fall under our Events Industry definition in Scotland in 2020 (IDBR, 2020).<sup>66</sup> Of these, 3,665 had fewer than 50 employees. The majority – approximately 3,175 – had a turnover of less than £500,000. Only around 17% have a turnover of £500,000 or more. Approximately 1,265 had a turnover of less than £100,000. Of the 655 businesses operating with a turnover of £500,000 or more, 120 were present in Edinburgh and 85 in Glasgow. 14% of events industry businesses had a presence in Edinburgh while 12% had a presence in Glasgow. The figure is 7% for Fife, 7% for Highland and 5% in South Lanarkshire (IDBR, 2020).

Stadia events – predominantly football and rugby in Scotland – also make a significant economic contribution, as well as contributing to a range of other outcomes, including increased international profile and engagement with individuals and communities. Research published in April 2020 showed that the Scottish Professional Football League (SPFL) contributes more than £200 million net to the Scottish economy every year and supports 5,700 jobs. The independent analysis by the Fraser of Allander Institute was carried out on the 2017/18 season and shows that SPFL clubs' activities, plus all spending by spectators at SPFL matches, contributed a gross figure of £444 million to Scotland's GDP and helped to support around 9,300 full time equivalent jobs. While there is no equivalent data for rugby, research published in September 2017 revealed that BT Murrayfield welcomed 80,000 fans over two days in May 2017 for the European Challenge and Champions Cup finals respectively and the direct economic benefits for the Scottish capital were recorded at £21.3 million, as part of a total £29.5 million impact on the wider national economy, in a report by The Sports Consultancy.

<sup>65</sup> Scottish Annual Business Statistics (SABS), 2018, Scottish Government and ONS

<sup>66</sup> Inter-Departmental Business Register (IDBR), 2020, Scottish Government and ONS

## COVID-19 and Stadia and Events

The Scottish Government recognises the significant negative impact that COVID-19 restrictions are having on the stadia and events sector in Scotland. The events sector was one of the first to go into lockdown on 15 March 2020 and will be one of the last to fully resume.

Significant international events were postponed, such as EURO 2020 which was due to be co-hosted in Glasgow in June/July 2020 and which will now take place in June/July 2021. The bulk of Scotland's 2020 events programme was cancelled or rescheduled. While some of this activity has been or is expected to be rescheduled into 2021, annual events lost their revenue for 2020 and some will again do so in 2021. Some events have not been or will not be able to reschedule as there are only a certain number of dates available at venues to host events and there were already events scheduled for 2021. Some activity has moved to broadcast only or online, however, thus far online activity has proved difficult to monetise.

The 2020 UK Events Report reported direct spend of £70 billion in the events sector in the UK in 2019. VisitScotland has estimated 9% of the UK total can be attributed to Scotland, representing £6 billion of direct spend to the Scottish economy and also accounting for approximately half of the country's total visitor spend. Given the severe limitations on the sector, there have significant losses to the sector and the Scottish economy across 2020 and 2021 so far.

While top-flight football and rugby has generally been able to continue behind closed doors, spectators have not been admitted in any significant numbers, apart from three pilot events with limited numbers (300 spectators per match) from 2 November 2020 for local authority areas with Level 0 and Level 1 restrictions. Football and rugby in Scotland is particularly dependent on spectators – for example, 43 per cent of revenue in the SPFL comes from gate receipts compared to the European average of 15 per cent. Therefore, a lack of supporters has a particularly negative impact. At the end of 2020, the Scottish FA and SPFL estimated a loss of around £70 million which was predicted to rise to £100 million by the end of the 2020-21 football season. While there is not a comprehensive picture of redundancies across clubs, many clubs have made announcements publicly regarding staff redundancies and in November 2020 the Scottish FA made 18 staff redundant. Scottish Rugby has estimated losses of £18 million up to March 2021.

A wide range of activity has been affected by COVID-19 including business events, sporting events and cultural events. The industry has had almost no income apart from that provided through UK Government and Scottish Government support schemes, and if this continues more businesses will cease to exist. Although figures are not available separately for the events sector, provisional figures from a snapshot as at 28th February 2021 show that Arts, entertainment and recreation is the sector with the third highest number of employments furloughed across Scotland with 29,130, or 8.0% of all employments furloughed in Scotland, behind the Accommodation and food services and Wholesale and retail sectors. This reflects the higher share of businesses in those sectors that are not currently trading or operating below full capacity (Source ONS BICS data).

There is a long lead in time to plan and prepare for most events. As such, fluctuating levels of restrictions are particularly difficult for events as organisers have little certainty about whether their event will actually be able to take place, resulting in them carrying significant risk. Parts of the sector have indicated that even when they are permitted to resume, as will be possible at Levels 2, 1 and 0, some events will not be commercially viable while physical distancing and attendance caps are in place.

Closure of the sector has resulted in economic insecurity for businesses and their workforce; and reduced wellbeing and increased isolation for people who would usually attend events. Although extremely difficult to quantify, the impact of cancelling events (and particularly community events) is likely to have had a negative impact on morale and cohesiveness in affected communities.

A disproportionately young workforce could result in a heightened risk and impact (in terms of lost lifetime earnings) of unemployment in the industry.

As the operations of the events sector have been restricted since March 2020, we assume that almost all of the GVA generated by this activity has been lost. Many events businesses have accessed the Coronavirus Job Retention Scheme and Self-Employed Support Scheme, although the sector has indicated there are gaps in this support (for example for company directors).

In total £31.5 million of funding was allocated by the Scottish Government solely for businesses working in the events sector in 2020-21, many of whom will also have been able to access funding through other channels. As of 21 April 2021, approximately £27 million had been paid out.

The support schemes set up using this funding were:

**Events Industry Support Fund 1 and 2**<sup>67</sup> were set up to provide financial support to event businesses, particularly those in the industry's supply chain, as they dealt with the ongoing impact of COVID-19. £13 million of funding was administered by VisitScotland on behalf of the Scottish Government. The process for delivering the funding was developed in consultation with the events sector, including the Event Industry Advisory Group, feedback from applicants and two online surveys of the event industry supply chain conducted by VisitScotland's Events Directorate.

The **Pivotal Events Businesses Fund**<sup>68</sup> provided grants from £25,000 up to a maximum of £150,000 to support event businesses whose primary role as organisers, suppliers, contractors and venues is critical to the survival of the events sector in Scotland, and upon whom the wider events industry and supply chain are most reliant for their own business and operations.

**Scotland's Events Recovery Fund**<sup>69</sup> (SERF) has been established to help Scotland's events sector plan and deliver events through to the end of 2021, and to provide support as the industry responds and adapts to the effects of COVID-19. This fund aims to help restart the events sector as restrictions are eased, and address additional costs which may be incurred as a result of new hygiene and health and safety requirements, allowing communities and the public to regain confidence in hosting and attending events.

Similar challenges were faced in the professional sport sector, with the three biggest spectator sports – football, racing and rugby – particularly affected. On 10 December 2020, a £55 million emergency sports funding package to tackle lost ticket revenue during the pandemic was announced by the Scottish Government. The funding comprises grants and

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<sup>67</sup> [COVID-19 Support Fund for Scottish Events Industry | VisitScotland.org](#)

<sup>68</sup> [Pivotal Event Businesses Fund - COVID-19 Financial Support | VisitScotland.org](#)

<sup>69</sup> [COVID-19 Recovery Fund for Scottish Events | VisitScotland.org](#)

low-interest loans, including £30 million for Scottish football at all levels of the game. Scottish Rugby benefit from £20 million, alongside £2 million for horse racing.

### **Objective and rationale for Government intervention**

In common with the wide range of other countries who have implemented similar measures, the objective of the restrictions set out within the Strategic Framework is to ensure that the operation of Stadia and Events settings is appropriate to the Level of COVID-19 risk, also taking into account the other restrictions in place. Any restrictions on operations are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Some of the activities that take place within the category of Events involve many of the high-risk criteria for COVID-19 transmission, as transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments or in crowded spaces over extended periods.<sup>70</sup> While stadia events are largely held in a broadly outdoor setting, there are transmission risks associated with access, movement in concourses and travel to and from the venue.

### **Transmission**

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.<sup>71</sup> The Scottish Government has set out further details about transmission and how this is considered in its 4 harms assessment.<sup>72</sup>

We know from contact tracing, international evidence and scientific research, that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and where no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters<sup>73,74</sup>.

The Government recognises that transmission of the virus within households presents the highest risk, which is why gatherings in private dwellings were targeted first and remain a key focus.

<sup>70</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#) <sup>56</sup> See further information in 'Current Status of Stadia and Events Sector' below.

<sup>71</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>72</sup> [Coronavirus \(COVID-19\): framework for decision making - assessing the four harms - gov.scot \(www.gov.scot\)](#)

<sup>73</sup> Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

<sup>74</sup> Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

However, other settings also have the potential to transmit the virus due to related risk factors. Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, has been and continues to be important in controlling the pandemic.

As is detailed in the 'Indoor and Outdoor Events' section below, events and stadia bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high risk factors associated with transmission of the virus<sup>75</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread from person to person. Events that involve standing may carry a greater risk due to difficulty maintaining distance and the possibility of mixing with a range of people, thus increasing the risk of transmission. We also know that events and stadia carry challenges around pinch points where people might gather (e.g. toilets, entrances and exits) which could increase the risk of transmission. Events that usually involve singing/shouting, are considered to have a higher risk of aerosol and droplet transmission. While it should be possible to have control of and mitigate many of the risks in the venue / site where the event is taking place, there is considered to be less control of risks when the venue and travel requirements are considered together.

There is little but some evidence of increased transmission risk from general outdoor activity<sup>76</sup>. To June 2020, 6% of cases on the London School of Hygiene and Tropical Medicine (LSHTM) database were associated with environments outdoors or with an outdoor element. Several papers do point to increased risk from outdoor activities where every-day social distancing breaks down. For example, the LSHTM database shows that outdoor settings linked to crowding are linked to relatively large clusters.

In May 2020 the USHER Institute carried out a review on outdoor transmission<sup>77</sup>, which is available here: The review found very little epidemiological evidence about outdoor transmission, although the quality of the evidence found was very low. Evidence from mechanistic studies (in laboratories) on the extent to which droplets and aerosol are dispersed found the ranges depend on temperature, humidity and environmental airflows, and this is true in both indoor and outdoor contexts. 5 Lab studies simulating outdoors suggest that infection could be transmitted by speech in the absence of coughing or sneezing.

A review by Canterbury Christ Church University in September 2020<sup>78</sup>, also found very few examples out outdoor transmission in everyday life. However, of relevance to the stadia and events sector, the review found:

- Risk increases when natural social distancing breached, gathering density, circulation and size increases, particularly for extended duration.
- Mass gatherings may also generate transmission from activities they prompt e.g. communal travel, congregation in bars.
- Outdoor transmission at mass gatherings had not been robustly tested.

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<sup>75</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

<sup>76</sup> [Rapid Scoping Review of Evidence of Outdoor Transmission of COVID-19 | medRxiv](#)

<sup>77</sup> [https://www.ed.ac.uk/files/atoms/files/uncover\\_002-03\\_summary\\_-\\_outdoor\\_transmission.pdf](https://www.ed.ac.uk/files/atoms/files/uncover_002-03_summary_-_outdoor_transmission.pdf).

<sup>78</sup> <https://www.canterbury.ac.uk/science-engineering-and-social-sciences/spear/docs/EXECUTIVE-SUMMARY-Outdoor-Transmission-of-COVID-19.pdf>



- Science concludes risk of infection is low outdoors if normal personal space and natural social distancing are not breached.
- Outdoor activities and events vary in size, density and circulation; and will not generate equal risks of transmission or need equal or same mitigations.

Some studies have examined the impact of stadia events and gatherings on transmission:

- [English football matches](#) in February and April 2020 were associated with around six additional COVID-19 cases per 100,000 people, two additional COVID-19 deaths per 100,000 people, and three additional excess deaths per 100,000 people into April 2020.
- [In Bergamo, Italy](#), cases went from zero before a Champions League match that fans travelled to in Spain, to 1,815 cases three weeks after the game, and 8,803 cases six weeks after the game. During March 2020, daily deaths in Bergamo were 568% higher than the average for the four years previous, compared to 187% higher in the wider Lombardy region.
- [In Germany](#), COVID-19 protests were linked to increased case rates in the regions that protestors travelled from.

Two studies have found that BLM protests in the USA were linked to greater [stay-at-home rates](#) and [reduced case rates](#). This is likely due to non-protesters shifted their activity in response to the perceived heightened risk of contagion and protest-related violence, and the distancing and mask-wearing observed during the protests.

- On the other hand, [a third study](#) found increased case rates in counties where protests were reported.
- Similarly, cases were found to increase 1.5-fold in US counties with [political rallies](#) after 2 weeks, compared to a 1.02-fold increase nationally.

Our vaccination programme is, of course, a game-changer in terms of combatting Covid-19 and reducing transmission rates. Vaccines are a critical part of suppressing the virus to the lowest possible level, both in order to save lives and also to allow us to gradually ease restrictions and return to a more normal life. The Scottish Government has set out further detail about the approach to vaccine rollout.<sup>79</sup> Rollout continues to see strong progress; as at 13 May 2020, 2,968,169 people have received the first dose of the Covid vaccination and 1,551,339 have received their second dose. Updates are published daily<sup>80</sup>. Balanced against this is the continued threat from new strains of the virus, and indeed this is reflected in the emergence of the new more transmissible B1.1.7 variant, which is now the dominant variant in Scotland. Furthermore, other new variants have been identified which pose new risks to Scotland (including around the potential for vaccine escape)<sup>81</sup>.

## Risk Factors

High-risk factors associated with transmission of the virus<sup>82</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Risks are further compounded by speaking loudly and the effects of alcohol consumption<sup>83</sup>. Another risk factor is when a 2m distance cannot be maintained, as evidence suggests that 1m distancing carries between 2 and 10 times the risk of 2m distancing<sup>84</sup>. Risks outdoors are lower, with

<sup>79</sup> [Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](#)

<sup>80</sup> [Coronavirus \(COVID-19\): daily data for Scotland - gov.scot \(www.gov.scot\)](#)

<sup>81</sup> [Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](#)

<sup>83</sup> [Collins A and Fitzgerald N \(2020\)](#)

<sup>83</sup> [Collins A and Fitzgerald N \(2020\)](#)

<sup>84</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

the risk of aerosol transmission considered to be very low outdoors due to high dilution of virus carrying aerosols and UV inactivation of the virus <sup>85</sup>.

Depending on the venue, issues of ventilation (with recirculation of air being particularly problematic), crowding (where it is hard to regulate the distance between people), and pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge. Fundamentally, venues which are attended by many people, typically from different households, specifically to meet for long periods of time, all amplify the risk of transmission. The risks in some venues may be exacerbated by some behaviours whether this be drinking alcohol (e.g. in nightclubs), which can cause people to lose their inhibitions, increase risk-taking and to make decisions they would usually not<sup>86</sup> or breathing heavily (e.g. due to exercising in gyms).<sup>87</sup> Many of the sectors covered in this document rely on people from many households coming together for prolonged periods (e.g. in events spaces, conference centres or stadia) and it is important to understand that the number of potential transmission events increase much more quickly than the number of people gathering.<sup>88</sup>

Each place an individual visits brings different risks depending on a range of factors, such as<sup>89</sup>:

- the mix and number of people present,
- the amount of time individuals are likely to spend there,
- the ability to maintain 2m distancing,
- the likelihood of pinch points where people might gather (e.g. toilets, entrances and exits),
- the standard and type of ventilation,
- the likelihood of people touching surfaces and goods, and
- the potential for significant aerosol projection activity.

