

FACE COVERINGS REGULATIONS – AUGUST 2021 – BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Legislation: The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021

Purpose and intended effect:

The aim of this Assessment is to analyse the impact of face coverings within the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021.

Amendments to the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into effect on 22 June and 10 July 2020 that made it mandatory for face coverings to be worn on public transport and in retail settings (respectively), with additional regulations from 9 October 2020 that made it mandatory for face coverings to be worn in storage and distribution facilities, and for face coverings to be worn in communal staff areas in both retail and storage and distribution facilities. Further amendments came into force on 2 November 2020 which made the use of face coverings mandatory in a large range of indoor public places, including indoor communal workplaces. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.21) Regulations 2021 implemented the system of levels of protection which are set out in the "[Coronavirus \(COVID-19\): Scotland's Strategic Framework update](#)", published on 22 February 2021 within which the face covering requirements remained unaltered.

This BRIA considers the impact of laying new Regulations which maintain the legal requirement to wear face coverings in the previously mandated spaces in order to mitigate transmission of Covid-19. As night clubs, dance halls, discotheques and sexual entertainment venues will be able to operate from 9 August, the mandatory requirement to wear face coverings has been extended to this setting. The age based exemption for under 5 years of age has been increased to under 12 years old in line with the developing clinical advice and state of the pandemic. The exemption for a worker or volunteer to remove their face covering if they are either separated from others by a partition or a distance of at least 2 metres has been amended to if they are either separated from others by a partition or a distance of at least 1 metre.

The current exemptions and reasonable excuses for not wearing a face covering as set out in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 regulations will be retained and updated to reflect the above changes.

Policy Objectives:

We have made great progress in tackling the pandemic through our combined efforts and the success in the vaccination rollout to date. As the direct health harms (Harm 1) caused by Covid are being managed and mitigated, the broader harms (Harms 2, 3 and 4) of the crisis grow more important in our decision-making and as such the First Minister announced the new strategic intent to '*suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future*' in the [Strategic Framework](#) update of 22 June 2021.

In a [statement to parliament on the 3 August 2021](#) the First Minister announced that we are now in a position to move beyond Level 0 which will entail the lifting of most of the remaining legally imposed restrictions - most notably on physical distancing and limits to the size of social gatherings. However, while this move will restore a substantial degree of normality, it is important to be clear that it does not signal the end of the pandemic or a return to life exactly as we knew it before Covid. Declaring freedom from, or victory over, this virus is premature. The harm the virus can do, including through the impact of long Covid, shouldn't be underestimated. And its ability to mutate may yet pose us real challenges. So even as we make this move, care and caution will still be required.

As such, non-pharmaceutical interventions (NPI's) play an important role in reducing the spread of the virus, and there is evidence that face coverings add some additional value in preventing the spread of

Covid-19, especially in crowded and less well-ventilated spaces, and where physical distancing is not possible ([Annex A](#)).

Therefore, the policy objective is to reduce the threat to public health, which can now be done whilst also reducing the impact on wider society. The continued use of face coverings in mandatory settings will continue to play a role in reducing transmission of the virus, particularly as other legal restrictions are removed.

The legal responsibility to wear a face covering in the Regulations is placed on the individual, rather than the employer. Employers do not have a legal duty to implement or enforce the use of face coverings in the workplace under the Coronavirus Regulations, and therefore are not liable to a fixed penalty notice, should staff or customers not comply with the regulations. Employers do however have obligations under reserved Health and Safety regulations to protect their staff and customers, including protecting their health. If, following a workplace risk assessment, face coverings are deemed necessary to protect the health of staff and customers, then employers should take steps to make face coverings available to staff.

The Scottish Government guidance on face coverings is available at:
www.gov.scot/collections/coronavirus-covid-19-guidance.

Public Health Rationale for Government intervention:

We know that no vaccine is 100% effective at preventing infection, disease and transmission. The latest analysis by PHE indicates that vaccine effectiveness against hospitalisation after 2 doses of COVID-19 vaccine is high, with a 93% protective effect against the Alpha variant and 96% for the Delta variant.¹ In the last four weeks from 26 June 2021 to 23 July 2021, 57.0% of COVID-19 positive PCR cases were in unvaccinated individuals.² To maintain the progress we have made in returning to more normality, it will be important for individuals, businesses and other organisations to continue to stick to a set of baseline measures to stop the virus resurging and to protect those who do not have protection from vaccination.

Transmission can take place in any setting. The setting itself is not the cause of transmission; it is human behaviour, activities and interactions that occur within a setting that influence transmission. However, some settings facilitate greater transmission due to a combination of risk factors.^{3,4}

On 14 June 2021 the World Health Organisation (WHO) published updated guidance on the use of face coverings and advised that a risk-based approach should be taken with the continued use of face coverings in spaces and settings where transmission is known to be high, especially as physical distancing restrictions and other mitigations are removed.⁵

In line with the scientific evidence and the risk based approach advised by WHO, the Scottish Government deems it necessary and proportionate to maintain the mandatory use of face coverings in order to protect public health.

