

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 26) Regulations 2021

EQUALITY IMPACT ASSESSMENT (EQIA)

Introduction

1. The COVID-19 pandemic has led to unprecedented calls on the health system as well as policy and financial decisions that have made fundamental changes to everyday life for people in Scotland. It has been necessary to take these extraordinary measures to respond to the pandemic, in order to protect the right to life and the right to health for Scotland's population. However, the unequal impact of the pandemic and the need to advance equality, eliminate discrimination and foster good relations (as per our Public Sector Equality Duty), 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.
2. 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.
3. On Friday 23 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, across the four key harms of the virus. It detailed how we would 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, across many aspects of our lives.
4. On Tuesday, 23 February 2021, we published an updated *COVID-19: Scotland's Strategic Framework*. This set out the approach we intended to take in order to relax the tightened Level 4 restrictions which placed most of Scotland under a Stay At Home requirement and also made clear that we intend to return to a refreshed approach to outbreak management based on the five levels of protection.
5. A further update, providing a timetable for easing restrictions, was published on Tuesday, 16 March 2021. This publication set out a longer term plan for relaxing restrictions and moving Scotland to lower levels, with the ultimate aim of getting to Level 0 by the summer. Some indicative dates were noted for late April and mid-May, with later points being left open so the latest data and evidence can be considered nearer the time.

Legislative background

6. 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.

7. 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.
8. On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) 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.
9. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the 2020 Regulations”) implement the strategic framework and came into effect at 0600 hours on 2 November 2020. These regulations revoke the additional temporary restrictions regulations and the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020.
10. 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 strain (VUI 202012/01) of COVID-19 in November 2020. 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.
11. Decision making under the Strategic Framework system is straightforward and transparent. It will build on existing structures and processes and will include 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.
12. 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. Under the new levels approach, Scottish Government will work closely with local authority leaders when making these decisions.
13. 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 equality impacts, the impact on individual rights and consideration of measures, for example, for specific geographies and sectors.
14. The Scottish Government considered from the outset whether the lockdown provisions were consistent with the Equality Act 2010 and also considered whether the provisions could constitute direct or indirect discrimination. In many cases, the provisions have applied to all persons irrespective of protected characteristic, although we acknowledge that the same provision may not have equal impacts. Equality Impact Assessments (EQIAs) have been carried out to consider the likely or anticipated impact of the measures contained in the Coronavirus (Scotland) Act 2020 and for any legislation thereafter. Where some possible negative impacts have been identified, the Scottish Government has

considered these to be justified as both a necessary and proportionate means of achieving the legitimate aim of protecting the general public from the threats posed by the outbreak of the Coronavirus pandemic and, therefore, the threat to human life in Scotland; and has sought to mitigate disadvantage wherever possible, e.g. developing exemption cards for people whose health or disability makes the wearing of face coverings unsuitable. However, from the beginning, measures were put in place to support people with protected characteristics as they complied with lockdown guidance, such as the £350 million of community funding announced on the 18 March 2020. Similarly, the £100m Winter Plan for Social Protection, announced on 30th November 2020, was developed to mitigate social harms posed by the concurrent risks of COVID-19, winter cost of living increases and EU exit, as well as to promote equality and human rights.

15. This impact assessment has identified some potential positive impacts on one or more of the protected characteristics, as restrictions are eased. Measures to reduce the spread of coronavirus positively affect the whole population, but will particularly affect the health of those people who are more severely affected by the disease.
16. This includes older people (age), those with underlying health conditions (some disabled people are more likely to experience severe ill-health from contracting COVID-19 than the general population), race and sex. [Early data](#) showed that the COVID-19 virus is more deadly for people with underlying health conditions. Prevalence of some of these health conditions is known to be higher in certain ethnic groups¹, for example Type 2 diabetes is 6 times more likely in people of South Asian descent and over 2 times more likely in African and Afro-Caribbean people².
17. All measures are given thorough consideration on the basis of their impact, including on equality and human rights³.