Risk factors for different businesses in different sectors vary hugely and most will have a number of risk factors to consider. Some places are riskier due to touch points, some due to limited ventilation, some due to the mix and number of people coming and going, some due to pinch points at which people may gather. Others may cause people to speak more loudly, breathe heavily or cheer, potentially projecting aerosol particles further. Businesses which rely on close contact or on people from different households visiting or coming together are inherently at a high risk of spreading the virus.<sup>90,91</sup>

<sup>85</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>86</sup> <https://www.nhsinform.scot/healthy-living/alcohol/the-risks-of-drinking-too-much>

<sup>87</sup> SAGE papers 21 September 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925856/S0770\\_NPIs\\_table\\_pivot.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925856/S0770_NPIs_table_pivot.pdf) and

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925854/S0769\\_Summary\\_of\\_effectiveness\\_and\\_harms\\_of\\_NPIs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925854/S0769_Summary_of_effectiveness_and_harms_of_NPIs.pdf)

<sup>88</sup> SPI M paper 20 August 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf)

<sup>89</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

<sup>90</sup> SAGE papers 21 September 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925856/S0770\\_NPIs\\_table\\_pivot.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925856/S0770_NPIs_table_pivot.pdf) and

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925854/S0769\\_Summary\\_of\\_effectiveness\\_and\\_harms\\_of\\_NPIs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925854/S0769_Summary_of_effectiveness_and_harms_of_NPIs.pdf)

<sup>91</sup> SPI M paper 20 August 2020:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf)

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. The specific measures, as set out in the Regulations and guidance, reflect the assessment of risk factors associated with a particular activity. Each of the Protection Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary. It is worth noting that although we do take the transmission risk of settings into account, in order to prioritise re-opening settings and activities we take a broader view across all four harms in order to make judgements about the sequencing of any re-opening.

### Ventilation

It is important to prioritise ventilation, given the airborne nature of the virus and particular attention should be given to enclosed spaces where there may be multiple users (such as bathrooms). Ventilation will form a part of building managers or employers' risk assessment when considering the occupation of premises. This is particularly important when considering the increased transmissibility of new variants. Premises will have a variety of ventilation systems and it is imperative that employers identify the system that is in use and how this should function, including seeking expert input where appropriate. Such systems should be regularly cleaned and tested and be maintained in accordance with instruction manuals. Employers should seek to monitor the air quality of premises, perhaps through the use of Carbon Dioxide monitors, taking into account the occupancy, equipment and activities taking place within enclosed spaces. Risk Assessments should be revisited in light of new variants and public health guidance.

### Alcohol

It is well established that alcohol is a psychoactive substance which inhibits judgement. The WHO Global Strategy recognises that intoxication with alcohol is associated with high-risk behaviours<sup>92</sup> Alcohol intoxication is associated with a number of well-characterised changes in psychological function, including disinhibition and reduced consciousness<sup>93</sup>, as well as changes in mood and feelings of intoxication as well as impairments in psychomotor performance and cognitive processes such as memory, divided attention, and planning . It can cause people to lose their inhibitions, increase risk-taking and make decisions they would usually not.

In relation to the specific risk of transmission of COVID-19, the direct effects of alcohol impair consumers' ability to comply with transmission control measures in hospitality settings. Drinking even small amounts of alcohol affects people's decision-making and lowers inhibitions. It can change the way people think and feel, and influence how they act. It impairs hearing, meaning people have to lean in closer to hear or shout, which increases aerosolisation of the virus. It impairs vision, affecting the ability to judge distances. It lowers the immunity to infection. It is a diuretic, resulting in people needing to urinate more frequently. Separately and together, these effects will reduce the ability (and potentially willingness) of people to physically distance and comply with safety measures, creating an increased risk of virus transmission. All of these risks are thought to increase proportionately, the greater the amount of alcohol sold and consumed .

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[6888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6888/spi-m-o-statement-gatherings-s0704-sage-52-200819.pdf)

<sup>92</sup> <https://apps.who.int/iris/handle/10665/44395>

<sup>93</sup> [https://www.shaap.org.uk/images/shaap\\_developing\\_adolescents\\_brain\\_press.pdf](https://www.shaap.org.uk/images/shaap_developing_adolescents_brain_press.pdf)

Given this evidence that alcohol consumption alters your thoughts, judgement, decision-making and behaviour, advice from the World Health Organisation during the COVID-19 pandemic is to ‘stay sober so that you can remain vigilant, act quickly and make decisions with a clear head, for yourself and others in your family and community’. It adds that ‘if you drink, keep your drinking to a minimum and avoid getting intoxicated’.

It is important to note that alcohol is not served in all stadia and events – many venues and events do not have an alcohol license and many choose not to serve alcohol as it is not appropriate to the type of event taking place. However, we know that alcohol does form a part of the hospitality offering in many settings, so a consideration of this risk in relation to COVID-19 transmission must form part of any impact assessment.

### Indoor and Outdoor Events

Events bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>94</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

As noted previously, high-risk factors associated with transmission of the virus<sup>95</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Indoor events are therefore considered to carry a higher risk of transmission than outdoor events. Drive-in events are considered to carry a lower risk of transmission as the audience are in their cars for most of the time reducing scope for mixing between households, although it is still very important to mitigate the risk to the workforce and to consider risks if people get out of their vehicle, for example to go to the toilet.

<sup>94</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

<sup>95</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

Events where people are seated are generally considered to carry a lower risk of transmission as physical distancing between groups can be maintained relatively easily. Events that involve standing may carry a greater risk due to difficulty maintaining distance and the possibility of mixing with a range of people, thus increasing the risk of transmission.

For stadium events, the risk of spectators sitting outdoors facing in the same direction to watch events is likely to be relatively low, although there may be an increased risk with the likelihood of singing / shouting, which in turn could project aerosol particles further, and reduced physical distancing in the event of celebrations, where elated fans may jump around and move away from their designated seat.

There is also a risk associated with public transport travel to venue, which will naturally bring larger groups of people into closer proximity indoors. Additionally crowds of spectators accessing the venue through shared entrances creates potential pinch points there, at toilets and at concessions increasing the likelihood of more people coming into contact with the same surfaces.

#### Current position of Stadia and Events

Most of the sector has been completely closed since mid-March 2020, although drive-in events were able to resume on 22 July 2020 and outdoor seated and outdoor open space events from 24 August 2020 (with a limit of 200 people, which adversely affected commercial viability). Outdoor events were then once again restricted as part of temporary measures introduced in the central belt from 25 September 2020 and all events were completely closed again from 26 December 2020. This means that the majority of the sector has been unable to operate in any way for approximately 14 months.

We have seen no evidence of transmission from Test and Protect data relating to drive-in events or the limited outdoor events that were permitted to resume. However, it is not possible to tell this conclusively from the categories listed by Test and Protect. We have not received any concerns about transmission at drive-in or outdoor events from local authority environmental health officers.

Apart from three test events – which showed no evidence of transmission from Test and Protect data – and the return of limited numbers of spectators (300 per match) in Levels 0 and 1 from 2 November, there have been no spectators at stadia events since March 2020.

The Scottish Government has been working with event organisers to progress a small number of internationally significant flagship events outwith the levels, recognising their economic and social impact, and with a view to maintaining Scotland's reputation as a host of major events. UEFA EURO 2020 in Glasgow is one of the flagship events that has been considered as part of this process, with a decision taken, based on the event's importance to Scotland and confidence in the mitigation measures in place, to allow 12,000 fans to attend matches at Hampden.

Work continues with organisers, clinicians and VisitScotland on other flagship events that may seek an exemption to enable greater numbers of spectators/attendees than through the Protection Levels framework. The Scottish Government is also engaging with the UK Government to understand the scope of and emerging evidence from its Events Research

Programme<sup>96</sup>. The pilots have been running across a range of settings, venue types, and activity types. Once available (currently expected around end-May) evidence from this programme will help to inform future Scottish Government policy.

### Conclusion

The limitations on events and stadia are part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The Levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, the restrictions on the events sector increases. Similarly as the risk falls, restrictions will ease.

While we know that limiting social mixing as much as possible in all settings is the most effective measure against transmission of the virus, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside significant increases in mental health problems.

Given these factors, across all of the five Levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing in event settings.
- Enabling events to take place wherever possible in ways that enable businesses to remain viable and reduce the likelihood of redundancies.
- The important role that events play in maintaining health and wellbeing as well as the broader economic and social benefits.
- The risk of informal event activities taking place in less safe environments.
- The economic costs, including the impact on the supply chain.

### Consultation

#### **Public Consultation**

A public consultation has not been undertaken as our focus has been on working with stadia and events businesses/industry to plan for a phased return. We have, however, made efforts to keep abreast of public thinking on the return of spectators to events and stadia, for example through monitoring BBC Radio Scotland phone-ins on summer events (on 5 March), and on the right time for festivals and big outdoor events to go ahead (on 26 March). We also monitor views through correspondence from the public to the Scottish Government.

In November 2020 Creative Scotland undertook a second [COVID19 Population Survey](#)<sup>97</sup> (the first round of research having taken place in August 2020), looking at the attitudes of the general population in relation to cultural participation and attendance. We have used the findings outlined in the report to inform our thinking, including being mindful of findings that have read-across to the stadia and events sector, such as:

- 52% of those surveyed said they had missed attending cultural venues and events since COVID restrictions.

<sup>96</sup> [Information on the Events Research Programme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/creative-scotland-events-research-programme)

<sup>97</sup> [https://www.creativescotland.com/\\_data/assets/pdf\\_file/0003/86205/COVID19-Audience-Report-Wave-2-Summary.pdf](https://www.creativescotland.com/_data/assets/pdf_file/0003/86205/COVID19-Audience-Report-Wave-2-Summary.pdf)



- Desire to attend arts and cultural venues remains polarised; while some are keen to attend when they can, others are wary. Most people feel that they will take their time or are reluctant to return to arts venues. The main concerns of the public are the desire to avoid crowds and being able to maintain social distance.
- 46% would accept a reduction to 1 metre physical distancing in venues, but additional protections would be vital.
- Were we to return to the same conditions as before lockdown, 52% would expect to attend arts and cultural events to 'about the same level as before lockdown', 14% 'a little more than before lockdown' and 9% 'a lot more than before lockdown'.

## **Business**

We have engaged with stadia and events stakeholders throughout the pandemic, including with a view to the resumption of live events, supporting the sector and understanding the impact of restrictions on the sector.

Engagement has principally been through the independent Events Industry Advisory Group (EIAG) and the Event Producers Independent Committee (EPIC). EIAG comprises representatives from 20 organisations<sup>98</sup> from a range of organisations across the sector, including those involved with sporting, business and cultural events. Its membership covers supply chain businesses as well as event organisers, local authority event officials and venues. There are members representing rural and island event interests. Officials meet with EIAG every three weeks.

EIAG was established to represent the events and festivals sector amid the impact of the COVID-19 pandemic. These stakeholders have significant concerns about the impact of the restrictions on the events sector.

In December 2020 EIAG established a short life working group to develop a proposal for a route back to live events. Scottish Government officials and clinicians engaged with the working group, which concluded its work in February. The EIAG working group proposed a route back to 'Scotland the Perfect Stage' (our national events strategy) that included the following key recommendations:

- i) revaluation and increase of the numbers permitted at events within the Levels of the Strategic Framework.
- ii) reduction and eventual removal for physical distancing for this sector at the earliest opportunity.
- iii) an indicative timeframe for the likely movement of Local Authorities into each Level.
- iv) continued financial support to sustain the industry until attendance restrictions are removed.

EIAG and other stakeholders have emphasised the clear need for ongoing financial support, particularly given that ongoing physical distancing requirements will mean that a sizeable percentage of the sector cannot viably operate given the detrimental impact that restrictions will have on attendances and therefore income generated.

<sup>98</sup> Members of Events Industry Advisory Group are: Glasgow Life, DF Concerts, National Outdoor Events Association, Specialized Security, Festivals Edinburgh, Edinburgh International Festival, Royal Highland Show, Rare Management, R&A, Scottish Rugby, Dundee City Council, SEC, Black Light Ltd, Heb Celt Festival, Scottish Football Association, P&J Live, VisitScotland, Glasgow City Council, 21cc Group Ltd, Experience Scotland.

We also sought the views of COSLA and a number of Trade Unions with an interest in the events sector, including Bectu, which is the union for creative ambition, who represents over 40,000 staff, contract and freelance workers in the media and entertainment industries.

Engagement has been ongoing with the Scottish FA and Scottish Rugby, who both have expressed concerns about the ongoing restrictions and the severe impact on their income.

Industry engagement has helped inform the funding provided. The process for delivering the Events Industry Support Fund 1 and 2 was developed in consultation with the events sector, including the Event Industry Advisory Group, feedback from applicants and two online surveys of the event industry supply chain conducted by VisitScotland's Events Directorate.

Event organisers understand the need to take decisions on appropriate Levels using current information but have stressed that events require a lengthy planning period and significant investment. Throughout the pandemic they have sought as much certainty as possible in order to undertake planning. Unlike other sectors, postponement of an event may mean losing that organiser's entire income stream for the year.

This links to the footnote included as part of the Protection Levels framework in relation to stadia and events notes that "Higher capacities can be agreed through local authority/Scottish Government". A process for event organisers to make an application to a local authority to seek approval for an event to be organised above the standard capacity limits has been developed and will be implemented from 17 May.

In addition, the Scottish Government been working with event organisers to progress a small number of internationally significant flagship events outwith the levels. UEFA EURO 2020 in Glasgow is one of the flagship events that has been considered as part of this process, with a decision reached, based on the event's importance to Scotland and confidence in the mitigation measures in place, to allow up to 12,000 fans to attend matches at Hampden. We will continue to work with organisers, clinicians and VisitScotland on other flagship events that may seek an exemption to enable greater numbers of spectators/attendees than through the Protection Levels.

Below is a summary, by theme, of EIAG feedback on the Protection Levels table published on 13 April and the physical distance capacity in public settings guidance published on 26 April.

#### Evidence

Questions were posed regarding:

- The rationale for the Scottish Government not matching the frameworks, dates and levels of the UK Government if both governments are using similar data.
- Why the framework for outdoor events does not take account of evidence that the risk of transmission outdoors is negligible.
- What evidence the Scottish Government used to set the parameters in the framework.
- Why there are no plans for test events to gather data, when such events will take place in England.

#### Timescales

Questions were posed regarding:

- The review dates for the Levels and associated guidance.



- What happens after Level 0.
- The timescales for an application to hold an event.
- How quickly guidance could be issued and processes set up to consider applications, given that large events involve significant planning timescales.

#### Application process and legal basis

Questions were posed regarding:

- Whether there will be a formal application process to Councils.
- Who within a Council would issue permissions, noting that multiple layers of approval could result in delays, particularly as there may be a range of consultees in relation to some events.
- Whether there will be an arbitration or appeals process should agreement not be reached.
- The legal standing or defence attached to the granting of permission to stage an event.
- Organisations with multiple events can have multiple applications being considered at a given time.
- Details of the Scottish Government-led Working Group that will consider large events.
- Whether the approach may result in agencies without significant experience in the sector taking a risk averse approach and thereby denying approval.