Consultation:

We have engaged with over 25 sectors and stakeholders ([Annex B](#)) from a range of specialisms, including retail, hospitality, travel, business and trade unions, on proposed baseline measures beyond Level 0 and

¹ [COVID-19 vaccine surveillance report - week 30 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002227/covid-19-vaccine-surveillance-report-week-30-2021.pdf)

² [Public Health Scotland COVID-19 Statistical Report](https://www.gov.scot/publications/scotland-covid-19-statistical-report/pages/10.aspx)

³ [S1186 SAGE 86 Minutes.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002227/S1186_SAGE_86_Minutes.pdf)

⁴ [S0921 Factors contributing to risk of SARS 18122020.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002227/S0921_Factors_contributing_to_risk_of_SARS_18122020.pdf)

⁵ [Considerations for implementing and adjusting public health and social measures in the context of COVID-19: interim guidance, 14 June 2021 \(who.int\)](https://www.who.int/publications/m/item/considerations-for-implementing-and-adjusting-public-health-and-social-measures-in-the-context-of-covid-19-interim-guidance-14-june-2021)

have analysed their diverse feedback to inform this BRIA. Through this engagement a number of key themes emerged.

Across sectors there was a desire for clear justification for the use of face coverings in some settings and not others and clear communications, for both business and the public, on the settings where face coverings are and are not required and why. It was noted that different requirements for staff and customers could result in confused messaging. Hospitality and grocers stakeholders in particular viewed any difference in requirements between staff and customers as illogical, highlighting the need for clear communication.

Stakeholders in some sectors were supportive of the continued mandatory use of face coverings. Young disabled people and those with additional support needs, as well as their parents, were anxious about removing regulatory requirements. Funeral, fire services, primary care and optometry bodies voiced a desire for regulation rather than voluntary guidance. This was echoed by Local Authority Regulators, Health and Safety Executive, Police and other regulators who cautioned against non-enforceable measures. In a number of sectors including construction, home moves, motor trade, arts and close contact services indicated that the continued use of face coverings may increase public confidence in using their services.

Trade unions including the Call Centre Group and BECTU advocated for the continued regulatory requirement to remain the default and enforced. However, unions did not want the responsibility for enforcement to fall upon staff. Hospitality stakeholders also did not want businesses to be tasked with enforcing face coverings regulations.

In terms of enforcement, business were concerned that the removal of regulations in some settings and not others risked causing public confusion, making enforcement more difficult and leading to staff being confronted by customers. Event's organisers believe that compulsory wearing of face coverings at events both indoors and outdoors will not be accepted by the industry nor the public. They state that it is not enforceable in practice and would result in incidences of conflict with stewards if enforcement was attempted. Events noted that consistency across sectors would greatly aid compliance by making regulations as clear and understandable as possible. Museums, local authorities, culture and leisure similarly noted that the removal of guidance for some areas would make it more difficult for sectors that wished to retain face coverings as they would be more open to public challenge.

Agriculture and close contact services stakeholders were concerned that removing the requirement of customers in some settings would result in greater risk for staff. Both public transport and faith and belief stakeholders expressed that while they were supportive of face coverings where needed, they did not want to be singled out and wanted to see consistency across sectors. A number of areas including retail and close contact services were concerned that removing face covering requirements in some settings but not others would imply that those settings had greater risk and undermine public confidence in them, which could in turn correlate in loss of revenue.

Other sectors including aviation, museums, galleries and Food Standards Scotland stated that they would continue to require customers to wear face coverings, even without government regulations. In a *Guardian* article published on July 14, representatives from several airlines were quoted confirming that they intended to follow European and industry guidelines requiring face coverings, regardless of changes in legislation in the United Kingdom.⁶ A number of major supermarkets in England have informed the *BBC* that they will continue to require face coverings, even after they are no longer mandatory from July 19.⁷

Night time economy stakeholders viewed any regulatory requirement for staff or customers to wear face coverings as a costly and disruptive measure that prevents a return to normal trading. The Scottish

⁶ *The Guardian* – July 14 - [Planes, trains, buses: where will masks be mandatory in England after 19 July? | Transport | The Guardian](#)

⁷ BBC – July 16 - [Sainsbury's and Tesco to encourage mask-wearing from Monday - BBC News](#)

Chambers of Commerce indicated that many businesses would not intend to implement face coverings if they were not required to do so.

Some sectors asked for clarification on how settings would be categorised in the Regulations. Transport queried whether rolling stock, sea vessels and transport facilities would be treated the same as public transport vehicles such as buses and trains. Retail highlighted the difficulty in differentiating intermingled sectors, for example a retail premise within a larger visitor attraction.

Landscaping, universities, hospitality and close contact services expressed their concern over staff wellbeing if they were made to wear face coverings for extended periods of time, with warm kitchen environments highlighted as a particularly uncomfortable setting.

Communication while wearing face coverings was also an issue identified by some. Hospitality observed that face coverings can cause communication difficulties which can lead to mistaken orders and unnecessary costs for businesses. Massage therapy, hospitality and universities highlighted that in areas where lip reading is necessary, face coverings can lead to additional costs in order to provide support. Meanwhile, events highlighted that in activities where face to face communication was key – for example business networking events – the value was diminished by the presence of face coverings. Arts similarly noted that some work and activities were very difficult to carry out with face coverings in use.

Prior stakeholder engagement brought to attention concerns from Food Standards Scotland, manufacturing and agriculture policy colleagues that in some specific settings, such as on the production floor, face coverings can lead to health and safety concerns. Face coverings can impede hearing and communication, which can pose significant safety issues, while they also have the potential to become caught in machinery and risk workplace accidents. They questioned whether the health and safety risks outweighed the public health benefit, particularly when other measures were in place. There is an exemption in the regulations which permits the removal of a face covering when undertaking tasks in the course of employment, where the wearing of a face covering would cause a material risk of harm.