Policy Objectives

18. The Regulations make a number of policy changes, as set out below.

Allocation of levels

These Regulations amend schedule 6 of the principal regulations to adjust the allocation of levels across Scotland. These changes are being made as a result of the most recent data and evidence available. These Regulations make the following changes –

Moving to Level 2

- City of Glasgow

Moving to Level 1

- Highland
- Argyll & Bute
- Aberdeen City

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SAGE:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895841/S0483_Ethnicity_and_Covid-19.pdf

² <https://www.diabetes.co.uk/south-asian/>
<https://www.diabetes.co.uk/news/2013/jan/those-of-african-caribbean-descent-more-likely-to-have-diabetes-92672091.html>

³ A summary of equality and Fairer Scotland evidence was published for Phase 1 and 2 of the Route Map. <https://www.gov.scot/publications/equality-fairer-scotland-impact-assessment-evidence-gathered-scotlands-route-map-through-out-crisis/>

- Aberdeenshire
- Moray
- Angus
- Perth & Kinross
- Fife
- Falkirk
- West Lothian
- East Lothian
- Inverclyde
- West Dunbartonshire
- Dumfries & Galloway
- Scottish Borders

Moving to Level 0

- The islands in the Highland area (except the Isle of Skye)
- Orkney Islands
- Shetland Islands
- Na h-Eileanan Siar
- The Isle of Coll, the Isle of Colonsay, the Isle of Erraid, the Isle of Gometra, the Isle of Iona, the Isle of Islay, the Isle of Jura, the Isle of Mull, the Isle of Oronsay, the Isle of Tiree, and the Isle of Ulva.

All other areas remain at their previous level.

Physical distancing at marriages and civil partnerships

These Regulations adjust the requirements placed on those responsible for businesses, services and places of worship. The physical distancing requirements now allow businesses, services and places of worship to permit no physical distancing when a person being married or entering a civil partnership is being accompanied from one part of a premises to the part of those premises where the marriage ceremony or civil partnership registration is taking place. This ensures that a party to the marriage or civil partnership can be accompanied down the aisle, or similar, by a family member or friend from another household, in line with many traditions.

These Regulations also adjust the existing exemptions to face covering requirements applying in respect of parties to be married or enter into a civil partnership, to the effect that the exemption also applies while they are being accompanied by other persons as described above.

Funfairs

These Regulations adjust the restrictions in Schedule 3 to permit funfairs to open to the public in Level 2 areas. This change 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.

Title of Proposal: Life Events – Marriage ceremonies and civil partnership registrations- change to physical distancing and face covering requirements

This Equality Impact Assessment (EQIA) record discusses amendments to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the health protection regulations”) required to enable the tradition of a party to the marriage or civil partnership being accompanied “down the aisle”, or similar, by a parent, parents or other family friend or relation to continue, where the individuals concerned are not members of the same household (or extended household).

Earlier EQIAs for measures relating to marriage and civil partnership have summarised the available evidence on transmission risks related to these events.⁴

Impact: The changes to the health protection regulations would:

- create an exception to the duty (at each level of the protection levels framework in the health protection regulations) on persons responsible for premises to take measures to ensure that physical distancing is maintained by parties to the marriage ceremony or civil partnership registration and persons accompanying either party to the part of the premises where the ceremony or registration is to take place; and
- modify the requirements to wear face coverings in certain indoor premises so the parties to the marriage ceremony or civil partnership registration would not need to wear a face covering while being accompanied from one part of the premises to the part of the premises where the ceremony or registration is to take place. (For the avoidance of doubt the accompanying person(s) would still be required to wear a face covering unless otherwise exempt.)

General

The impact of physical distancing requirements in relation to the tradition of a party to a marriage or civil partnership being accompanied into the place where the ceremony or registration is taking place by a parent, parents or other guest, has been raised in correspondence being received by Scottish Government and in stakeholder engagement. The available evidence suggests that this tradition continues to have great significance to those involved and that it is often highly valued by the couple as a form of personal support at a significant and emotional life event. The couple may also look back with fondness at the tradition having taken place at their marriage ceremony.

The Scottish Ministers are under a duty to end any restriction or requirement imposed by the health protection regulations as soon as that measure is no longer necessary to control the incidence or spread of coronavirus in Scotland.