#### Outdoor venues

Questions were posed regarding:

- Whether the physical distance based capacity calculation applies to outdoor settings and is based on the same distancing as indoors.
- What constitutes an 'outdoor venue', with a view to clarifying the position where there would be confusion – for example, regarding a marquee in a field.

#### Physical distancing

Questions were posed regarding:

- The rationale for 1m physical distancing in an indoor setting with stadia (for hospitality) but 2pm when outdoors in the stadia itself.
- The rationale for allowing settings that are essentially indoors (schools, hospitality, transport) to operate with measures that are perceived to be less restrictive than stadia/venues.

#### Calculations process

Main points of feedback received were:

- The holding capacity on a concourse, when accounting for physical distance, may severely limit the calculated capacity.
- Clear guidance is needed on exit capacities to enable venues to calculate capacity on that basis.
- There are perceived inconsistencies between the guidance on calculating physical distancing capacities and the Sports Ground Safety Association Guidance.

#### Mitigations and alternative approaches

Questions were posed regarding whether consideration was given to a range of mitigations and alternative approaches, including:

- Use of a COVID certificate indicating vaccination status, test status or recent COVID status
- Contact tracing technology that automatically tracks and records each spectator's significant contacts



## **Options**

This section sets out the range of options that have been considered, and we continue to work constructively with the sector to explore and assess alternatives.

### **Across Levels 0 to 2 there are a number of mitigating actions required including:**

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of facemasks where physical distancing is difficult and where there is a risk of contact within two metres of people who are not members of your household, including legal requirements to wear these in some settings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing.
- Fixed entry and exit points and staggering entry and exit times to prevent bottlenecks arising as people arrive or leave
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to the standard limit in the levels. Event organisers may, through application to a local authority, seek approval to hold an event above the standard capacity limits. Further details about this are set out separately.
- Using sectoral events and stadia guidance in conjunction with business and physical distancing guidance, travel guidance (as people travel to and from events) and any other relevant guidance (for example that for performing arts)

## **Sectors and groups affected**

### **The Regulations will affect:**

- Premises which are designed for the purpose of organised gatherings or activities of limited duration that bring people together for the primary purpose of watching or participating in a community, cultural, commemorative, recreational, sporting, art, educational, entertainment, or business experience. This does not include weddings or other family / social gatherings or minor sporting events and competitions being organised where there are no spectators permitted.
- The organisers of such gatherings which span numerous types of events and activities, including, but not limited to: plays, comedy shows, music concerts, opera and other live music, sporting events, business conferences and dinners.
- Businesses that provide goods and services to the events and stadia sectors, including, but not limited to:  
performers, event technicians across all trades, food and drink wholesalers and food service providers, staging and equipment hire, security, logistics, media, cleaning and maintenance.
- Local Authorities who, in addition to organising events themselves, have responsibilities for licensing and

- enforcement through their Environmental Health Officers.
- Customers of the events sector.
  - Businesses providing services to customers for the events sector, including but not limited to: hospitality, accommodation and travel providers.

**The key measures that will affect the events and stadia sector are set out in the following table:**

<b>Level 0 (Baseline)</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>
Standard capacity limits* Indoors: 400 Outdoors seated: 2,000 Outdoors free-standing: 1,000	Standard capacity limits* Indoors: 200 Outdoors seated: 1,000 Outdoors free-standing: 500	Standard capacity limits* Indoors: 100 Outdoors seated: 500 Outdoors free-standing: 250	Closed with the exception of drive in events	Closed

\* Higher capacities can be agreed through local authority/Scottish Government

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 puts in place a process through which event organisers may, through application to a local authority, seek approval to hold an event above the standard capacity limits. Further details about this are set out separately.<sup>100</sup>

Guidance on travel<sup>101</sup> also has a significant impact on events, which often rely on people travelling locally, nationally or internationally.

### **Our approach to assessing options**

Within this BRIA, we have compared the package of measures within each Level against the baseline approach of Level 0. This has allowed us to present the clinical evidence for intervention at each Level setting out the health benefits, whilst acknowledging the potential impacts on the live events and stadia sectors. We have also set out some other key options considered at each Level. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

The Scottish Government's objective is to get all parts of the country to Level 0 and remain there if we can. At Level 0 we would expect to see low incidence of the virus with isolated clusters and low community transmission. Broadly, this Level is the closest we can get to normality prior to a move to Phase 4 of the Route Map and then back to normality. The Baseline and Level 1 are designed to be sustainable for longer periods.

In assessing the relevant options for each Level we considered current and previous restrictions, international best-

<sup>100</sup> [Coronavirus \(COVID-19\) stadia and live events guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-live-events/pages/1-introduction-and-what-we-are-trying-to-achieve.aspx)

<sup>101</sup> [Coronavirus \(COVID-19\): guidance on travel and transport - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-travel-guidance/pages/1-introduction-and-what-we-are-trying-to-achieve.aspx)

practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

### **OPTIONS FOR 'BASELINE' / LEVEL 0**

Compared to the previous Protection Levels framework considered for the Stadia and Events BRIA in November 2020, the update published on 13 April 2021 set out changes to the Baseline/Level 0, as follows:

#### November 2020:

- Indoors seated and ambulatory permitted (restricted numbers)
- Indoor grouped standing not permitted
- Outdoors events permitted (restricted numbers)
- Stadia open with restricted numbers

#### April 2021:

- Indoors – 400 attendees
- Outdoor seated – 2000 attendees
- Outdoors free standing – 1000 attendees
- Possibility to apply to local authority to exceed these limits.

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters and low community transmission.

#### Option 1: Baseline

In the Baseline position, outdoor and indoor events, including events in stadia, are permitted with restricted numbers (as set out above), while maintaining physical distancing. These numbers have been provided to give clarity and consistency for events and stadia. Guidance will be published to assist with calculating a physical distance based capacity limit in public settings, including for events.

The capacity numbers for Level 0 will affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that some events still contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

In Level 0, where there is very low incidence of the virus, mitigating measures and continued restrictions on the numbers of people and households permitted to mix will still be in place. These mitigating measures support suppression of the virus at Level 0.

The numbers reflect the balance of factors outlined in the conclusion of the section on the rationale for Government intervention:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing in event settings.
- Enabling events to take place wherever possible in ways that enable businesses to remain viable and reduce the likelihood of redundancies.
- The important role that events play in maintaining health and wellbeing and the wider social and economic benefits.

- The risk of informal event activities taking place in less safe environments.
- The economic costs, including the impact on the supply chain.

There could be expected to be continued strong progress of the rollout of the vaccine to reach this Level, but this could be balanced to some extent by the need for caution around strains with high levels of transmissibility.

The approach taken in this option is for a standard capacity limit for a particular type of venue (such as 400 maximum indoors) as this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table is available separately<sup>102</sup>.

The numbers permitted at this Level for events indoors and outdoors are based on an understanding of the latest clinical evidence, including vaccine rollout, variants and prevalence rates. As referred to previously, a balance has been sought between the need to continue focusing on virus suppression and a desire to reopen the sector as far as possible.

*Option 2: Tailored approach based on physical distancing only to determine capacity*

This approach would share many of the overall outcomes for option 1 above, however the model would be different. Rather than a numbers caps for a type of venue, this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, with a potential option for Environmental Health Officers to sample check on risk-assessed basis to ensure that guidance is being appropriately followed.

*Option 3: Open up all sectors of Scottish economy including all segments of events and stadia with 2m physical distancing in place and no additional restrictions on numbers.*

This option would allow the highest amount of activity of the options in level 0 for events and stadia, although the 2m physical distancing requirement would continue to have an impact on the viability of some events and stadia. Under this option the full range of indoor and outdoor events would be permitted, recognising the low virus transmission rate in this level. However, when combined with opening of other sectors of the economy, it was considered that this option would provide too much scope for social interaction between households resulting in too high a risk of transmission and making it unlikely that the virus could be kept under suppression.

*Option 4: Utilising mass testing and / or covid certification to open events and stadia up to larger numbers*

There has been ongoing consideration as to whether mass testing would enable events and stadia to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

<sup>102</sup> [Coronavirus \(COVID-19\) stadia and live events guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/covid-19-guidance/stadia-and-live-events/pages/102.aspx)

Mass testing at events was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include: location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>103</sup> <sup>104</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for events and stadia.

## **Conclusion**

In considering the evidence around options for Level 0, Scottish Ministers weighed up the need to limit social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention (including the impact on the Article 8 rights of individuals and the Article 1, Protocol 1 rights of businesses and suppliers) .

They concluded that at Baseline / Level 0, restrictions on numbers permitted at events and stadia could both reduce interactions and have a potential impact on the R rate. Such measures remain necessary given the emergence of the new more transmissible B1.1.7 variant, which is now the dominant variant in Scotland.

Consideration was given to the option of utilising mass testing or covid-19 certification to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile, Option 3 was considered too high risk in relation to encouraging gatherings and social interaction in spaces where it is difficult to maintain physical distancing, when combined with opening of all other sectors of the economy at the same time. The economic harms, while considerable for those unable to operate due to number restrictions, were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers at events throughout the whole sector and therefore increasing the risk of social interactions was of greater concern. Financial support

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<sup>103</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>104</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)

available for the events sector from March 2020 to date is summarised under the conclusion for level 4 options.

It was therefore determined that, in line with clinical advice, events and stadia would be permitted to operate at Level 0 with restricted numbers, but with a process put in place to apply to a local authority to permit higher numbers which would then allow an assessment of the specific risks for that event. As regards the approach taken, Option 1 (standard limits per type of venue but with option to apply for higher numbers) was seen to have benefits over Option 2 (limit based only on physical distancing and venue capacity), as this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits.

### **OPTIONS FOR LEVEL 1**

Compared to the previous Protection Levels framework considered for the Stadia and Events BRIA in November 2020, the update published on 13 April set out changes at Level 1, as follows:

#### November 2020:

- Small seated indoor events permitted (100 people)
- Outdoors seated and open space permitted (restricted numbers – 200 people)
- Outdoor grouped standing not permitted
- Stadia open with restricted numbers (300 people)

#### April 2021:

- Indoors – 200 attendees
- Outdoors seated – 1000 attendees
- Outdoors free standing – 500 attendees
- Possibility to apply to local authority to exceed these limits.

Level 1 is designed to be sustainable for longer periods. Within this Level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

#### *Option 1: Maintain baseline*

This option would mean outdoor and indoor events, including events in stadia, are permitted with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that some events still contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the standard capacity and numbers restrictions within venues, impacting on their Article 1, Protocol 1 rights.

In Level 0, where there is very low incidence of the virus, mitigating measures and continued restrictions on the numbers of people and households permitted to mix will still be in place. These mitigating measures support suppression of the virus at Level 0.



However, in Level 1, there would be slightly higher rates of virus prevalence and community transmission is starting to increase. Therefore there are greater public health risks associated with doing nothing further to restrict opportunities for household mixing and social gathering while attending events and stadia.

The opportunity for virus transmission would therefore be higher than in Level 0 and more of a concern, since even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that event venues continue to be relatively high-risk settings due to the gathering of large groups of people, the likelihood of social interaction, the difficulty in physically distancing people entering and exiting events venues and the concurrent risk of transmission from gathering of customers using public transport to access and egress venues. Events bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>105</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

Given the increased risk at Level 1, doing nothing and maintaining the baseline measures would not meet the public health objectives.

#### Option 2: Numbers further restricted compared to Baseline / Level 0

This option was considered to enable all venue types and services to operate, but with restricted numbers compared to Level 0, thus reducing the likelihood that there would be any impact on the current low incidence of the virus and low community transmission, from these events. It would also represent a sensible phased transition from Level 2 to Level 1, and in turn from Level 1 to Level 0, which would allow clinicians to track accurately how increasing the numbers at events and stadia would affect transmission Levels (which is currently untested outside of three pilot events), while also providing a gradual pathway for businesses back to operating live events with mitigations in place.

Mitigations we would expect to be in place are:

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of facemasks where physical distancing is difficult and where there is a risk of contact within two metres of people who are not members of your household, including legal requirements to wear these in some settings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing. Examples include plays, comedy shows, opera and other live music, acts of worship, and sporting events with allocated outdoor seated areas
- Fixed entry and exit points and staggering entry and exit times to prevent bottlenecks arising as people arrive or leave
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to a number cap

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<sup>105</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

- Using sectoral events and stadia guidance in conjunction with business and physical distancing guidance and new travel guidance.

It was considered that the economic harms of restricting numbers in Level 1 for some businesses would be comparable to those in all other Levels, including Levels 3 and 4, since for larger event operators restrictions on numbers to such a low level would mean they are not financially viable to operate and therefore are rendered effectively closed. Financial support available for the events sector from March 2020 to date is summarised under the conclusion for level 4 options.

*Option 3: Tailored approach based on physical distancing only to determine capacity*

As was the case for Level 0, a tailored approach to capacity setting was considered. Rather than numbers caps for a type of venue/event (eg, outdoor free standing), this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, with a potential option for Environmental Health Officers to sample check on risk-assessed basis to ensure that guidance is being appropriately followed.

*Option 4: Utilising mass testing and / or covid certification to open events and stadia up to larger numbers*

There has been ongoing consideration as to whether mass testing or covid-19 certification would enable events and stadia to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

Mass testing at events was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>106</sup> <sup>107</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open

<sup>106</sup><sup>106</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>107</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)

space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for events and stadia.

## **Conclusion**

In considering the evidence around options for Level 1, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention (including the impact on the Article 8 rights of individuals and the Article 1, Protocol 1 rights of businesses and suppliers). They concluded that at Level 1, tighter restrictions on numbers permitted at events and stadia to those permitted at Level 0/Baseline could both reduce interactions and have a potential impact on the R rate. To ensure a proportionate and a tailored approach, a process has been put in place to apply to a local authority to permit higher numbers which would then allow an assessment of the specific risks for that event.<sup>108</sup>

Consideration was given to the option of utilising mass testing to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile the Baseline option was considered too high risk in relation to encouraging gatherings and social interaction. The economic harms were acknowledged, however the risk of increasing virus prevalence by permitting higher numbers at events and therefore increasing the risk of social interactions was of greater concern.

It was therefore determined that, in line with clinical advice, events and stadia would be permitted to operate at Level 1 with restricted numbers compared to Level 0.

As was the case for Level 0, an approach of setting limits for a particular type of venue rather than for each venue based on capacity and physical distancing. Again, the rationale was that this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table will be provided. In addition, this option is the most straightforward way to limit attendance in comparison to the baseline of Level 0.

## **Options for Level 2 and 3**

Within Levels 2 and 3, as defined in the Strategic Framework, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods and only for as long as required to get the virus down to a low, sustainable Level.

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<sup>108</sup> [Coronavirus \(COVID-19\) stadia and live events guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-events-and-venues/pages/108.aspx)

For stadia and events there is a clear difference between measures in Levels 2 and 3 which are detailed in the following options.

## - **OPTIONS FOR LEVEL 2**

Compared to the previous Protection Levels framework considered for the Stadia and Events BRIA in November 2020, the update published on 13 April set out changes at Level 2, as follows:

### November 2020:

- Drive-in events permitted
- Events generally not permitted
- Stadia closed to spectators

### April 2021:

- Indoors – 100 attendees
- Outdoors seated – 500 attendees
- Outdoors free standing – 250 attendees

- Possibility to apply to local authority to exceed these limits.