A number of stakeholders advocated for a four nations approach. The Scottish Chambers of Commerce, hospitality and events, expressed their wish to see Scotland align with the United Kingdom Government's voluntary approach to face coverings. There was a concern that Scottish business would be placed at a competitive disadvantage if measures like face coverings were kept in place, but eased elsewhere. Organisations active in different parts of the United Kingdom also noted that differences in rules could make internal communications over restrictions more complex and result in inconsistent internal company policies.

A number of sectors also suggested situational exemptions to the use of face coverings. Faith and belief stakeholders, libraries and events suggested that individuals could remove their face coverings when seated in certain settings. Close contact services suggested those on treatment tables could also be allowed to remove them.

Options:

Option 1: Continue the mandatory usage of face coverings in certain indoor spaces (including indoor communal workplace area) and mandate the use of face coverings in nightclubs, dance halls, discotheques and sexual entertainment venues in line with the re-opening of the sector.

Costs – As laid out under 'Competition Assessment' while we do not have data on how much business have invested in face coverings, we do know that they intend to continue investing in a range of protective measures which incur financial expenditure. While we do not have data about the direct impact of the mandatory use of face coverings on footfall, footfall has fallen and e-commerce has increased. Hospitality stakeholders have also indicated that face coverings can cause communication issues which result in incorrect orders and loss of revenue.

The divergence between policy in Scotland and England could create competitive advantages and disadvantages for Scottish businesses, which is a concern that stakeholders have raised.

There is no legal duty on employer to supply face coverings – as they are not classified as PPE – so there are no legal additional costs to business or organisations, although it is accepted that many businesses purchase face coverings on behalf of their customers or employees.

Benefits – Reduced risk of infection and transmission of the virus. The benefits of reducing transmission would also be experienced by those who are exempt from the mandatory requirement. Reducing the risk of transmission will benefit business as it will support the continued easing of restrictions.

The continued mandatory requirement to wear face coverings may result in reduced anxiety for customers which could support them to feel more safe and confident in society, and to spend more time – and money – visiting businesses.

Option 2: Remove the requirement to wear face coverings in some settings and retain the requirement in settings of known transmission.

Costs – As laid out under ‘Competition Assessment’ while we do not have data on how much business have invested in face coverings, we do know that they intend to continue investing in a range of protective measures which incur financial expenditure. While we do not have data about the direct impact of the mandatory use of face coverings on footfall, footfall has fallen and e-commerce has increased. Hospitality stakeholders have also indicated that face coverings can cause communication issues which result in incorrect orders and loss of revenue.

This may result in a competitive advantage for some businesses where face coverings are not required. On the other hand, this may also result in a competitive advantage for businesses where face coverings are still required, as customers may feel safer visiting a setting where face coverings are still required.

The divergence between policy in Scotland and England could create competitive advantages and disadvantages for Scottish businesses, which is a concern that stakeholders have raised

Benefits – Reduced risk of infection and transmission of the virus – however this would not be to the same extent as Option 1. The benefits of reducing transmission would also be experienced by those who are exempt from the mandatory requirement. Reducing the risk of transmission will benefit business as it will support the continued easing of restrictions.

The continued mandatory requirement to wear face coverings may result in reduced anxiety for customers, however this may not be to the same extent as Option 1, which could support them to feel more safe and confident in society, and to spend more time – and money – visiting businesses.

Option 3: Remove the requirement to wear face coverings from the Regulations and recommend their use in guidance.

Costs – This would not result in any financial expenditure for business, although it is accepted that many businesses purchase face coverings on behalf of their customers or employees and may continue to do so even if there is not a mandatory requirement.

Benefits – The public health benefits of this Option are far more diminished than Options 1 and 2. Data shows that adherence to wearing face coverings rose significantly when the requirement became mandatory and so usage may decrease significantly if the regulatory requirement was removed. This may be accelerated by policy across the UK e.g. from 19 July there are no regulatory requirements to wear face coverings in England.

Option selected – Option 1

Based on the current scientific evidence and balancing the direct harm of Covid (Harm 1) with the potential increase in transmission caused by removing of other legal restrictions (physical distancing), Option 1 has been deemed necessary and proportionate to protect public health.

Scottish Firms Impact Test:

We have considered the impact that these regulations will have on Scottish businesses.

Competition Assessment:

It is unlikely that the change in the aged based exemption – from under 5 to under 12 years of age – will result in a competitive advantage or disadvantage to Scottish business. In terms of the continued regulatory requirement to wear face coverings in most indoor public places and indoor communal workplaces, the Regulations will have an impact on Scottish companies in a number of ways. Scottish businesses have invested large sums in protective measures, including face coverings, and the continued requirement will incur financial expenditure or loss in revenue. Consumers may alter their behaviour and favour settings where face coverings are mandatory or they may choose not to visit settings where face coverings are required and instead either visit outdoor settings or shop online.