Ministers have determined that easing the requirement for physical distancing at marriage ceremonies and civil partnerships registrations to the limited extent this EQIA sets out, at [each protection level of the updated Strategic Framework](#), is proportionate and appropriate. The Scottish Government’s decisions are based on an assessment of the current evidence for Scotland and they seek to balance health, social and economic harms so as to minimise overall harm. These are the direct impact of COVID-19, other health impacts,

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The EQIA published when the health protection regulations were introduced can be seen at: [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](#) at page 60-71. A further EQIA was published in April 2021: [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021 \(legislation.gov.uk\)](#), at page 69.

societal impacts, and economic impacts.⁵ The assessment process includes oversight by the Chief Medical Officer and other Senior Advisors.

On other traditions associated with marriage and civil partnership, sometimes based on religious or belief requirements or preferences, we have received only limited representations. For some of these traditions, issues other than physical distancing are involved, such as the sharing of food and drink or communal objects (such as hand-fastening ribbons). We sought the views of religious and belief bodies whose celebrants conduct marriage ceremonies and civil partnership registrations, the Association of Registrars of Scotland and wedding industry representatives about any marriage traditions (whether religious or belief or not) which are adversely affected by physical distancing requirements arising as a result of the pandemic.

Differential impacts	Age: Children and Younger People⁶		<p>We are not aware of any evidence that suggests this change in the level of restriction will create any particular inequalities for children and younger people. The measures do not limit the age of individual(s) who may accompany a party to the marriage or civil partnership into the venue. This change will likely be positive for those wishing to attend these important life events.</p> <p>Children under 12 do not need to physically distance from others.</p>
	Age: Older People		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for older people. The measures do not limit the age of individual(s) who may accompany a party to the marriage or civil partnership into the venue. This change will likely be positive for those wishing to attend these important life events.</p>
	Sex: Women		<p>We are not aware of any evidence that suggests our proposal will create any particular inequalities for women. The measures do not favour people of any sex and so would allow, for example, for both a father and a mother to accompany a party. They would also, for example, allow fathers to accompany a party. The measures would also apply to both parties to the marriage or civil partnership whatever their sex. This change will likely be positive for those attending these important life events.</p>
	Sex: Men		<p>We are not aware of any evidence that suggests this level of restriction will create any particular inequalities for men. The measures do not favour people of any sex and so would allow, for example, for both a father and a mother to accompany a party. They would also, for example, allow fathers to accompany a party. The measures would also apply to both parties to the marriage or civil partnership whatever their sex. This change will likely be positive for those attending these important life events.</p>
	Race		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic. This change will likely be positive for those attending these important life events.</p>

⁵ [COVID-19 in Scotland \(data.gov.scot\)](https://data.gov.scot)

⁶ People who are under 16 cannot marry or enter a civil partnership in Scotland

Religion or Belief		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic. Our proposal applies to marriages and civil partnerships conducted by local authority registrars (civil marriages) as well as religious and belief marriages and civil partnerships.</p> <p>We have sought the views of religious and belief bodies whose celebrants conduct marriage ceremonies and civil partnership registrations, the Association of Registrars of Scotland and wedding industry representatives about any marriage traditions (whether religious or belief or not) which are adversely affected by physical distancing requirements arising as a result of the pandemic.</p>
Disability		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic. The measures would not operate in a way which might prevent a disabled person from accompanying a party to the marriage or civil partnership into the part of the premises where the ceremony or registration will take place. The proposed change will likely be positive for those attending these important life events.</p>
Marriage and Civil Partnership⁷		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic. This change will likely be positive for those wishing to take part in and attend these important life events.</p>
Pregnancy and Maternity		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for pregnant women or new mothers. This change will likely be positive for those attending these important life events.</p>
Gender Reassignment		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic. This change will likely be positive for those wishing to attend these important life events.</p>
Socio-economic disadvantage		<p>We are not aware of any evidence that suggests this change will create any particular inequalities for this protected characteristic.⁸ Couples from different socio economic backgrounds can continue to choose to proceed with a marriage ceremony as they could</p>

⁷ in respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work.