### Option 1: Maintain baseline

This option would mean outdoor and indoor events, including events in stadia, are permitted with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that some events still contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

In Level 2, there would be increasing community transmission and multiple clusters. Therefore there are greater public health risks of doing nothing to restrict opportunities for household mixing and social gathering through events and stadia.

The opportunity for virus transmission would be relatively high, however, since even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that events and stadium venues continue to be high-risk settings due to the gathering of large groups of people, the likelihood of social interaction, the difficulty in physically distancing people entering and exiting events venues and the concurrent risk of transmission from gatherings of customers using public transport to access and egress venues. Events bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>109</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

<sup>109</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

Given the increased risk at Level 2, doing nothing and maintaining the baseline measures would not meet the public health objectives.

Option 2: Numbers further restricted compared to Levels 0 and 1

This option was considered to enable all venue types and services to operate, but with more restricted standard limits on numbers than in Level 0 and 1, thus reducing the likelihood that there would be any impact on the incidence of the virus and community transmission, from these events. It would also represent a sensible phased transition from Level 2 to Level 1, and in turn from Level 1 to Level 0, which would allow clinicians to track accurately how increasing the numbers at events and stadia would affect transmission Levels (which is currently untested outside of three pilot events), while also providing a gradual pathway for businesses back to operating live events with mitigations in place.

Mitigations we would expect to be in place are:

- Enhanced hygiene measures, for example sanitiser and hand-washing facilities should be easily available at key points, including on entry and exit points
- Wearing of facemasks where physical distancing is difficult and where there is a risk of contact within two metres of people who are not members of your household, which is a legal requirement in some settings
- Use of screens to create a physical barrier between people, for example at pay points
- Allocated seating or marked areas on the ground, which households must sit in for the duration of the event to ensure physical distancing. Examples include plays, comedy shows, opera and other live music, acts of worship, and sporting events with allocated outdoor seated areas
- Fixed entry and exit points and staggering entry and exit times to prevent bottlenecks arising as people arrive or leave
- Capacities calculated based on physical distancing to allow 2 metres physical distancing at all times up to a number cap
- Using sectoral events and stadia guidance in conjunction with business and physical distancing guidance and new travel guidance.

It was considered that the economic harms of restricting numbers in Level 2 for many businesses would be comparable to those in all other Levels, including Levels 3 and 4, since for larger event operators, restrictions on numbers to such a low level would mean they are not financially viable to operate and therefore are rendered effectively closed.

Option 3: Tailored approach based on physical distancing only to determine capacity limits

As was the case for Levels 0 and 1, a tailored approach to capacity setting was considered. Rather than numbers caps for a type of venue/event (eg, outdoor free standing), this approach would be based on the capacity of each venue, taking account of physical distancing requirements. The approach could apply across all settings, events and activities where people come together.

Venues would be supported to self-assess their capacity, with a potential option for Environmental Health Officers to sample check on risk-assessed basis to ensure that guidance is being appropriately followed.

Option 4: Utilising mass testing and / or covid certification to open events and stadia up to larger numbers

There has been ongoing consideration as to whether mass testing or covid-19 certification would enable events and stadia to operate at any Level with higher numbers due to the removal or reduction of the need for physical distancing.

Mass testing at events was proposed by some stakeholders and the potential for mass testing was also identified in the media as being considered in other countries, such as Singapore, as a route to reopen the event sector. The consideration of using mass testing in Scotland has been discussed with SG clinicians and also with UK Government counterparts as an option to deliver optimum venue capacity over a phased period.

While it presents a potentially positive option in the future to allow operability and counter the economic impact of closures, clinicians are yet to be convinced of the merits of this approach. There are also logistical and practical challenges that would not be likely to be resolved on a scale and within a reasonable time period to allow mass testing to proceed in line with the Strategic Framework. Practical concerns include location of testing; efficacy of test; lag between test and event; logistical issues of space; and need to link to testing in all other sectors i.e. workplace, education.

This option will continue to be kept under review as further evidence emerges. To consider this a viable option in the future we would expect further positive developments in testing capability and capacity of rapid testing to a level of efficacy that clinicians were content with. The Scottish Government is monitoring progress of the UK Government's Events Research Programme<sup>110 111</sup> which includes use of lateral flow tests and removal of physical distancing at pilot events. This covers a range of different settings of event including indoors and outdoors in venues such as stadia, other seated venues and open space venues. We will seek to use the outputs of this research to inform further development of COVID-19 policy for events and stadia.

## **Conclusion**

In considering the evidence around options for Level 2, Scottish Ministers weighed up the need to reduce social interaction, clinical evidence regarding the spread of infection, and the social and economic harms of intervention (including the impact on the Article 8 rights of individuals and the Article 1, Protocol 1 rights of businesses and suppliers) . They concluded that at Level 2, tighter restrictions on numbers permitted at events and stadia to those permitted at Level 0/Baseline and Level 1 could both reduce interactions and have a potential impact on the R rate. To ensure a proportionate and a tailored approach, even at this level where the virus is more prevalent, a process has been put in place to apply to a local authority to permit higher numbers which would then allow an assessment of the specific risks for that event.

Consideration was given to the option of utilising mass testing to permit higher numbers, but there was not a strong enough rationale or indication of testing capacity or capability at this stage to support this option currently. Additionally, the logistical and practical challenges presented by this option are significant.

Meanwhile the Baseline option was considered too high risk in relation to encouraging gatherings and social interaction. The economic harms were acknowledged, however the

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<sup>110</sup> [Government announces pilot events to pave way for larger audiences at sport, theatre and gigs this summer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-announces-pilot-events-to-pave-way-for-larger-audiences-at-sport-theatre-and-gigs-this-summer)

<sup>111</sup> [Event Research Programme - ministerial directions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/event-research-programme-ministerial-directions)

risk of increasing virus prevalence by permitting higher numbers at events and therefore increasing the risk of social interactions was of greater concern.

It was therefore determined that, in line with clinical advice, events and stadia would be permitted to operate at Level 2 with restricted numbers compared to Levels 0 and 1.

As was the case for Levels 0 and 1, an approach of setting limits for a particular type of venue rather than for each venue based on capacity and physical distancing. Again, the rationale was that this is the approach with the lowest risk of direct health harm and a way of providing consistency, but with scope for higher numbers to be agreed with the local authority or Scottish Government where individual assessment permits. Further detail on the process to agree higher numbers than those in the levels table will be provided. In addition, this option is the most straightforward way to limit attendance in comparison to the baseline of Level 0.

At Levels 0-2, exemptions are possible to agree higher capacities with the Scottish Government/local authorities.

### **OPTIONS FOR LEVEL 3**

Compared to the previous Protection Levels framework considered for the Stadia and Events BRIA in November 2020, the update published on 13 April contained one change at Level 3: with drive in events able to proceed, whereas previously they were only permitted at Level 2. Otherwise, events and stadia remain closed at Level 3.

Under Level 3, there would be increasing community transmission and multiple clusters. For example, more than 150 cases per 100,000 population<sup>112</sup>. There are therefore greater public health costs of not restricting social interaction within a high-risk setting as the virus would continue and accelerate its spread, ultimately resulting in direct harms to health.

#### *Option 1: Maintain baseline*

This option would mean outdoor and indoor events, including events in stadia, are permitted with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that some events still contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

<sup>112</sup> Decisions regarding which Level applies to each local authority will be informed by 5 key indicators: Numbers of new cases per 100,000 people, test positivity rate, future number of cases per 100,000 people, number of people likely to need acute hospital care in future weeks, number of people likely to need intensive care in future weeks. Further information on these indicators can be found at: <https://www.gov.scot/publications/coronavirus-covid-19-allocation-of-Levels-to-local-authorities/>



In Level 2, there would be increasing community transmission and multiple clusters. Therefore there are greater public health risks of doing nothing to restrict opportunities for household mixing and social gathering through events and stadia.

The opportunity for virus transmission would be very high, however, since even taking into account the extensive mitigations that businesses would put in place, the clinical evidence demonstrates that events and stadium venues continue to be high-risk settings due to the gathering of large groups of people, the likelihood of social interaction, the difficulty in physically distancing people entering and exiting events venues and the concurrent risk of transmission from gatherings of customers using public transport to access and egress venues. Events bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high-risk factors associated with transmission of the virus<sup>113</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person.

Given the increased risk at Level 2, doing nothing and maintaining the baseline measures would not meet the public health objectives.

#### *Option 2: Closure of all events*

This option would mean that no events would be permitted, and stadia closed in all Level 3 local authorities.

Evidence from the lockdown periods in 2020 and 2021 shows that the immediate closure of businesses led to a reduction in income and immediate cash flow and viability challenges for many sectors of the economy. Closure would exacerbate cash flow problems for events and stadia businesses and potentially threaten viability of businesses, putting jobs at risk and leading to higher unemployment. Contact with customers would be lost, which could impact on the longer term viability of the business. There stadia and events sector has been clear that a prolonged period of closure in 2021 would mean that many core event businesses and supply chain businesses will not be able to continue trading and will therefore be unable to support the resumption of the sector.

Closure would also have a negative impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and loneliness as people lose access to event and stadia settings to socialise.

However, closure of all event and stadia settings within a Level 3 area would have the most significant positive impact on transmission rates and spread of the virus. It would virtually eliminate opportunities for people to meet in event areas which are characterised by many of the high-risk factors associated with transmission of the virus identified by scientific evidence and modelling.

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<sup>113</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)



### Option 3: Closure of all events other than drive-in events

This option would mean that events and stadia were no longer permitted to operate indoors or outdoors, but that drive-in events would still be able to operate.

When this option was considered in November it was deemed that drive-in events still had the congregating factor of large numbers travelling to a single destination for a prolonged period of time, which would increase the likelihood of transmission through the use of shared services such as toilets and catering. While these factors must continue to be accounted for, the positive progress made in vaccine rollout and virus suppression, along with the confidence that organisers could deliver these events safely and with appropriate mitigations, supports the change outlined on 13 April.

### **Conclusion**

As the policy intention at Level 3 remains focused on limiting the opportunity for people to gather and mix, there is little doubt that the closure of both indoor and outdoor events has a mitigating effect on reducing virus transmission at this Level. Adopting the baseline approach at relatively high levels of transmission is clearly not a viable option.

Option 2 is seen as the most impactful in stopping virus transmission in high risk settings such as events and stadia, although the economic harms of closure in Option 2 would be substantial.

Option 3 is considered most appropriate, with progress and evidence in relation to prevalence rates, vaccine rollout and mitigations to manage risk factors supporting the opening of drive in events. This fits with the views of stakeholders, in particular EIAG, who put forward the case that drive in events could take place safely at Level 3 and therefore recommended this change be made.

## **OPTIONS FOR LEVEL 4**

Compared to the previous Protection Levels framework, the update published on 13 April contained no change at Level 4: as before, stadia and events would be closed.

Level 4 measures would be designed to be in place for as short a period as deemed necessary, to provide an agile response to quickly suppress the virus.

Within this Level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this Level would see the introduction of measures close to a return to full lockdown. Measures introduced in Level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education, and avoid the overwhelming of the NHS.

### **Option 1: Maintain baseline**

This option would mean outdoor and indoor events, including events in stadia, are permitted with restricted numbers as per the Baseline / Level 0 position, while maintaining physical distancing.

This would affect all types of events venues and services, allowing many to resume and therefore having a positive impact on their revenue generation, employment of staff, and on supply chain businesses. However, we know that some events still contend that these numbers are too low for them to operate viably as customer numbers will be limited by physical distancing requirements and the capacity and numbers restrictions within venues.

The workforce may be affected by higher levels of sick workers due to high rates of COVID-19, or larger numbers of staff self-isolating for 10 days. Beyond the risk-reduction benefits achieved from the mitigating actions there would be no further public health benefits.

Under Level 4, we would expect to see very high or rapidly increasing incidence. The Baseline option of allowing indoor and outdoor events to be permitted at restricted levels would not deliver the policy objectives of ensuring that restrictions on operations help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS. With the Baseline permitting indoor and outdoor events operating with restricted numbers, it would enable the circumstances under which evidence show transmission is high<sup>114</sup> There are therefore greater public health costs of not restricting social interaction within a high risk setting such as events and stadia.

### **Option 2: Closure of all events**

This option would mean that no events would be permitted, and stadia closed in all Level 4 local authorities.

Evidence from the lockdown periods in 2020 and 2021 shows that the immediate closure of businesses led to a reduction in income and immediate cash flow and viability challenges for many sectors of the economy. Closure would exacerbate cash flow

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<sup>114</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/892043/S0484\\_Transmission\\_of\\_SARS-CoV-2\\_and\\_Mitigating\\_Measures.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892043/S0484_Transmission_of_SARS-CoV-2_and_Mitigating_Measures.pdf)

problems for events and stadia businesses and potentially threaten viability of businesses, putting jobs at risk and leading to higher unemployment. Contact with customers would be lost, which could impact on the longer term viability of the business. There stadia and events sector has been clear that a prolonged period of closure in 2021 would mean that many core event businesses and supply chain businesses will not be able to continue trading and will therefore be unable to support the resumption of the sector.

Closure would also have a negative impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and loneliness as people lose access to event and stadia settings to socialise.

However, closure of all event and stadia settings within a Level 4 area would have the most significant positive impact on transmission rates and spread of the virus. It would virtually eliminate opportunities for people to meet in event areas which are characterised by many of the high-risk factors associated with transmission of the virus identified by scientific evidence and modelling.

### Conclusion

As the policy intention behind changes to events and stadia operation is about reducing the opportunity for people to gather and mix, there is little doubt that the closure of both indoor and outdoor events would have an immediate mitigating effect on reducing virus transmission at Level 4, where there is a very high rate of virus transmission. Adopting the Baseline approach at high Levels of transmission is clearly not a viable option and while the economic harms of closure in Option 2 would be substantial, Option 2 is seen as the most impactful in stopping virus transmission at Level 4 in high-risk settings such as events and stadia. Despite the extremely positive impact the full closure option will have on the spread of the virus – as evidenced by the lockdown implemented in March – given the wider socio and economic negative impacts Level 4 would only be implemented where it is necessary to bring high transmission rates of the virus under control, and even then only for the necessary period of time. This recognises the impact on the Article 8 rights of individuals and the Article 1, Protocol 1 rights of businesses and suppliers. The Scottish Government recognises the impact of restrictions on events businesses since March 2020. Scottish Government support for business since the start of the pandemic totals more than £3 billion. This includes £31.5 million allocated for the events sector in 2020-21. In total £31.5 million of funding has been allocated solely for businesses working in the events sector, many of whom will also have been able to access funding through other channels. This support was used for the following schemes:

- **Events Industry Support Fund 1<sup>115</sup> + 2<sup>116</sup>** were set up to provide financial support to event businesses, particularly those in the industry's supply chain, as they dealt with the ongoing impact of COVID-19. £13 million of funding was administered by VisitScotland on behalf of the Scottish Government. The process for delivering the funding was developed in consultation with the events sector, including the Event Industry Advisory Group, feedback from applicants and two online surveys of the event industry supply chain conducted by VisitScotland's Events Directorate.
- **The Pivotal Events Businesses Fund<sup>117</sup>** provided grants from £25,000 up to a maximum of £150,000 to support event businesses whose primary role as organisers, suppliers, contractors and venues is critical to the survival of the events sector in Scotland, and upon whom the wider events industry and supply chain are most reliant for their own business and operations.
- **Scotland's Events Recovery Fund<sup>118</sup>** which was established to help Scotland's events sector plan and deliver events through to the end of 2021, and to provide support as the industry responds and adapts to the effects of COVID-19. This fund aims to help restart the events sector as restrictions are eased, and address additional costs which may be incurred as a result of new hygiene and health and

<sup>115</sup> [events-industry-support-fund---final-guidelines---240820.pdf \(visitscotland.org\)](#)

<sup>116</sup> [Events Industry Support Fund 2 - Guidance \(visitscotland.org\)](#)

<sup>117</sup> [Pivotal Event Businesses Fund - COVID-19 Financial Support | VisitScotland.org](#)

<sup>118</sup> [COVID-19 Recovery Fund for Scottish Events | VisitScotland.org](#)

safety requirements, allowing communities and the public to regain confidence in hosting and attending events.