In addition, there is not a 4 nations approach to the continued mandatory use of face coverings and from 19 July all legal requirements to wear face coverings have been removed in England. The divergence between policy in Scotland and England could create competitive advantages and disadvantages for Scottish businesses, which is a concern that stakeholders have raised. Some consumers may feel more secure in an environment with more widespread regulations around face coverings, and therefore prefer to travel to or do business in Scotland. Others individuals, particularly in settings where comfort or face to face communication are of greater importance, may prefer to do business in England, to the disadvantage of Scottish business. It is uncertain at present whether consumer behaviour will lead to the more widespread mandated use of face coverings in Scotland becoming a net advantage or disadvantage for Scottish business. Organisations active across different parts of the United Kingdom will face greater complexity in their messaging when dealing with different rules and regulations around face coverings across, which may lead to additional costs.

Face coverings have been mandatory on public transport and private hire car services since June 2020 and will remain in place beyond Level 0. While transport providers do not have a legal requirement to provide face coverings to staff or customers within the Coronavirus Regulations, and there is an exemption for staff if they are behind a partition (e.g. bus or train driver booth), employers do have responsibilities to protect the health of their staff and customers in reserved Health and Safety regulations and as such have bought face coverings. While we do not have direct data on the purchasing of face coverings by the transport sector we do know that, 79% of businesses in Scotland in the Transport and Storage sector are currently using or intending to use Personal Protective Equipment (PPE). 88% of businesses in the Transport and Storage sector are also implementing hygiene measures, social distancing (86%), adjusted working practices (66%) and doing temperature checks (46%),⁸ all of which incurs financial expenditure or loss in revenue. 31% of businesses in the Transport and Storage sector reported decreased turnover in the last two weeks of the BICS survey (28th June to 11th July 2021) compared with what is normally expected for this time of year, broadly in line with all businesses in Scotland (33%). When asked why the sector was experiencing a change in turnover, the majority (63%) of businesses reported the Covid-19 pandemic as the reason⁹. The mandatory requirement to wear face coverings will therefore continue to have a business implication on the transport sector.

Transport Scotland have found that concerns about using public transport remain high: 70% of people are very or fairly concerned about contracting or spreading the virus while using public transport; and 61%

⁸ [Business Insights and Conditions Survey \(BICS\) Scotland – Wave 34 \(28th June to 11th July 2021\)](#)

⁹ As above.

are very or fairly concerned about having enough space to observe physical distancing on public transport. Public polling also shows that 83% of respondents think that face coverings should continue to be mandatory on public transport and so the regulations may have a positive business impact if the support people to feel safe and confident while travelling and foster public confidence.¹⁰

Some people may choose not to travel using public transport as they do not want to wear a face covering, which may give a competitive advantage to the car industry and increase purchases of cars. Survey data from Transport Scotland from 31 May - 6 June 2021 found that 40% agree with the statement “I will avoid public transport and use my car or other vehicle more than I did before when restrictions on transport are lifted”.¹¹ New car registrations in June 2021 grew 28.0% year-on-year to 186,128 in the UK as a whole, according to the Society of Motor Manufacturers and Traders (SMMT’s) latest figures.¹² Compared with the previous decade average, however, monthly registrations were down -16.4%, while total registrations for Q2 2021 fell short of industry expectations by around 9,000 units, partly as the ongoing global semiconductor shortage acted as a limiting factor on supply. Additionally, the main reasons for avoiding public transport, aren’t however as people do not want to wear a face covering, but in rank order are the risk that others are still carrying the disease; convenience; unable to stay 1m apart; and cleanliness or hygiene on-board public transport.¹³

Face coverings have been mandatory in retail settings since 10 July 2020 this mandatory requirement will remain beyond Level 0. Essential stores (approximately 36% of retail businesses providing 129,640 jobs in Scotland are deemed to come under the essential retail category as defined by the [Strategic Framework](#)) have remained open throughout the pandemic. Again, while employers are not required to enforce the wearing of face coverings within the Coronavirus Regulations, stakeholders, such as Marks and Spencer’s and other retailers, have informed us that they have invested substantial sums in the procurement of face coverings and face shields for their staff and customers. 28% of businesses in the Wholesale, Retail, Repair of Vehicles sector reported decreased turnover in the last two weeks of the BICS survey (28th June to 11th July 2021) compared with what is normally expected for this time of year, slightly lower than all businesses in Scotland (33%). When asked why the sector was experiencing a change in turnover, 58% of businesses reported the Covid-19 pandemic as the reason¹⁴. In addition to this the Scottish Retail Consortium (SRC) estimates that lost retail sales revenues over the past year would be somewhere in the £3.5 billion to £4.5 billion range. Therefore the mandatory requirement to retain face coverings, and the likelihood that employers will continue to invest substantial funds in face coverings, will likely have a substantial impact on business.

While public polling shows that 76% of respondents think that face coverings should be mandatory in shops and enclosed public places¹⁵ there will be some customers who do not want to wear face coverings and stakeholder have alerted us to a rise in incidences of verbal and physical violence linked to coronavirus measures. The British Retail Consortium’s 2021 Crime Survey found that, when asked about the three most significant threats for their business over the next two years, the vast majority of retailers nominated violence against staff as the number one issue.¹⁶ Nearly 7 in 10 (69%) placed this as their top threat with 88% placing it in the top 3. Violence and abuse rose from 424 incidents a day in 2020 to 455 incidents of violence and abuse a day in 2021, nearly one every minute of a typical nine hour shopping day. Over 110 incidents a day involved violence, about one every five minutes during normal opening hours. While the Scottish Parliament has passed the [Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill at Stage 3](#), there is the possibility that incidences of verbal and physical violence linked to coronavirus measures – and face coverings – could continue in line with the continued mandatory requirement to wear face coverings.

