

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (RESTRICTIONS) (SCOTLAND) REGULATIONS 2020

SSI 2020/103

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

Purpose of the instrument.

This instrument makes provision for the purpose of enabling a number of emergency public health measures to be taken to reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Scotland which causes the disease Covid-19.

Policy Objectives

1. The UK Coronavirus Bill passed the House of Commons on 24 March 2020. The Scottish Government confirmed that it will use new powers within the Bill, which bring Scotland’s powers into line with existing powers in England, to ensure that action to implement social distancing and impose restrictions on gatherings, events and operation of business activity can be enforced.
2. It is critical for the Scottish Government to take all reasonable steps to prevent the community transmission of disease, where possible. Severe acute respiratory coronavirus 2 (SARS-CoV-2) was recently declared by World Health Organisation a Public Health Emergency of International Concern. These measures are deemed necessary to increase compliance with the public health guidance and limit the further spread of the disease.
3. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the Regulations”) provide for the closure of certain premises and businesses, during the emergency period, in order to protect against the risks to public health arising from coronavirus by restricting activities which would lead to prolonged social contact . These businesses and premises include food and drink venues for consumption on site (with some exceptions such as hospitals and care homes); drinking establishments including bars, pubs and nightclubs, entertainment venues including cinemas, theatres, concert halls and bingo halls; museums and galleries; nail, beauty, hair salons and barbers; spas and massage parlours; casinos and betting shops; all indoor leisure and sports facilities including gyms; funfairs, playgrounds and outdoor markets (except for stalls selling food).
4. The Regulations contain provisions to allow businesses or services, considered essential services, such as food retailers and pharmacies, to continue to operate under the restrictions. It places an enforceable duty on these business to take reasonable steps to ensure compliance with required social distancing measures within the relevant premises.

5. The Regulations create a new offence making it unlawful for anyone to leave the place where they live without a reasonable excuse (and provides a wide- ranging, but nonexhaustive, list of reasonable excuses as possible defences to this offence). This means in practice that if a person has left the place where they live, and is questioned by a police officer, the individual could be fined if they do not provide a reasonable excuse. The regulations also place a ban on public gatherings of more than two people. Further, the Regulations provide Police Scotland with the power to enforce the restrictions on movement of people outside the place where they are living, to disperse gatherings and to enforce business closures.

6. They further provide police constables with the power to issue a Fixed Penalty Notice to anyone over 16, if the constable has reason to believe an offence has been committed under the Regulations. By a fixed penalty notice, a person may discharge any liability for the offence by payment of that penalty within a specified period. The levels of fine are set at £30 if paid within 28 days, or £60 thereafter. This rate will increase if penalties have already been issued to the same person up to a maximum of £960.

7. All measures contained in this instrument are time-limited and will expire at the end of the period of six months beginning with the day on which they come into force. Moreover, the Regulations are subject to a requirement to keep restrictions or requirements under review and for those to be lifted as soon as they are no longer deemed necessary to prevent, protect against or control the incidence or the spread of coronavirus.

8. The UK Government have brought in similar emergency public health measures in relation to England. There are other global precedents: France, Italy and Spain have each recently mandated the closure of non-essential businesses and other venues and placed restrictions on movement to limit community spread of severe acute respiratory coronavirus 2 (SARS-CoV-2).

Consultation

9. There has been no public consultation in relation to this instrument.

Impact Assessments

10. Impact Assessments have not been prepared for this instrument because of the need to make and lay the instrument urgently to encourage self-isolation and minimise the risks to public health arising from Covid-19. The provisions of the Regulations are however subject to strict obligations on the Scottish Government to review their necessity.

Scottish Government
Directorate for Readiness and Transition

26 March 2020