⁸ National Records of Scotland have published information on the costs of getting married in Scotland [Marriage in Scotland - What You Would Pay \(nrscotland.gov.uk\)](http://nrscotland.gov.uk) and on the costs of entering a civil partnership in Scotland [Civil Partnership Registration in Scotland - What You Would Pay \(nrscotland.gov.uk\)](http://nrscotland.gov.uk)

			<p>before there were pandemic restrictions. This change will likely be positive for those attending these important life events.</p>
	<p>Mitigating actions:</p>		<p>The Scottish Government guidance on marriage ceremonies and civil partnerships and receptions will continue to set out the range of mitigations to reduce the opportunities for the virus to transmit, including on the actions venues must take, the continuing need for physical distancing between households (subject to this proposed change), face coverings in indoor spaces, and hygiene requirements such as when sharing objects required during the service. For example the marriage ceremony and civil partnership guidance contains information about handling hand-fastening ribbons and use of the Quaich as well as on sharing a pen to sign the Marriage Schedule.</p> <p>We will update our guidance for marriages to ensure clear communication of the measures and to provide guidance on whether a party might choose to wear a face covering during the period whilst they are being accompanied notwithstanding that they have an exemption from this requirement for the period of the ceremony or registration. Scottish Government officials will also continue to communicate regularly with interested stakeholders.</p>

Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	The proposed measures do not constitute unlawful discrimination, harassment and victimisation. To the extent that older people may be at a higher risk from coronavirus, our guidance for marriages and civil partnerships will continue as appropriate to reference other guidance for at risk groups, and we will continue to emphasise the importance of risk mitigations such as face coverings. Marriage guidance should be read alongside the guidance for at risk groups, including in relation to shielding , as well as information published by NHS Inform.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity between different age groups.
Promoting good relations among and between different age groups			X	We have no evidence of differential impacts to promote good relations between different age groups

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts of the proposed measures for the need to advance equality for opportunity of disabled people
Promoting good relations among and between disabled and non-disabled people			X	We have no evidence of differential impact for the need to promote good relations between these groups.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity between men and women.
Promoting good relations between men and women			X	We have no evidence of differential impact for the need to promote good relations between the different sexes.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity for people with this protected characteristic.
Promoting good relations			X	We have no evidence of differential impact for the need to promote good relations for this protected characteristic.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity for people who intend to undergo, are undergoing or have undergone gender reassignment
Promoting good relations			X	We have no evidence of differential impact for the need to promote good relations as between people with the protected characteristic of gender reassignment and others who do not.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity for this characteristic.
Promoting good relations			X	We have no evidence of differential impact for the need to promote good relations.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity for this characteristic.
Promoting good race relations			X	We have no evidence of differential impact in respect of the need to promote good relations.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.
Advancing equality of opportunity			X	We have no evidence of differential impacts for the need to advance equality of opportunity for this characteristic. We are consulting religious and belief bodies, registrars and the wedding industry to identify any further traditions, including those which may be religious or belief requirements or preferences to consider these further.
Promoting good relations			X	See Advancing equality of opportunity. The Scottish Government recognises the importance to individuals of particular faiths that they marry in accordance with their faith. Making changes to health protection regulations to accommodate marriage traditions may help promote good relations between faiths as well as between people of faith and of no faith (who may choose a civil marriage for this reason), through the visibly equal treatment of different categories of marriage.

Do you think the policy impacts on people because of their marriage or civil partnership?⁹

Marriage and Civil Partnership	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	For the position at all levels, the measures do not constitute unlawful discrimination, harassment and victimisation.

⁹ The PSED only applies, under section 149(1)(a) of the Equality Act 2010, to the protected characteristic of marriage and civil partnership in relation to eliminating discrimination etc. relating to work under Part 5 of that Act.

Conclusion

The updated Strategic Framework and levels approach 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 measures, now including the new measures set out in this EQIA record, are together 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 and the economy.

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 the public, and focussing on our primary objective of reducing the spread of the virus. We will continue to keep the levels and restrictions under review, and take all decisions based on the best available evidence.