¹⁰ [Daily Question | 05/07/2021 | YouGov](#)

¹¹ [COVID-19 Public Attitudes Survey Data: Wave 18 \(transport.gov.scot\)](#)

¹² [New car market recovery squeezed by supply issues - SMMT](#)

¹³ [COVID-19 Public Attitudes Survey Data: Wave 18 \(transport.gov.scot\)](#)

¹⁴ [Business Insights and Conditions Survey \(BICS\) Scotland – Wave 34 \(28th June to 11th July 2021\)](#)

¹⁵ [Daily Question | 05/07/2021 | YouGov](#)

¹⁶ [brc-crime-survey-2021.pdf](#)

Those customers who do not want to wear face coverings may choose to shop online rather than in store. This number is likely to be small. Polling found that when asked to think ahead to September of this year and answer which measures they expected to keep doing in September of this year, 73% responded 'wearing a face covering when shopping or on public transport'.¹⁷

However, throughout the pandemic e-commerce has grown significantly. Due to lockdown measures, online retail sales as a percentage of total retail sales has seen record highs across the UK with a peak of 36.3% in January 2021. Online sales made up 26.1% of retailing in the UK in June 2021. Despite the recent decline, online sales are still significantly higher than February 2020's pre-pandemic levels (19.1%)¹⁸. According to Business Insights and Conditions Survey (BICS), at July 2020 4% of businesses in the UK started selling goods or services online for the first time during the pandemic¹⁹. Figures comparing footfall between 2019 (pre-pandemic) and 2021 show that Scottish footfall decreased by 66.3% in March Year-On-Two-Years (Yo2Y), a 4.7 percentage point increase from February. This is above the UK average decline of 68.7% (Yo2Y). Shopping centre footfall declined by 72.1% in March (Yo2Y) in Scotland, up from -73.2% in February. Research from Accenture found that the vast majority of consumers who have increased their use of digital and omnichannel services, such as home delivery, curb-side pickup or shopping via social media platforms expect to sustain these activities into the future.²⁰ Those retailers who already have infrastructure to support online shopping may have a competitive advantage compared to retailers who do not and who are reliant on footfall for their sales.

Face coverings have been mandatory in hospitality settings since 14 September 2020 this mandatory requirement will remain beyond Level 0. Again, the issues and benefits for transport and retail could be mirrored in hospitality. While we do not have direct data on the purchasing of face coverings by the hospitality sector we do know that, 78% of businesses in Scotland in the Accommodation and Food Services sector are currently using or intending to use Personal Protective Equipment (PPE)²¹. 84% of businesses in the Accommodation and Food Services sector are also implementing hygiene measures, social distancing (78%), adjusted working practices (58%) and doing temperature checks (32%), all of which incurs financial expenditure or loss in revenue. 68% of businesses in the Accommodation and Food Services sector reported decreased turnover in the last two weeks of the BICS survey (28th June to 11th July 2021) compared with what is normally expected for this time of year, significantly higher than all businesses in Scotland (33%). When asked why the sector was experiencing a change in turnover, the majority (89%) of businesses reported the Covid-19 pandemic as the reason²². Therefore the mandatory requirement to retain face coverings, and the likelihood that employers will continue to invest substantial funds in face coverings, will likely have an impact on business.

In addition, during stakeholder engagement the hospitality sector noted that face coverings can cause communication difficulties which can lead to mistaken orders and unnecessary costs for businesses. As face coverings remain in hospitality settings, this negative impact could continue. People who do not want to wear face coverings in hospitality settings may instead choose delivery services for home dining.

Face coverings have been mandatory in communal staff areas in both retail and storage and distribution facilities hospitality settings since 9 October 2020 and this mandatory requirement will remain beyond Level 0. Anecdotal evidence suggests that many staff within delivery services and the 'gig economy' have zero hours contracts or are classified as self-employed. Stability of hours and earnings are lower in this sector and many employees are not unionised. Employees within this sector who are self-employed may feel the financial implications of purchasing face coverings more so than staff working in other sectors

¹⁷ Results are taken from questions run on behalf of Scottish Government on the YouGov online omnibus survey. The sample is demographically and geographically representative of adults 18+ across Scotland, with c.1000 responses each wave. Fieldwork for this result took place 27-29 July.

¹⁸ [ONS Retail Sales Index, UK](#)

¹⁹ [Business Insights and Conditions Survey \(BICS\) UK – Wave 9 \(29th June to 12th July 2020\)](#)

²⁰ [COVID-19: New Retail Consumer Behavior Habits | Accenture](#)

²¹ [Business Insights and Conditions Survey \(BICS\) Scotland – Wave 34 \(28th June to 11th July 2021\)](#)

²² As above.

where face coverings are regulated, such as retail, and where employers have purchased face coverings for their staff.

Face coverings have been mandatory in communal indoor workplaces since 9 October 2020 and this mandatory requirement will remain beyond Level 0. In terms of offices and other workplaces, 79% of businesses in Scotland are currently using or intending to use Personal Protective Equipment (PPE). 86% of businesses are also implementing hygiene measures, social distancing (85%), adjusted working practices (62%) and doing temperature checks (37%), all of which incurs financial expenditure or loss in revenue.²³ A third (33%) of businesses reported decreased turnover in the last two weeks of the BICS survey (28th June to 11th July 2021) compared with what is normally expected for this time of year. When asked why the sector was experiencing a change in turnover, the majority (73%) of businesses reported the Covid-19 pandemic as the reason.