Many events businesses and freelancers should also have been able to access support through the UK Government's Coronavirus Job Retention Scheme and Self-Employment Income Support Scheme (both extended until end September 2021).

### **Scottish Firms Impact Test:**

The Scottish Government engaged with representatives of the Scottish events sector, as set out within the consultation section of this BRIA.

#### **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

The ONS Standardised Industrial Classifications (SIC) does not provide a category or division for the events sector. A list of SICs has been compiled by the Scottish Government which may plausibly be judged to constitute the sector, based on a description of these activities. Note that a number of the SIC codes selected for analysis as part of the events sector overlap with existing Growth Sectors including Tourism; Finance and Business Services; and, Creative Industries. For this reason it is challenging to assess what proportion of business are registered in Scotland, however we know via the events industry in Scotland (as defined above) comprised 3,830 businesses (IDBR, 2020) and 4,634 individual units (SABS, 2018). It contributed approximately £978 million GVA to the Scottish economy in 2018 (SABS, 2018). In 2019 it employed approximately 57,000 part-time and full time employees as well as approximately 6,300 self-employed workers (APS, 2019). Around 25% of business units in the Events Industry are concentrated in Glasgow and Edinburgh (SABS, 2018).

Across the rest of the UK restrictions have been in place for the events sector for most of 2020 and in to 2021. Some are similar to those in the Strategic Framework but are for varying time periods. Restrictions in Scotland commenced earlier than in other parts of the UK and if restrictions in Scotland are tighter and longer lasting then this could impact on the competitiveness of the sector relative to the rest of the UK. There is a perception that

England in particular is ahead of Scotland in terms of timing of and information about the resumption of events. For example, from 17 May, in England the following are permitted:

- Indoor events (max 1,000 or 50%)
- Outdoor seated events (max 10,000 or 25%)
- Outdoor other events (max 4,000 or 50%)

These numbers are all in excess of numbers permitted in Scotland in level 0 (Standard capacity limits: Indoors: 400, Outdoors seated: 2,000 Outdoors free-standing: 1,000).

Stakeholders have already reported that some events have moved to England. There is concern among stakeholders that this could have longer-term consequences, with some doubt as to whether we could encourage lost events in 2021 back to Scotland.

Likewise if restrictions in Scotland are tighter than in Europe or the rest of the world, then this could impact competitiveness.

With restrictions across Europe, business events and conferences is a key sector within which activity is likely to be curtailed until the rate of the virus is significantly reduced. Prior to the pandemic, latest industry figures showed that:

- 447 association events were hosted in Scotland in 2018/19 (VisitScotland Annual Scottish Association Survey 2019).
- Delegates attending these events in 2018/19 spent 425,600 delegate days in the country and contributed £217m to the Scottish economy. Of the UK delegates attending these events 95% state that they will re-visit Scotland while 87% of international delegates say that they will return for a holiday.
- These figures relate purely to association business, which makes up, in the case of the EICC, approximately 50% of the venue's business, the remainder being made up of corporate, festival and stand-alone banqueting events.
- VisitScotland has estimated that In 2019 the event sector more widely delivered £6bn of direct spend in Scotland, accounting for approximately half of the country's total visitor spend.

Some countries were still permitting the operation of business events (for example Germany) while our business events sector was largely closed. Therefore it is conceivable that international business events trade, particularly large conferences, may elect to move to other countries that are operating without restrictions, potentially inhibiting growth and expansion of the sector in Scotland.

We will continue to engage with colleagues in England, Wales and NI to monitor activity and explore opportunities for shared learning.

## Operation, including of events, in rest of UK

### England<sup>119</sup>

- The Department for Digital, Culture, Media and Sport (DCMS) published 'Coronavirus (COVID-19): Organised events guidance for local authorities' on 6 April 2021 <sup>120</sup>
- As part of the UKG's Events Research Programme, the F.A. Cup Semi-Finals and Final at Wembley stadium are pilot events, as was the World Snooker Championships at the Crucible theatre in Sheffield. The pilots will not be just sporting events and are supplemented via DCMS's partnership with Liverpool City Council ('Project Encore') to ensure the events cover a range of settings.
- From 17<sup>th</sup> May – indoor hospitality opens up along with entertainment venues (all venues) – restrictions on larger venues for performances or sporting events – indoor 1000 people max or 50% cap/outdoor 4000 max or 50% cap; largest venues – football stadiums – up to 10,000 max or 25% cap – so e.g. Wembley approx. 10,000 people. Easing limit on social contact; multiple households can mix; most social contact rules will be lifted; indoor household mixing will be allowed.
- No earlier than 21<sup>st</sup> June – all limits removed; reopen final closed sectors – in particular nightclubs; lift restrictions on large events and performances and at this point decide if all limits can be removed (decision on festivals to be made in advance of this step)

### Wales<sup>121</sup>

From 13 March:-

- Cinemas, theatres and concert halls - Performances may be broadcast without an audience, whether over the internet or as part of a radio or television broadcast.
- Venues for conferences and business events - These may be opened if requested or authorised by a local authority or the Welsh Ministers. Individual businesses cannot apply for an exception to continue trading
- As set out in the revised Coronavirus Control Plan<sup>122</sup>, a small number of outdoor pilot events of between 200 and 1,000 people are also being planned.

From 12 April:-

- travel restrictions within the UK and Common Travel Area lifted
- wedding venues will be able to let prospective clients view their premises by appointment only

From 26 April - If public health conditions permit, the following relaxations can go ahead:

- organised outdoor activities will be permitted for up to 30 people
- outdoor wedding receptions will be permitted for up to 30 people
- outdoor visitor attractions can open

### N.Ireland<sup>123</sup>

From 23<sup>rd</sup> April

- Competitive outdoor sports can resume with a limited number of 100 participants and no spectators.

<sup>119</sup> <https://www.gov.uk/government/speeches/pm-statement-to-the-house-of-commons-on-roadmap-for-easing-lockdown-restrictions-in-england-22-february-2021>

<sup>120</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-organised-events-guidance-for-local-authorities/coronavirus-covid-19-organised-events-guidance-for-local-authorities>

<sup>121</sup> <https://gov.wales/business-closures-alert-level-4>

<sup>122</sup> <https://gov.wales/sites/default/files/publications/2021-03/coronavirus-control-plan-revised-alert-levels-in-wales-march-2021.pdf>

<sup>123</sup> <https://www.visitbritain.org/covid-19-new-coronavirus-latest-information-and-advice-businesses-1>

- Outdoor attractions may reopen including drive-in cinemas and performances, attendees will only be permitted to share a vehicle with their household or bubble.

No earlier than 17 May

- Sectors which will be reopening include some large events, including conferences, theatre and concert performances and sports events.
- Controlled indoor events of up to 1,000 people or 50% of a venue's capacity, whichever is lower, will be permitted, as will outdoor events with a capacity of either 50% or 4,000 people, whichever is lower. There will still be social distancing and other interventions for events.

#### • How many businesses and what sectors is it likely to impact on?

Clearly, the higher the Protection Level in place, the greater the restrictions on stadia and events and the more widespread the impact. This is particularly the case at Level 4, where no activity would be possible, and Level 3, where only drive in events would be permitted. But even at Levels 0, 1 and 2 the number restrictions in place will impact on stadia and events able to accommodate larger capacities were restrictions not in place.

The Events Industry in Scotland as defined above comprised 3,830 businesses (IDBR, 2020) and 4,634 individual units (SABS, 2018). Around 25% of business units in the Events Industry are concentrated in Glasgow and Edinburgh (SABS, 2018).

Small businesses form the majority part of the sector. Figures from the Inter Departmental Business Register indicate that in 2020, 96% of businesses in the Events Sector had fewer than 50 employees, 3% had between 50 and 249 employees and 1% had more than 250 employees. Similarly, 50% had a turnover of between £100,00 and £499,000 and 8% had a turnover in excess of £1 million (IDBR, 2020).

Survey data indicates 1,250 employees and 250 self-employed workers in companies under the three SIC code definitions. Employment is concentrated in Glasgow and Edinburgh with 450 and 350 of those in employment across the three activities located in each city respectively (BRES, 2019).

The ONS Standardised Industrial Classifications (SIC) does not provide a category or division for the events sector. A list of SICs has been compiled by the Scottish Government which may plausibly be judged to constitute the sector, based on a description of these activities. Note that a number of the SIC codes selected for analysis as part of the events sector overlap with existing Growth Sectors including Tourism; Finance and Business Services; and, Creative Industries. The activities identified as part of the core events sector are those in which it is assumed that a large proportion of their output can be attributed to the staging of events. However, the supply chains for events as well as businesses providing services directly to event audiences and participants extend beyond those identified by SIC code. This wider range of activities include not only food, accommodation and transportation services but also a diverse range of businesses in supply chains.

Following on from Event Industry Forums that were conducted by EventScotland throughout April and May 2020, the fragility of the events supply chain was identified as one of the key shared concerns across the sector and this remains the case. In response to this, VisitScotland Events Directorate asked businesses working closely with the events sector to complete an online survey (live from 16-22 June 2020) which requested feedback



on the impact of COVID-19 on their business. The survey generated 315 responses from a wide range of businesses and organisations.

The survey underlined the breadth of organisations involved in the events supply chain with event organisers, production services and AV & technology companies providing the largest representation. The vast majority (96%) of respondents were from a micro or small sized businesses and most relied significantly on the support of freelancers, 69% of respondents were self-employed, either as a sole trader or via a Ltd Company, and 89% indicated that their head office is based in Scotland. Many of the suppliers provided specialist skills that, once lost, would not be easy to replace.

Over-arching summary findings highlighted:

- 57% of respondents were 100% reliant on the events sector for their business turnover, a further 26% were 61-

99% reliant.

- 27% had lost over a quarter of a million pounds in revenue to date, with 11% of those losing over £1m. Average revenue loss was almost £650k.

- 43% of respondents stated that they could remain trading between 1 and 6 months, and 25% were unsure of how long they can remain in business. 4% had already ceased trading.

- 21% had not been eligible or had been unable to access any support funding.

- 55% of respondents had staff furloughed. 93% of those that had accessed the furlough scheme indicated that extending it beyond October 2020 would have a helpful/essential impact on their ability to operate.

- 69% of respondents were self-employed, either as a sole trader or via a Ltd Company.

- There was a significant reliance on freelance staff, particularly amongst small and micro businesses (the majority of respondents).

- The vast majority (96%) of respondents were from micro or small sized businesses. 44% had 2 or fewer FTE staff.

- 9% had already made or foresaw making redundancies with 16% expecting to make redundancies before October 2020.

- 44% of respondents stated that their income will not exceed expenditure until physical distancing restrictions are lifted.

- 34% had been able to diversify their product or client base, into areas including digital events and COVID19 protection measures.

In addition, verbatim feedback also emphasised a range of over-arching challenges including: concerns around the loss of skilled workforce and how this would impact on the future of the sector; mass gathering and physical distancing bringing financial challenges; seasonality and the dependency for many businesses on summer and outdoor event seasons; and the need for a clearly defined restart plan for the events sector.

While there are fewer restrictions on the sector as a result of the April 13 Local Protection Levels framework publication, on the basis of the data gathered during the earlier period of lockdown restrictions it is clear that the supply chain will continue to be adversely affected by ongoing restrictions, that there could be a particular impact on self-employed and freelance staff, and that a large proportion of the sector are small and micro businesses for whom the cost of additional mitigations to operate may be prohibitive.

• **What is the likely cost or benefit to business?**

**Costs to events businesses**

The measures set out in the Protection Levels framework are likely to have costs for stadia and events businesses at all Levels. The most significant costs would be incurred at Levels 3 and 4 where all stadia and events are required to close, other than drive ins at Level 3. Closing events to spectators would result in a significant amount of revenue foregone and would threaten the financial viability of businesses in the sector and associated jobs.

Where events are permitted at Level 0, 1 and, businesses will incur the costs of compliance with additional health and safety and other measures aimed to mitigate the transmission of the virus, including additional training hours for staff, although Scotland's Events Recovery Fund (SERF) will provide financial support to many businesses meet these costs. Additionally, where larger venues are only able to operate with reduced numbers, there may be costs to adapt their venue to smaller numbers to ensure viability and also costs that cannot be offset with revenue through the opening of a large venue for smaller numbers (e.g. heating costs, security staff).

The nature of the Strategic Framework and that local authorities can move up or down levels may also mean that events that have been planned to be permitted in a Level 0, 1 or 2 area, could be cancelled at short notice should the Level change before the event takes place. Cancellation or postponement could mean the loss of revenue, potential loss of perishable stock and the possibility that some event costs will still require to be covered to suppliers. Events stakeholders have reported difficulties in obtaining cancellation insurance due to the uncertainty caused by COVID-19 and so, currently, event organisers are exposed to all losses associated with cancellation.

Some of the costs to businesses will, however, be partially off-set by the business support schemes put in place by the Scottish Government and the UK Government.

The business conferences and events sector has been hard hit by the restrictions having been unable to operate or unable to operate with the primary method of operation – in person attendance at events – since the lockdown in March 2020 and a lack of confidence and uncertainty in when events will be able to safely recommence has meant that forward bookings for conferences and events have been postponed or cancelled. There has also been a shift to holding events online – however this has proven difficult to monetise and may not involve the use of conference centres (i.e. it is run on electronic platforms without involvement of conference centres or other events businesses).

We understand a hybrid or online events have not substantially offset losses the sector has experienced from being able to run in person conferences and trade fairs. Some conference centres have managed to let parts of their venues for other purposes (such as healthcare or education), helping to offset some losses from traditional business as well as providing a public benefit. Current reductions in business may have longer-term consequences in a constrained financial environment, so that even in a stable situation where rates of the virus are reduced and spread is curtailed, business event numbers may not return to the same level.

As conference and exhibition centres were instructed to close, they qualified for business grant support from the Scottish Government (depending on rateable value), as well as Coronavirus Job Retention Scheme support from the UK Government.

### **Competition Assessment**

Restrictions potentially make it harder for new businesses to enter the market and to compete.

- **Will the measure limit suppliers' incentives to compete vigorously?**

It is not anticipated that the measures for events and stadia in the Protection Levels framework will impact on suppliers' incentives to compete vigorously.

- **Will the measure limit the choices and information available to consumers?**

There is a likelihood that the events and stadia measures in the Protection Levels framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

### **Consumer Assessment:**

The following sets out the Scottish Government's view on the impact of the stadia and events sector measures within the Protection Levels framework on consumers.