Employers may choose to continue to with home working due to the continued requirement to wear face coverings. This could therefore have an impact on the corporate property market in the long run if businesses choose to adopt new ways of working, such as giving up leases for offices and favouring home working.

Face coverings have been mandatory in communal indoor workplaces since 9 October 2020 and this mandatory requirement will remain beyond Level 0. This will impact the events industry has been particularly negatively affected by Covid. For the marriage and civil partnership group within the events sector, there has been a reduction in the number of marriages and civil partnerships taking place: these were down by 14.3% in the first quarter of 2020 compared to the average over the past five years. This was mainly due to the fact that Registration Offices closed in mid-March and most marriages scheduled after the closure could not take place. From June 2020 onwards marriages and civil partnerships were resumed with limits on the number of attendees. Based on the provisional data for 2020, there has been around a 54% reduction in the number of marriages and a 13% reduction in the number of civil partnerships in 2020 compared to the previous year.²⁴

As the requirement only applies to indoor settings, customers may choose to have outdoor events where there is no face covering requirement, which may give some venues a competitive advantage. Due to the climate and weather in Scotland it is not viable for all events to take place outside and so customers may choose to postpone their events or travel across the border to England where there are no face coverings requirements. Stakeholders have also highlighted that in activities where face to face communication are key – for example business networking events – the value was diminished by the presence of face coverings. Again, people may choose to have outdoor events or travel to England where face coverings are not required in order to improve face to face communications. This could put Scottish companies at a competitive disadvantage and have a negative impact on the events sector.

The night club sector has been closed since March 2020 which has had significant financial implications. In terms of size of the nightclub sector in Scotland, there are 123 identified business premises, as per the October 2020 Contingency Fund, and the 2019 Business Register Employment Survey (BRES) estimated employment in the sector at around 2,500. The opening of the sector will generate revenues, but the extent of revenue generation and profitability may be partially offset by continued restrictions – face coverings. Data for the nightclub sub-sector of investments in protective measures is not available and as the sector has been closed.

The mandatory requirement to wear face coverings in nightclubs may also reduce the attraction of going, which may in turn reduce demand. There are exemptions within the regulations, for eating and drinking, when seated, and when exercising (which would include dancing) and so face coverings would only be required when moving throughout the setting.

²³ [Business Insights and Conditions Survey \(BICS\) Scotland – Wave 34 \(28th June to 11th July 2021\)](#)

²⁴ National Records of Scotland. [Births, Deaths and Other Vital Events - Quarterly Figures](#)

The change in the exemption to allow a worker or volunteer to remove their face covering if they are either separated from others by a partition or a distance of at least 1 metre will have a positive impact on businesses. There is an exemption for a face covering to be removed if the worker or volunteer is behind a partition, however some businesses do not have the funds to buy partitions or pay for their regular cleaning. For other businesses, partitions are impractical or not a feasible and workable option.

Many businesses do not have large enough buildings or break rooms to enable staff to take breaks at regular scheduled times if a distance of 2m is required to remove a face covering. In response some businesses instituted staggered breaks which impacted negatively on operations. Other businesses were not able to operate with 2m distancing so have either moved to home working or have temporarily closed. The change in the exemption to 1m will have a positive impact on business and will allow increased operational capacity, full or partial return to office working, and the re-opening of businesses which have previously been closed.

The change in the age-based exemption from under 5 to under 12 years of age may have a positive benefit on consumers. Parents, guardians and relevant adults may have found it slightly challenging to ensure that children between 5 and 11 years old wore face coverings while in indoor public spaces and so the change in the age based exemption may make shopping and visiting other settings slightly less burdensome which may result in customers spending more time in businesses and therefore spending more money. The latter would also benefit businesses.

During the Covid-19 pandemic many companies have become involved in the production of face coverings. This includes sole traders and small businesses, as well as larger manufacturers. In July 2020 the Cabinet Office announced that they had procured 10 face covering production lines which would be operated in cooperation with UK manufacturers and which would produce millions of products a week.²⁵ This included one production line in Livingston, Scotland which would be operated by Transcal. The continued mandatory requirement – and demand – for face coverings could positively impact some manufacturers.

Consumer Assessment:

The quality of goods and services available to consumers is unlikely to be impacted by changes in face covering regulations. However, the nature of services in different sectors will change as face coverings remain in place for some settings and are advisory in guidance in others.

The wearing of face coverings first became mandatory on public transport in June 2020 and extended to include most indoor public places and communal indoor workplaces by November 2020. Therefore customers have become used to this requirement and have sourced face coverings to wear where needed.

The presence of differing regulations across the United Kingdom may create a degree of confusion for consumers over which settings they are required to wear face coverings in and why. Clear communication and messaging will be required to ensure that the public is fully aware of the regulatory requirements in Scotland.