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

The restrictions will limit consumer choice in terms of social and entertainment activity but are necessary for protecting public health. This impact will be less in Levels 0, 1 and 2 compared to other Levels as spectators/attendees are permitted, in greater numbers the lower the Level. However, as there are restrictions on numbers and increased costs to events businesses of implementing COVID-19 safety measures, it is likely that at least some of these costs will be passed on to consumers through increased ticket prices. Travel guidance could influence availability of goods in the events sector, through the inability of many to leave their local authority (although at the time of writing travel restrictions across Scotland are due to be lifted).

As the event sector has been almost entirely closed for a considerable period of time and as restrictions must remain in place, key suppliers or venues are increasingly likely to be lost. This may limit events once the sector is permitted to restart at any scale.

Limited numbers of spectators attending stadia events – particularly for leading clubs and fixtures – means that if they wish to view matches they must do so by paying for an online service.

- **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

- **Does the policy involve storage or increased use of consumer data?**

No, unless restrictions on in-person events lead to an increase in online events, especially where this is paid for. We have no evidence on this at present.

- **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the updated Protection Levels framework. However, the limits on events, in particular at Levels 3 and 4 but even at Levels 0, 1 and 2, may mean that some unscrupulous businesses are prepared to organise illegal events – although the fact that numbers permitted for stadia and events in the updated Protection Levels framework are greater than previously should make this less likely. It is likely that safety measures to reduce transmission at illegal events would be nowhere near as stringent as at events organised by experienced operators with oversight from local authorities and health protection staff.

**Test run of business forms:**

No new forms are required as a result of this policy. The process to consider applications for higher numbers for events will use existing local authority processes where possible.

**Digital Impact Test:**

These restrictions will not affect online events. Such events have increased as a result of the coronavirus pandemic but it is not necessarily easy for event organisers to monetise them to replace income generated from in person events.

There is a limited opportunity for spectators to attend stadia events – particularly for leading clubs and fixtures – meaning they must pay to view fixtures online.

**Legal Aid Impact Test:**

N/A

**Enforcement, sanctions and monitoring**

Regulations have been put in place to support the implementation of the measures. Further details are contained in guidance, including events sector guidance, performing arts guidance and guidance on calculating physical distancing capacities. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.



## **Options Appraisal**

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table outlines the benefits and costs, in comparison to the Baseline/Level 0 option, of:

- Restrictions on outdoor and stadia events, especially restricted numbers (in Levels 1 and 2)
- Events not permitted at Levels 3 or 4 (except drive-in events at Level 3)

More detailed discussion of each of the Levels and the options that have been considered by Scottish Ministers within Levels is contained within the main body of this document.

### ***Option 1: Baseline / Level 0***

The Baseline / Level 0 would mean that events and stadia were able to operate with restricted numbers, though with the highest numbers allowed for any of the Levels given the low virus rates at Level 0. While the continuing restrictions at this Level would impact on financial margins, there would be a positive impact on revenue generation, employment of staff, and on supply-side businesses.

The nature of most events (particularly those in an indoor setting) present some level of exposure to the high-risk factors associated with transmission of the virus, although as the vaccine rollout progresses and evidence is gathered indicating that vaccines positively impact on transmission rates this risk is likely to reduce. As at 13 May 2020, 2,968,169 people had received the first dose of the Covid vaccination and 1,551,339 had received their second dose.

However, there are transmission and other risk factors associated with stadia and events, which bring a risk of increased community transmission and an ongoing need for restrictions at this time.

Higher rates of infection may ultimately impact negatively on the events sector as consumer confidence could be affected through anxiety about social interaction, particularly in indoor venues.

### ***Option 2: Protection Levels Framework***

<b>Measure</b>	<b>Benefits</b>	<b>Costs</b>
In relation to Baseline / Level 0, further restrictions on numbers attending outdoor and stadia events – in Levels 1 and 2	Restrictions reduce opportunities for virus transmission.  Numbers are such that it can be hoped that the majority of events that could proceed at Level 0 could also proceed at Levels 1 and 2.	Further restrictions on numbers will make it unviable for some stadia and events to proceed at Levels 1 and 2 and, for those that do proceed, this will result in revenue foregone, potentially to a significant extent. Reduced revenue and turnover for events businesses will increase the risk of closure and job losses.
Events not permitted at Levels 3 and 4, other than drive in events at Level 3	Restrictions reduce opportunities for virus transmission.	The mandated closure of the stadia and events sector would affect sectoral businesses, their employees, customers and wider supply chains.  Closing for any further significant length of time could lead to significant viability issues and result in business closures and redundancies. It could lead to a loss of competitiveness and damage Scotland's future reputation as a successful host of international events on the world stage.

## **Conclusion**

**This BRIA has set out the relative costs and benefits for stadia and events of options relating to the Protection Levels framework published on 13 April, balancing the strategic imperative of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.**

Although the direction of travel remains positive, in large part because of the vaccine rollout, we recognise the significant challenges facing the stadia and events sector as a result of the ongoing restrictions, in terms of numbers caps and physical distancing. The Scottish Government is therefore committed to continuing to engage with and support the stadia and events sector, including through guidance and financial support.

## Capacity Limits Exceptions for Stadia and Events

**Title of Legislation:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021 (“the No.23 Amendment Regulations”)

### **Purpose and intended effect:**

Scotland’s Strategic Framework outlines the strategic intent of the Scottish Government to suppress the virus to the lowest possible level and keep it there. The Framework (updated February 2021) takes account of important developments, including new and highly infectious strains of the virus and progress with the vaccination roll-out. The Framework explains how we will use all of the tools we have available to get coronavirus to the lowest possible level and keep it there, including the revised local protection levels.

This BRIA is focused on the introduction of standard capacity limits for stadia and live events, with the option to exceed those capacity limits if granted approval by a local authority (or in exceptional cases, the Scottish Government). However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

The Strategic Framework<sup>125</sup> includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The attendance limits as detailed in the Protection Levels table are below:

Level 0	Level 1	Level 2	Level 3	Level 4
Maximum capacities* Indoors: 400 Outdoors seated: 2,000 Outdoors free-standing: 1,000	Maximum capacities* Indoors: 200 Outdoors seated: 1,000 Outdoors free-standing: 500	Maximum capacities* Indoors: 100 Outdoors seated: 500 Outdoors free-standing: 250	Closed with the exception of drive-in events	Closed

The measures relating to stadia and live events were designed to limit large gatherings of people in one place where physical distancing would be difficult and where an event could give rise to a ‘super-spreader’ event. Built into the local levels regulations is the ability for event planners to apply for exceptions to the maximum capacities, where appropriate, and this is the focus of this BRIA.

The live event industry, including sports, music and other performing arts has been particularly affected by the restrictions in place under the Framework and there has been, effectively, no operation of a live event industry in Scotland since March 2020. Unlike some other sectors, stadia and live events were unable to operate in levels 3 and 4 of the Protection Levels and will continue to operate at significantly

<sup>125</sup> <https://www.gov.scot/publications/covid-19-scotland-strategic-framework/>



reduced capacity as a result of physical distancing limitations though with the intention of increasing capacities gradually in concert with the reduction in protection levels.

### **Background:**

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 first regulations”), to implement physical distancing requirements and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 12) Regulations 2020, which came into force on 14 August 2020, permitted outdoor theatres to open. The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 came into force on 14 September 2020 and revoked and replaced the first regulations. They made provision which is substantially similar to the first regulations, including permitting outdoor theatres to be open (while requiring that indoor theatres and concert halls remained closed). On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 (“the additional temporary restrictions”) set out additional restrictions, both nationally and specific to the central belt.

Those regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 while the additional temporary restriction regulations were in force. The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 implemented the the new Strategic Framework came into effect on 2 November. On 26<sup>th</sup> December all local authority areas in mainland Scotland were moved into Level 4 under that Framework, and any live events venues which had been able to open to the public were once again required to close.

From 17<sup>th</sup> May 2021, when the No. 23 Amendment Regulations come into force, stadia and live events venues, such as theatres, concert halls, comedy clubs, will be permitted to open to the public. Provided that their venue capacity allows, they may open to audiences up to attendance limits corresponding to the level which their area is in,. If, however, an event organiser or venue operator seeks to organise an event for number in excess of the aforementioned limits, the No. 23 Amendment Regulations require that an application is made to their local authority, seeking approval to organise such an event.

**Title of proposal:** Live events – higher capacity limits application process

**Purpose and intended effect:**

### **Introduction**

Scotland’s events and entertainment industries are diverse consisting of a range of small medium and large businesses many of which can also provide services for other sectors such as cultural, community, sporting and business activities. The sector plays an important role in Scotland’s culture covering a multitude of areas of interest from live sport and music to theatre and local festivals.

This BRIA should be read in conjunction with associated documents for the Stadia and Live Events sector and the Performing Arts Sector which provide further detail on the economic and other impact of the Framework restrictions.

Live events can create particular issues in terms of meeting public health concerns given the increased risks associated with people gathering in larger numbers, and the pressures placed on associated infrastructure such as transport or local hospitality.

In order to facilitate the restarting of live events, it was considered appropriate to provide a framework for local authorities to allow, in a limited way, events to take place where the numbers would exceed the maximum capacities but not beyond the level of physical distancing based capacity.

**Objective:**

In common with the wide range of other countries who have implemented similar measures, the objective of the restrictions – the capacity limits - set out within the Strategic Framework is to ensure that the operation of stadia and live events is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Restrictions on gatherings of people in large numbers are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

The Scottish Government recognises the negative impact that COVID-19 restrictions are having on the stadia and events sector in Scotland. The events sector was one of the first to go into lockdown on 15 March 2020 and will be one of the last to fully resume – the exception process is designed to assist with the safe and measured restart of the live events industry.

Significant international events were postponed, such as EURO 2020 which was due to be co-hosted in Glasgow in June/July 2020 and which will now take place in June/July 2021. The bulk of Scotland's 2020 events programme was cancelled or rescheduled. While some of this activity has been or is expected to be rescheduled into 2021, annual events lost their revenue for 2020 and some will again do so in 2021. Some events have not been or will not be able to reschedule as there are only a certain number of dates available at venues to host events and there were already events scheduled for 2021. Some activity has moved to broadcast only or online, however, thus far online activity has proved difficult to monetise.

The 2020 UK Events Report reported direct spend of £70 billion in the events sector in the UK in 2019. VisitScotland has estimated 9% of the UK total can be attributed to Scotland, representing £6 billion of direct spend to the Scottish economy and also accounting for approximately half of the country's total visitor spend. Given the severe limitations on the sector, there have significant losses to the sector and the Scottish economy across 2020 and 2021 so far.

While top-flight football and rugby has generally been able to continue behind closed doors, spectators have not been admitted in any significant numbers, apart from three pilot events and limited numbers (300 spectators per match) from 2 November 2020 for local authority areas with Level 0 and Level 1 restrictions. Football and rugby in Scotland is particularly dependent on spectators – for example, 43 per cent of revenue in the SPFL comes from gate receipts compared to the European average of 15 per cent. Therefore, a lack of supporters has a particularly negative impact. At the end of 2020, the Scottish FA and SPFL estimated a loss of around £70 million which was predicted to rise to £100 million by the end of the 2020-21 football season. While there is not a comprehensive picture of redundancies across clubs, many clubs have made announcements publicly regarding staff redundancies and in November 2020 the Scottish FA made 18 staff redundant. Scottish Rugby has estimated losses of £18 million up to March 2021.

A wide range of activity has been affected by COVID-19 including business events, sporting events and cultural events. The industry has had almost no income apart from that provided through UK

Government and Scottish Government support schemes, and if this continues more businesses will cease to exist. Although figures are not available separately for the events sector, provisional figures from a snapshot as at 28th February 2021 show that Arts, entertainment and recreation is the sector with the third highest number of employments furloughed across Scotland with 29,130, or 8.0% of all employments furloughed in Scotland, behind the Accommodation and food services and Wholesale and retail sectors. This reflects the higher share of businesses in those sectors that are not currently trading or operating below full capacity (Source ONS BICS data).

Performing arts venues and organisations make a large proportion of their income from ticket and associated sales, which largely ceased in March. Additionally, many were required to issue refunds for cancelled performances. Emergency funds have been put in place to support the sector and its freelancers and many organisations are using the Coronavirus Job Retention Scheme. However, redundancies have been made by a number of venues. With physical distancing and additional capacity restrictions in place, performing arts venues can open at levels 0 - 2, although it may not be economically viable for many venues to do so. There are still significant risks in planning future performances or tours with the possibility of closure if a local authority is moved to a higher level or a further lockdown is introduced or without some prospect for the reduction/removal of physical distancing.

There is a long lead in time to plan and prepare for most events. As such, fluctuating levels of restrictions are particularly difficult for events as organisers have little certainty about whether their event will actually be able to take place, resulting in them carrying significant risk. Parts of the sector have indicated that even when they are permitted to resume, as will be possible at Levels 2, 1 and 0, some events will not be commercially viable while physical distancing and attendance caps are in place. An ongoing review of physical distancing will assess whether there is any scope to alter the physical distancing requirements while still mitigating the risk of transmission in various settings. The First Minister will make an announcement on the outcome of the physical distancing review in the coming weeks.

This approvals process provides a framework for local authorities to allow, in a limited way, events to take at higher numbers (in excess of the standard capacity limits) with some additional scrutiny and consideration of the risks of coronavirus transmission at larger events.

### International Approach

Most countries around the world, and those in the UK, put in place some form of restrictions around attendance at events.

Wales guidance –there is no limit but all businesses must set and display the maximum capacity for the premises and put in place measures for communicating and managing the maximum capacity set.

### UK guidance –

All events recommencing at Step 3 (as of 17<sup>th</sup> May 2021) will be subject to the following capacity caps:  
1,000 people or 50% of a venue's capacity, whichever is lower at indoor events  
4,000 people or 50% of a site or venue's capacity, whichever is lower at outdoor events

The UK government has also made a special provision for large, outdoor seated venues where crowds can be safely distributed around the venue, allowing up to 10,000 people or 25% of total seated capacity, whichever is lower. This provision can be used by venues with a seated capacity of 16,000 or above.

Their guidance for safe use of multi-purpose facilities also states that “*individual businesses or venues should consider the cumulative impact of many venues re-opening in a small area. This means working with local authorities, neighbouring businesses and travel operators to assess this risk and applying additional mitigations. Steps could include: Further lowering capacity - even if it is possible to safely seat a number of people inside a venue, it may not be safe for them all to travel or enter that venue.*”<sup>126</sup>

The capacity of your business must be reviewed prior to reopening and at all times when your business is operational. Overall capacity will depend on the size of the floor space within the pub where customers will be seated.

Their guidance also states that “*with appropriate mitigations in place, by Step 4, the government aims to remove all legal limits on social contact and enable all events above the Step 3 capacity restrictions to go ahead. This will be strictly subject to the government review of the latest available data on the impact of the previous step against four tests and the outcome of the scientific Events Research Programme, potentially using testing to reduce the risk of infection, subject to further evaluation*”<sup>127</sup>. The UK government is hoping to move England to Step 4 from 21<sup>st</sup> June 2021.