YouGov polling from July 5²⁶ indicates that 70% of all respondents in Great Britain and 76% of respondents in Scotland would feel less safe in crowded or un-ventilated places where people were not wearing a face covering. Compliance with wearing face coverings in Scotland has generally been very high. Polling from YouGov from 13-15 July²⁷ indicated that 83% identify wearing face coverings when

²⁵ [New production lines will make millions of face coverings each week - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/new-production-lines-will-make-millions-of-face-coverings-each-week)

²⁶ Results from YouGov Daily Question 5 July 2021: 2,749 GB adults

²⁷ Results are taken from questions run on behalf of Scottish Government on the YouGov online omnibus survey. The sample is demographically and geographically representative of adults 18+ across Scotland, with c.1000 responses each wave. Fieldwork dates as shown.

required as *important*. This number has decreased from mid-January, when 90% of respondents considered wearing face coverings *important*. In the same polling, (13-15 July), 91% rated themselves as doing *very well* at wearing a face covering when required. Polling (27-29 July²⁸) also found that when asked to think ahead to September of this year and answer which measures they expected to keep doing in September of this year, 73% responded 'wearing a face covering when shopping or on public transport'.²⁹

Throughout the pandemic we have received high levels of correspondence from the public regarding face coverings. During the period 28 June 2021 – 21 July 2021 we received 68 cases relating to face coverings which can be broadly categorised in the following way; remove the mandatory requirement to wear face coverings and move to a guidance based approach (34), retain the regulatory requirement to wear face coverings (29), and other issues relating to face coverings, mainly exemptions (7). Combined with polling data, this suggests that customers both expect to wear a face covering and think it's important to going forward.

Many consumers, including the most clinically at risk, disabled people, older people and their families, may be anxious about the wider easing of restrictions. During consultation on potential baseline measures beyond Level 0 some stakeholders raised concerns that changes to face covering requirements could result in disabled people, who are at a higher risk of becoming seriously ill from the virus, fearing for their safety if there was a move to guidance and personal risk assessments. Young disabled people and those with additional support needs, and their parents, also raised similar concerns. Therefore some customers, particularly those at highest clinical risk, may find the continued mandatory requirement to wear face coverings supports them to feel safe and confident while participating in society.

Continuing the mandatory use of face coverings could impact some customers more so than others. There are some people who cannot wear a face covering for health, disability or other legitimate reasons. People with dementia, learning disabilities or autistic people and children may find the regulations particularly confusing and difficult to understand and/or comply with. There is a reasonable excuse not to wear a face covering where the person cannot put on, wear or remove a face covering because of any physical or mental illness (such as anxiety and panic disorders) or impairment or disability or wear one without severe distress. Similarly, discretion is allowed for those who need to communicate with a person who relies on lip reading or facial expressions to communicate.

People with breathing difficulties or physical conditions making face covering usage difficult may find the continued mandatory usage of face coverings challenging. Exemptions exist within the regulations and guidance and will continue to do so. The general public are not required to show proof of exemption, however a [Face Coverings Exemption Card Service](#) has been created to provide those who are exempt with a tool to feel more safe and confident when participating in society.

There have been reports of incidences of exempt people being denied access to spaces and services. Stakeholders have raised concerns that the continued mandatory use of face coverings will result increased discrimination towards those with exemptions. In consultation with stakeholders we have produced guidance for workplaces on engaging with customers and visitors and dealing with customers with exemptions. This guidance can be found on the [Scottish Government website here](#). The Equality and Human Rights Commission (EHRC) have also provided [guidance which explains how service providers can ensure they are compliant with the Equality Act 2010](#).

There are some for who accessibility and affordability creates barriers to using and maintaining high quality and sanitary face coverings. Data has found that people from lower income households were more

²⁸ As above.

²⁹ Results are taken from questions run on behalf of Scottish Government on the YouGov online omnibus survey. The sample is demographically and geographically representative of adults 18+ across Scotland, with c.1000 responses each wave. Fieldwork for this result took place 27-29 July.

likely to have poorer health outcomes if they contracted Covid³⁰ and so those who the policy would most positively affect may also be negatively impacted by the policy.

Accessibility of face coverings has always been a key consideration of the Scottish Government. Evidence suggests that high quality face coverings can be made at home from everyday products.³¹ As per the [World Health Organisation \(WHO\) advice](#), our [face coverings guidance](#) recommends the use of re-usable face coverings that are two, preferably three, layers thick and we have produced a video on best practice and how to make your own face covering at home [here](#). We have also provided guidance on how to clean a face covering if you do not have access to a washing machine.

While we are not centrally providing face coverings to the general public, local authorities and schools consider how to address any equity concerns arising from the use of face coverings. In terms of those who rough sleep and are at risk of homelessness, many street outreach teams provide disposable face masks to those that need them. Some of the additional £1 billion of additional investment to help local communities and build resilience in public services has been used by local partners including third sector to provide face coverings free of charge.³²

Test run of business forms:

No statutory forms will be created.

Digital Impact Test:

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

Legal Aid Impact Test:

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

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider BRIA for COVID-19 legislation.

Implementation and delivery plan and post-implementation review:

As with other public health measures in place, we will keep face covering legal requirements under review in the context of transmission of the virus (Harm 1) and the impact on wider society (Harms 2, 3 and 4). If face coverings are no longer found necessary or proportionate to achieve the legitimate aim – or a less intrusive measure is found to achieve the same aim – then the legal requirement will be removed.