New Zealand has numerical caps depending on alert level. For example, in Level 2 (of 4) no more than 100 people are permitted at social gatherings, including weddings, birthdays, funerals and tangihanga and bars and night clubs can open at Alert Level 2, with 100 people per defined space. Religious buildings can open at Alert Level 2: up to 100 people can gather in each defined space for religious ceremonies, events and services.

Israel, Singapore and South Korea all have national restrictions in place. All events are allowed, but with strict requirements:

- Israel: Event halls and gardens are limited to 50% occupancy and 300 people. Cultural and sporting events and conferences are limited to 500 people (closed space) and 750 (open areas). Stadiums with over 10,000 seats, are limited to 1,000 (enclosed spaces) and 1,500 (open areas). Hotel dining rooms are limited to 50% occupancy and 300 people.
- Singapore: No event has a greater capacity than 250 attendees. Theatres are limited to 100, cinemas, 150, religious services, sports events and business conferences, all 250. Government approval is needed for most events of 250 people. Penalties including fines and closures of businesses.
- South Korea: Sporting events capped at 10% capacity, weddings and funerals limited to 100 attendees, theatre attendees must be seated one seat apart. Masks are compulsory at all events. Fines in place for non-compliance.

Japan has national guidelines but restrictions vary by province. National guidelines vary by a province's state of emergency and whether events involve cheering and shouting. Caps on spectator numbers at events, typically 50% of capacity. Gatherings over 1,000 people / where mixing may occur must request permission from local authorities. Compliance very high despite no penalties.

Approaches in the USA and Australia vary by state and can also vary by city. In Australia restrictions are based on a state's position in Australia Covid roadmap and the level of community transmission.

<sup>126</sup> [COVID-19: Guidance for the safe use of multi-purpose community facilities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities)

<sup>127</sup> [Coronavirus \(COVID-19\): Organised events guidance for local authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/coronavirus-covid-19-organised-events-guidance-for-local-authorities)

In the USA, weddings and sporting events have been prioritised by most states. Even states with high case rates are allowing some mass events e.g. NY state allows weddings with up to 150 attendees. Outdoor capacity limits are commonly larger than indoor limits. Enforcement varies from state to state.

In Australia some cities have tighter restrictions than the states they are in e.g. Greater Sydney area has tighter restrictions than the rest of New South Wales. These are due to be relaxed on 29 March. Numbers are subject to short notice change and often exclude 'controlled outdoor events'. Outdoor gatherings generally have higher attendee limits. In Sydney (NSW), Victoria and Canberra (ACT) they are limited to 50, 100 and 1,000 people, respectively. Several exemptions commonly apply, allowing for events to take place. In Sydney, weddings and funerals are limited to 300 attendees and community sports to 3,000, and in Canberra (stage 4 of the roadmap) events with 10,000 can be held if exemptions are granted.

### **Rationale for Government intervention:**

The capacity limits were introduced for stadia and live events in order to facilitate additional risk mitigation and scrutiny to sectors which are known to carry additional risk factors.<sup>128</sup> This includes potentially large groups of people arriving or congregating at a premises at a set time; pinch points such as exits and entrances, and large numbers of people potentially using facilities at set times such as intervals, or at the end of a live event.

It is recognised that the expertise for decision making lies with local authorities and as such, the capacity exception process is designed to overlay and utilise the structures and processes already in place for local authorities. However, given the requirement to manage public health risk more widely, a call in power is necessary to satisfy the responsibilities of government, and allow for a degree of oversight in respect of certain higher risk events.

Evidence and analysis cannot pinpoint number limits for events. What the analysis can point towards is more people, and particularly more households, mixing therefore presenting higher transmission risk with outdoors being safer than indoors, and intoxication increasing risk due to likely reduced compliance with mitigations. This helps to explain why such limits vary from country to country. Lower limits on capacities present lower risks of transmission, but must be balanced against the mitigations which can be put in place

The precise numbers to use for standard limits on events remain a matter of judgement and it is important that the capacities identified in the protection levels table may be **adjusted upwards or downwards**, both now and in the future. Indeed, they should be kept under review to ensure proportionality in response to further developments in the pandemic. The higher the cap, the higher the number of larger events that could proceed without the need for formal approval on numbers, so long as they met wider necessary conditions. The lower the cap, the greater the number of proposed events that would need to be considered by an approval process thereby placing a greater burden on the public authorities involved in the decision making.

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.<sup>129</sup> The Scottish

<sup>128</sup> [SPI-M-O: Consensus statement on events and gatherings, 19 August 2020 \(publishing.service.gov.uk\)](#)

<sup>129</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

Government has set out further details about transmission and how this is considered in its 4 harms assessment.<sup>130</sup>

We know from contact tracing, international evidence and scientific research, that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and where no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters<sup>131,132</sup>.

High-risk factors associated with transmission of the virus<sup>133</sup> include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Risks are further compounded by speaking loudly and the effects of alcohol consumption<sup>134</sup>. Another risk factor is when a 2m distance cannot be maintained, as evidence suggests that 1m distancing carries between 2 and 10 times the risk of 2m distancing<sup>135</sup>. Risks outdoors are lower, with the risk of aerosol transmission considered to be very low outdoors due to high dilution of virus carrying aerosols and UV inactivation of the virus<sup>136</sup>. For this reason, the capacity limits have been set at higher levels for outdoor events than for those taking place indoors. The differentiation between seated and standing is designed to take in account the fundamental difference in passive vs active movement. It is easier to maintain physical distancing, and take into account the requirement to stay 2m apart, when someone is sitting rather than standing in an undefined space.

Depending on the venue, issues of ventilation (with recirculation of air being particularly problematic), crowding (where it is hard to regulate the distance between people), and pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge. Fundamentally, venues which are attended by many people, typically from different households, specifically to meet for long periods of time, all amplify the risk of transmission. The risks in some venues may be exacerbated by some behaviours –

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<sup>130</sup> [Coronavirus \(COVID-19\): framework for decision making - assessing the four harms - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/healthandcare/coronavirus/assessing-the-four-harms)

<sup>131</sup> Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

<sup>132</sup> Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

<sup>133</sup> [COVID-19: NOTE BY THE CHIEF MEDICAL OFFICER, CHIEF NURSING OFFICER AND NATIONAL CLINICAL DIRECTOR 7<sup>th</sup> October 2020](#)

<sup>134</sup> [Collins A and Fitzgerald N \(2020\)](#)

<sup>135</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

<sup>136</sup> [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

whether this be drinking alcohol (e.g. in nightclubs), which can cause people to lose their inhibitions, increase risk-taking and to make decisions they would usually not<sup>65</sup> or breathing heavily (e.g. due to exercising in gyms)<sup>66</sup>. Many of the sectors covered in this document rely on people from many households coming together for prolonged periods (e.g. in events spaces, conference centres or stadia) and it is important to understand that the number of potential transmission events increase much more quickly than the number of people gathering<sup>67</sup>.

Each place an individual visits brings different risks depending on a range of factors, such as<sup>68</sup>:

- the mix and number of people present,
- the amount of time individuals are likely to spend there,
- the ability to maintain 2m distancing,
- the likelihood of pinch points where people might gather (e.g. toilets, entrances and exits),
- the standard and type of ventilation,
- the likelihood of people touching surfaces and goods, and
- the potential for significant aerosol projection activity.

Risk factors for different businesses in different sectors vary hugely and most will have a number of risk factors to consider. Some places are riskier due to touch points, some due to limited ventilation, some due to the mix and number of people coming and going, some due to pinch points at which people may gather. Others may cause people to speak more loudly, breathe heavily or cheer, potentially projecting aerosol particles further. Businesses which rely on close contact or on people from different households visiting or coming together are inherently at a high risk of spreading the virus<sup>69 70</sup>.

The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. The specific measures, as set out in the Regulations and guidance, reflect the assessment of risk factors associated with a particular activity. Each of the Protection Levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary. It is worth noting that although we do take the transmission risk of settings into account, in order to prioritise re-opening settings and activities we take a broader view across all four harms in order to make judgements about the sequencing of any re-opening.

The Scottish Government has produced ventilation [guidance](#) to support businesses to identify how they can reduce the risk of transmission in indoor environments. Ventilation will form a part of building managers or employers' risk assessment when considering the occupation of premises. This is particularly important when considering the increased transmissibility of new variants. Premises will have a variety of ventilation systems and it is imperative that employers identify the system that is in use and how this should function, including seeking expert input where appropriate. Such systems should be regularly cleaned and tested and be maintained in accordance with instruction manuals. Employers should seek to monitor the air quality of premises, perhaps through the use of Carbon Dioxide monitors, taking into account the occupancy, equipment and activities taking place within enclosed spaces. Risk Assessments should be revisited in light of new variants and public health guidance.

Events, stadia and performance spaces bring people together, sometimes from across a wide geographical area, in close proximity, often for an extended time period. These provide opportunities for transmission of COVID-19 as we know that high risk factors associated with transmission of the virus include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread from person to person.



As regards outdoor transmission risks, evidence shows that the risks are low but are not non-existent. In recognition of the lower risk associated with outdoor settings, greater numbers of attendees are permitted for outdoor events than for indoor events within our Protection Levels Framework.

The Scottish Government has drawn from a range of sources that provide evidence on outdoor transmission, both in general activity and in relation to gatherings and stadia events. Below is a summary of some of the key sources we have drawn from.

This rapid scoping review of evidence of outdoor transmission of COVID-19 shows that [there is little but some evidence of increased transmission risk from general outdoor activity](#). To June 2020, 6% of cases on the London School of Hygiene and Tropical Medicine (LSHTM) database were associated with environments outdoors or with an outdoor element. Several papers point to increased risk from outdoor activities where every-day social distancing breaks down. For example, the LSHTM database shows that outdoor settings linked to crowding are linked to relatively large clusters.

A review by Canterbury Christ Church University in September 2020 -

<https://www.canterbury.ac.uk/science-engineering-and-social-sciences/spear/docs/EXECUTIVE-SUMMARY-Outdoor-Transmission-of-COVID-19.pdf> - found very few examples of outdoor

transmission in everyday life. However, of relevance to the stadia and events sector, the review found:

- Risk increases when natural social distancing is breached, gathering density, circulation and size increases, particularly for extended duration.
- Mass gatherings may also generate transmission from activities they prompt e.g. communal travel, congregation in bars.
- Outdoor transmission at mass gatherings had not been robustly tested.
- Science concludes risk of infection is low outdoors if normal personal space and natural social distancing are not breached.
- Outdoor activities and events vary in size, density and circulation; and will not generate equal risks of transmission or need equal or same mitigations.

Some studies have examined the impact of stadia events and outdoor gatherings, including:

- [English football matches](#) in February and April 2020 were associated with around six additional COVID-19 cases per 100,000 people, two additional COVID-19 deaths per 100,000 people, and three additional excess deaths per 100,000 people into April 2020.
- [In Bergamo, Italy](#), cases went from zero before a Champions League match that fans travelled to in Spain, to 1,815 cases three weeks after the game, and 8,803 cases six weeks after the game. During March 2020, daily deaths in Bergamo were 568% higher than the average for the four years previous, compared to 187% higher in the wider Lombardy region.
- [In Germany](#), COVID-19 protests were linked to increased case rates in the regions that protestors travelled from.

The Scottish Government is considering what happens after Level 0 and is undertaking a review of physical distancing. It should also be noted that the guidance around the exceptions process is designed to allow for the results of a major events research programming being conducted by UK government and this will assist with informing next steps for the events and live entertainment sectors.

There are a number of sectoral exemptions to the capacity limits exception process due to the significantly different footprint and the need for a proportionate response to the risk identified with gatherings of people.

- *Showings in Cinemas: which are not considered to be events, and for which separate sector guidance is available.*

Cinemas are to be considered exempt from the exception capacities guidance as it would not be considered appropriate to include the sector. It is believed there is only one cinema in Scotland with the



capacity to go over and above the capacity limits detailed in the levels table once physical distance based capacity (“PDBC”) is calculated. This screen room has a pre-covid capacity of 500 and therefore would reasonably expect, at a maximum, to have no more than 150 attendees at any one time.

Crucially, and a defining difference from theatres, is that cinemas have the ability to show the same ‘performance’, which is not live, on multiple screens either at the same time or over a staggered period allowing for a far greater degree of control over, for example, pinch points and crowd flow. The activity is passive and one way, with the audience facing the same direction towards a screen at all times as oppose to other events where the performance or performers may move around and interact with the attendees. Additionally, the UK Cinema Association guidance has adopted measures akin to hospitality to mitigate risk. [Coronavirus/COVID-19 | Guidance for audiences | UK Cinema Association \(cinemauk.org.uk\)](https://www.cinemauk.org.uk)

Theatres are included, however, as part of the exception process. While it is accepted that there are a number of similarities between theatres and cinemas there are some fundamental differences particularly in scale when looking at venues

The exceptions process for capacity limits would affect a number of larger venues and focus primarily on those in the central belt. (Eden Court in Inverness does have a pre-Covid capacity of 1000 and could apply in Level 2 for exception). It is estimated that 80% of Scotland’s theatre spaces would not reach the maximum capacities detailed in the levels table and therefore would not require or seek an exception to the capacity limits. Further, 90% of respondents to a recent survey by the Federation of Scottish Theatre indicated that it is not viable to operate with PDBC in place. However, the Edinburgh Playhouse has a pre-Covid capacity of in excess of 3000 attendees. With social distancing in place, it would be possible for event planners to hold events requiring further scrutiny from Local Authorities. Namely, those above the limits identified in Levels 0,1 and 2 in the protection levels table. It is, however, likely that the guidance would affect only a small number of larger venues and focus primarily on those in the central belt

Similar issues affect the live music industry however we would anticipate the guidance capturing a larger number of venues given the relatively larger scales (SECC main hall with PDBC can hold 2000 attendees) and this would also cover the wider array of spaces used for musical performances eg theatre spaces, conference halls or stadia.

- *Bingo Halls are not included in this guidance*

Bingo Halls can accommodate considerable numbers pre-Covid though each capacity will be reduced by PDBC. Bingo Halls operate throughout the day so there are no start or end times to the activity beyond opening and closing hours and can be considered separately to the guidance associated with the exceptions process.

- *Life events (weddings, civil partnerships, funerals as they are covered by [separate guidance](#))*

The issues around life events have received scrutiny through policy leads and through discussions and decisions concerning the recent Judicial Review on places of worship. There are fundamental human rights involved which are not captured within the stadia/live event space and are not appropriate to consider as part of the events sector.

- *Mass participation sports (marathons, triathlons etc) There is separate sector guidance available*

Mass participation sporting events cover a number of different settings and, pragmatically, could not be covered by one particular piece of guidance which centres on limiting numbers in order to understand and mitigate risk. For example, while a marathon is a sporting event, the event would normally take place in a public space, either as a complete or rolling closure of public roads, or in some cases on public highways and byways. Crowds may gather on public streets with no recourse to

event planning or ticketing requirements and there could be no limit placed on the number of people along a particular route of a mass sporting event. Subsequently, mass participation sports events should be considered through separate guidance.

- *Drive-in and drive- thru events*

Drive-in and drive-thru events are not subject to the same PDBC considerations (as a result of people being confined with a car) and are therefore not considered as part of the events guidance

- Static demonstrations which are covered by separate guidance Coronavirus (COVID-19): protests and demonstrations - gov.scot (www.gov.scot)
- Marches and parades which will be covered by separate guidance at the point they are allowed to resume.
- Picketing which is exempt through the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 18) Regulations 2021 (legislation.gov.uk)
- Flagship events which are identified through the Scottish Government Events Gateway Process

The “Gateway Process” are significant (or Flagship) events which have a defined, and separate, criteria from other events considered as part of the events capacity guidance. Any events being considered under this process are required to provide extensive documentation, including risk assessments and event plans and all planning undertaken takes into consideration public health advice and the current rates of infection/risks of transmission.

This process has specific criteria and has been designed outwith the guidance on Stadia and Live Events. The criteria includes:

*“.....internationally significant and aligns with ‘Scotland The Perfect Stage’ (our national events strategy), or supports our broader policy priorities. This would focus on audience reach (including broadcast) and GVA impact for the pre-covid event (including key local economic impact) with consideration also given to the positive impact on the wider supply chain and likelihood of the event (or its content) moving to another country. Fundamentally, the successful delivery of selected events would demonstrate that Scotland is still functioning as a host for world-class events, aiming to maintain our reputation for future bids.”*

## **Consultation**

We have engaged with stadia and events stakeholders throughout the pandemic, including their input on the exceptions to capacities process.

Engagement has principally been through the independent Events Industry Advisory Group (EIAG) and Local Authorities including representatives of Environmental Health Officers and Local Authority event planners.

EIAG comprises representatives from 20 organisations<sup>137</sup> from a range of organisations across the sector, including those involved with sporting, business and cultural events. Its membership covers

<sup>137</sup> Members of Events Industry Advisory Group are: Glasgow Life, DF Concerts, National Outdoor Events Association, Specialized Security, Festivals Edinburgh, Edinburgh International Festival, Royal Highland Show, Rare Management, R&A, Scottish Rugby, Dundee City Council, SEC, Black Light Ltd, Heb Celt Festival, Scottish Football Association, P&J Live, VisitScotland, Glasgow City Council, 21cc Group Ltd, Experience Scotland.

supply chain businesses as well as event organisers, local authority event officials and venues. There are members representing rural and island event interests. Officials meet with EIAG every three weeks and Covid Co-Ordination leads have met with this group on three occasions to discuss and provide context to the exceptions process.

Engagement has been ongoing with COLSA, SOLACE, EHOs and Local Authorities who have helped shape the guidance associated with the regulations as they will be responsible for assessing applications.

Event organisers understand the need to take decisions on appropriate Levels using current information but have stressed that events require a lengthy planning period and significant investment. Throughout the pandemic they have sought as much certainty as possible in order to undertake planning. Unlike other sectors, postponement of an event may mean losing that organiser's entire income stream for the year.

Separately, the Scottish Government been working with event organisers to progress a small number of internationally significant flagship events which fall outwith the scope of this process . UEFA EURO 2020 in Glasgow is one of the flagship events that has been considered as part of the flagship events process, with a decision reached, based on the event's importance to Scotland and confidence in the mitigation measures in place, to allow 12,000 fans to attend matches at Hampden if the public health position allows at the time. We will continue to work with organisers, clinicians and VisitScotland on other flagship events that may seek an exemption to enable greater numbers of spectators/attendees than through the Protection Levels.

Below is a summary, by theme, of EIAG feedback on the Protection Levels table published on 13 April and the physical distance capacity in public settings guidance published on 26 April.

Questions were posed regarding:

- The rationale for the Scottish Government not matching the frameworks, dates and levels of the UK Government if both governments are using similar data.
- Why the framework for outdoor events does not take account of evidence that the risk of transmission outdoors is negligible.
- What evidence the Scottish Government used to set the parameters in the framework.
- Why there are no plans for test events to gather data, when such events will take place in England.

#### Timescales

Questions were posed regarding:

- The review dates for the Levels and associated guidance.
- What happens after Level 0.
- The timescales for an application to hold an event.
- How quickly guidance could be issued and processes set up to consider applications, given that large events involve significant planning timescales.

#### Application process and legal basis

Questions were posed regarding:

- Whether there will be a formal application process to Councils.
- Who within a Council would issue permissions, noting that multiple layers of approval could result in delays, particularly as there may be a range of consultees in relation to some events.
- Whether there will be an arbitration or appeals process should agreement not be reached.

- The legal standing or defence attached to the granting of permission to stage an event.
- Organisations with multiple events can have multiple applications being considered at a given time.
- Details of the Scottish Government-led Working Group that will consider large events.
- Whether the approach may result in agencies without significant experience in the sector taking a risk averse approach and thereby denying approval.

#### Outdoor venues

Questions were posed regarding:

- Whether the physical distance based capacity calculation applies to outdoor settings and is based on the same distancing as indoors.
- What constitutes an 'outdoor venue', with a view to clarifying the position where there would be confusion – for example, regarding a marquee in a field.

#### Physical distancing

Questions were posed regarding:

- The rationale for 1m physical distancing in an indoor setting with stadia (for hospitality) but 2pm when outdoors in the stadia itself.
- The rationale for allowing settings that are essentially indoors (schools, hospitality, transport) to operate with measures that are perceived to be less restrictive than stadia/venues.

#### Calculations process

Main points of feedback received were:

- The holding capacity on a concourse, when accounting for physical distance, may severely limit the calculated capacity.
- Clear guidance is needed on exit capacities to enable venues to calculate capacity on that basis.
- There are perceived inconsistencies between the guidance on calculating physical distancing capacities and the Sports Ground Safety Association Guidance.

#### Mitigations and alternative approaches

Questions were posed regarding whether consideration was given to a range of mitigations and alternative approaches, including:

- Use of a COVID certificate indicating vaccination status, test status or recent COVID status
- Contact tracing technology that automatically tracks and records each spectator's significant contacts
- Staggered arrival times to allow for increased capacity

#### Route back and economic impact

Feedback was that:

- Without venues opening at an increased rather than decreased capacity, the events industry would largely remain closed, with many venues unable to viably open given number constraints.
- The stadia and events industry in Scotland is at standstill waiting, whilst it is perceived that the rest of UK and EU ramp up activity regarding stadia and events. Furthermore there is a perception that the data that is emerging from elsewhere appears to be at odds with what is viewed as an extremely cautious framework and capacity guidance from the Scottish Government.
- Without further positive progress by mid May, with a view to enabling resumption at greater levels of capacity than through the Levels update and related guidance, there is a view that summer events will in the main be unable to proceed, with significant implications for many in the sector.

## **Options:**

A range of options were considered in how to allow an exceptions process to work while maintaining confidence in managing risk around events with potential high risk of becoming a 'super-spreader' event:

Consideration was given to:

1) A flat cap applied to all events, with no exception process meaning events could progress only within the limits set out in the protection levels table.

### **Pros**

- A standard limit would prevent large groups gathering in one area for a common purpose, and assuage some concerns around the public health risk of potential "super-spreader events"
- Easy to understand and makes it clear for the events industry what is permissible.

### **Cons**

- A blunt instrument which would not allow for venues which can accommodate larger numbers, physically distanced, to host events. This would have a negative impact on the commercial viability of such venues, at a time when many are already in a financially difficult position.
- Ongoing uncertainty for events organisers as to when it might be possible for them to have an event with larger numbers

2) A tiered approach to event scale identifying small, medium or large events with a scaling process of approval including local authorities and then Scottish Government for large events.

### **Pros**

- A structured approach to holding larger events allowing a high degree of local decision making taking into account the professional expertise of local authorities
- Strong signal to the events industry that larger events would be possible but retaining a level of oversight from Scottish Government when numerical 'threshold' reached for referral for larger events
- Scottish Government analysis and modelling well placed to provide input on likely impact of larger events.

### **Cons**

- A number of stakeholders raised concerns about government 'over-reach' in terms of decision making and referral process. The numerical threshold approach would not allow for scale dependent on size of event in differing local authority geographies. E.g a 'large' event in a rural authority, may not be considered 'large' in an urban setting.
- Significant resource implications for Scottish Government and concerns over expertise being removed from local authorities for decision making

3) A hybrid approach where exceptions are possible up to the limits identified in Level 0 of the protection levels table, with flexibility to allow larger events at a later stage where more is known more generally about the impact of holding large events on the pandemic.

### **Pros**

- Balances the risk of holding live events while maintaining confidence in the decision making of local authorities to mitigate that risk.

- Indicates to events industry that sector can reopen, cautiously, while we await further evidence from the Event Research Programme.
- Retains Scottish Government oversight via call-in power without automatic referral required.

### **Cons**

- The biggest barrier to events industry is physical distancing, rather than allowing exceptions, so this may be an unwelcome addition of bureaucracy
- Hybrid option – recommendation by Scottish government that local authorities limit approval of events to level 0 levels until move to level 0 - does not go as far as events industry would like
- Due to emerging issues, such as more evidence pertaining to the effect of large scale live events on the pandemic and the ongoing review of Physical Distancing, there is a general lack of guidance available for longer term and larger scale events which the industry requires for planning and viability.

### **Decision**

Option 3 satisfies some of the demands of the events industry, namely allowing some events to go ahead where appropriate above the maximum identified capacities, while maintaining a necessary role of the Scottish Government in being able to 'call-in' certain larger events which may cause a public health concern to be raised. It also allows for flexibility within the capacity limits themselves should the prevalence or situation regarding the pandemic materially change. Crucially, this allows for the limits to be scaled up or down allowing the exceptions process to continue within the relevant limits of each level. Finally, it allows event organisers to consider progressing applications for summer events with some degree of confidence they are possible, with additional assurance to come in advance of 7<sup>th</sup> June.

### **Competition Assessment:**

“Competition” with other businesses in this sector is not only related to audiences, but also to the attraction of high quality performing artists and technicians, as well as non-public financial support.

Across the rest of the UK restrictions have been in place for the events sector for most of 2020 and in to 2021. However, there is a now a perception that England in particular is ahead of Scotland in terms of timing of and information about the resumption of events and performances.

This is likely to impact on the competitiveness of the sector relative to the rest of the UK. Stakeholders have already reported that Scotland is being omitted from UK tours as there is not enough information available about a route to reopening viably compared to England. There are reports that some UK tours are threatened in their entirety by the lack of certainty around Scottish dates which puts at risk the viability of an entire tour. There is concern among stakeholders - due to the long lead-times for committing to touring productions and for creating a production- that this could have longer-term consequences, with full reopening of the sector further delayed due to lack of productions to present on Scotland's stages.

Likewise if restrictions in Scotland are tighter than in Europe or the rest of the world, then this could impact competitiveness as artists and those working in all other areas of the performing arts sector will be compelled to seek work elsewhere.

### **Current operation, including of events, in rest of UK**

### **England**<sup>138</sup> :

- The Department for Digital, Culture, Media and Sport (DCMS) published 'Coronavirus (COVID-19): Organised events guidance for local authorities' on 6 April 2021<sup>139</sup> and [DCMS guidance for the performing arts](#) was last updated on 7 May.
- DCMS announced that the F.A. Cup Semi-Final and Final at Wembley stadium will be pilot events, as will the World Snooker Championships at the Crucible theatre in Sheffield, which concluded on May 3. The pilots will not be just sporting events and are supplemented via DCMS's partnership with Liverpool City Council ('Project Encore') to ensure the events cover a range of settings.
- No earlier than 17<sup>th</sup> May – indoor hospitality opens up along with entertainment venues (all venues) – restrictions on larger venues for performances or sporting events – indoor 1000 people max or 50% cap; Easing limit on social contact; multiple households can mix; most social contact rules will be lifted; indoor household mixing will be allowed.
- No earlier than 21<sup>st</sup> June – all limits removed; reopen final closed sectors – in particular nightclubs; lift restrictions on large events and performances and at this point decide if all limits can be removed (decision on festivals to be made in advance of this step)

### **Wales**<sup>140</sup>

From 13 March:-

- Cinemas, theatres and concert halls - Performances may be broadcast without an audience, whether over the internet or as part of a radio or television broadcast.
- As set out in the revised Coronavirus Control Plan<sup>141</sup>, a small number of outdoor pilot events of between 200 and 1,000 people are also being planned.

From 12 April:-

- travel restrictions within the UK and Common Travel Area lifted
- wedding venues will be able to let prospective clients view their premises by appointment only

From 26 April - If public health conditions permit, the following relaxations can go ahead:

- organised outdoor activities will be permitted for up to 30 people
- outdoor wedding receptions will be permitted for up to 30 people
- outdoor visitor attractions can open

### **N.Ireland**<sup>142</sup>

From 23<sup>rd</sup> April

- Competitive outdoor sports can resume with a limited number of 100 participants and no spectators.
- Outdoor attractions may reopen including drive-in cinemas and performances, attendees will only be permitted the share a vehicle with their household or bubble.

No earlier than 17 May

- Sectors which will be reopening include some large events, including conferences, theatre and concert performances and sports events.

<sup>138</sup> <https://www.gov.uk/government/speeches/pm-statement-to-the-house-of-commons-on-roadmap-for-easing-lockdown-restrictions-in-england-22-february-2021>

<sup>139</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-organised-events-guidance-for-local-authorities/coronavirus-covid-19-organised-events-guidance-for-local-authorities>

<sup>140</sup> <https://gov.wales/business-closures-alert-level-4>

<sup>141</sup> <https://gov.wales/sites/default/files/publications/2021-03/coronavirus-control-plan-revised-alert-levels-in-wales-march-2021.pdf>

<sup>142</sup> <https://www.visitbritain.org/covid-19-new-coronavirus-latest-information-and-advice-businesses-1>

**Consumer Assessment:**

The capacity exceptions process is designed to enable some events to go ahead, over and above those which may be able to operate within the capacities identified in the protection levels table. Given the particular challenges faced by the sector over the previous year, however, it is likely some costs may be passed on to the consumer, for example, through raised ticket prices.

Going to live events may also be affected by other factors such as:

The requirement for physical distancing and the subsequent impact on attendance figures on venues and other premises.

Travel guidance, particularly where there are areas of concern or known outbreaks of the virus.

**Does the policy increase opportunities for unscrupulous suppliers?**

There is some anecdotal discussion from local authorities that the vacuum in the live event space has created opportunities for either illegal, or poorly planned, events. The numbers permitted for stadia and events in the protection levels table, and a more general move towards the economy reopening should mitigate any concerns.

**There is no expected impact on essential services.**

**Test run of business forms:**

The capacity exceptions process does provide a new form of approval for Local Authorities however it is built on top of existing practices and procedures and is a matter for the Local Authorities to make operational.

**Digital Impact Test:**

No expected impact on digital platforms

**Legal Aid Impact Test:**

N/A

**Enforcement, sanctions and monitoring:**

Regulations have been put in place to support the implementation of the measures. Further details are contained in guidance, including events sector guidance and performing arts guidance. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

Guidance has been drafted in consultation with local authorities and key event planners. Work will be ongoing to review the success or otherwise of the measures with a commitment to providing further information three weeks after the move to Level 2 and the opening of stadia and live events.

The exceptions process will remain under review to take account of developments in the pandemic and other domestic factors which may affect the sectors.



**Summary and recommendations:**

**This BRIA is concerned with a process which is designed to assist with the live events industry restarting, albeit in a limited way. We are committed to keeping this process under review and will continue to engage with stakeholders as more information becomes available.**

**Declaration and publication****Sign-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: John Swinney****Date: 24/06/2021****Minister's name: John Swinney****Minister's title: Deputy First Minister and Cabinet Secretary for COVID Recovery**