Summary and recommendations:

We have made great progress in tackling the pandemic through our combined efforts and the success in the vaccination rollout to date. However, we know that no vaccine is 100% effective at preventing infection, disease and transmission and to maintain the progress we have made in returning to more normality, it

³⁰ [Covid+and+Inequalities+Final+Report+For+Publication+-+PDF.pdf \(www.gov.scot\)](#)

³¹ In June 2020 the British Retail Consortium released a [specification for Textile Barrier Face Coverings](#) designed for both disposable and reusable face coverings; The British Standards Institute adopted the [specification for "barrier masks"](#) in June 2020; [SAGE-EMG, SPI-B, Transmission Group recognised the importance of quality in its discussion on 23rd December 2020](#)

³² [Helping communities through the pandemic - gov.scot \(www.gov.scot\)](#)

will be important for individuals, businesses and other organisations to continue to stick to a set of baseline measures to stop the virus resurging and to protect those who do not have protection from vaccination.

While we can now manage the threat to public health whilst also reducing the impact on wider society, as can be seen by the removal of the regulatory requirement for physical distancing, the continued use of face coverings – as per Option 1 – is necessary to continue to reduce transmission of the virus.

We continue to keep regulations and guidance under review and if appropriate we will introduce changes in line with the emerging evidence.

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: 31 August 2021

Minister's name: John Swinney MSP

Minister's title: Deputy First Minister and Cabinet Secretary for Covid Recovery

ANNEX A

SCIENTIFIC EVIDENCE ON THE USE AND EFFICACY OF FACE COVERINGS

- On 4 June 2020, SAGE discussed mitigating measures which included the use of face coverings. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- On 5 June 2020, updated December 2020, the World Health Organisation (WHO) released updated advice on the use of face coverings. The guidance advised that, to prevent Covid-19 transmission effectively in areas of community transmission, governments should encourage the general public to wear face coverings in specific situations and settings as part of comprehensive approach to suppress Covid-19 transmission. You can find a copy of this guidance on the WHO website [here](#).
- On 24 July 2020, UK Parliament released a summary of the relevant SAGE reports on face coverings. This can be found on the UK Parliament website [here](#).
- On the 21 August 2020, the WHO published evidence on the use of face coverings for children within the community. This evidence can be found on the WHO website [here](#).
- On 25 August 2020 the Chief Medical Officer's Advisory Sub-Group on Education and Children's Issues published an update on face coverings in schools which further supports our current position with regards to children wearing face coverings. The update can be found [here](#).
- On the 14 September 2020, the WHO published an Annex on Considerations in adjusting public health and social measures in the context of COVID-19. You can find a copy of this guidance on the WHO website [here](#).
- On 15 September 2020, SAGE NERVTAG-EMG provided updated advice on the duration of the use of face coverings. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- On 1 October 2020, SAGE concluded that to mitigate against aerosol transmission, enhanced use of face coverings should be considered alongside ventilation for reducing far-field aerosol transmission risks. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- On 12 October 2020, SAGE published a paper on the benefits and harms of different measures. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- On 1 December 2020 WHO published updated advice on the use of face coverings in the community. You can access the most up to date guidance from WHO [here](#).
- On 23 December 2020, SAGE-EMG, SPI-B, Transmission Group provided updated advice on the use of face coverings as mitigating measures to reduce the spread of the new variant. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- On 8 April 2021, SAGE highlighted that studies support the continued use of face coverings for staff working in hospitality, retail and leisure sectors, especially those working at restaurants, bars and pubs are at higher risk. You can find further information in the meeting minutes which are available on the UK Government website [here](#).
- 30 April 2021, evidence published in a SAGE SPI-B paper highlighted that minority and socio-economically deprived groups face several barriers in applying risk-mitigating practices in their workplaces, communities, transport, and domestic spaces therefore, guidance only in all settings rather than mandating is not recommended. They also stated that as settings reopen, prevention measures will be important, e.g., limiting building occupancy, improving ventilation, prioritising outdoor seating, use of face coverings, physical distancing, adherence to quarantine, and encouraging vaccination. You can find further information in the meeting minutes which are available on the UK Government website [here](#).

- 7 May 2021, the Centre for Disease prevention and Control (CDC) published a scientific brief into the community use of cloth masks to control the spread of SARS-CoV-2. This concluded that mask wearing reduces new infections. More information can be found [here](#).
- On 14 June 2021, WHO published interim guidance on the approach that countries with advanced vaccination programmes should adopt to tackle Covid-19. WHO recommends the continued use of face coverings in areas of known community or cluster transmission. The guidance can be found [here](#).
- On 5 July 2021 EMG, SPI-M and SPI-B published “considerations in implementing long-term ‘baseline’ NPIs.” The key messages are that ongoing baseline measures, such as face coverings, are required to decrease the risk of transmission from an infected person. The paper also highlights the importance of quality and fit of face coverings. You can find further information in the meeting minutes which are available on the UK Government website [here](#).

ANNEX B

STAKEHOLDERS AND SECTORS ENGAGED

Business
Retail
Manufacturing
Transport
Aviation
Hospitality
Tourism
Close contact services
Events
Performing arts / arts venues
Higher education
Optometry
Primary care
Voluntary and community sector
Sports
Funeral and crematorium sector
Faith and belief organisations
Disability organisations
COSLA
Police
Fire Service
Scottish craft butchers
Food Standards Scotland
Agriculture
Libraries
Home moves
Trade Unions
Night time economy