

Partial Business and Regulatory Impact Assessment

Title of Legislation - The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020

Purpose and intended effect

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 Principal Regulations”), to ensure that action to implement physical distancing and impose restrictions on gatherings, events and operation of business activity could be enforced. The Principal Regulations came into force on Thursday 26 March.

The Principal Regulations are reviewed at least once every 21 days and as soon as the Scottish Ministers consider that any restriction or requirement set out in these Regulations are 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, the Scottish Ministers must revoke that restriction or requirement. Following a review of the Regulations on 18 June 2020, Scottish Ministers decided to lay a further set of amending Regulations, the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020 (“the Amending Regulations”).

Policy Objectives

On 21 May 2020 the Scottish Government published a route map setting out a phased approach to easing lockdown restrictions while still suppressing coronavirus (COVID-19). The route map recognises that the restrictions have a negative impact on people’s lives, such as increasing loneliness and social isolation, deepening inequalities and damaging our economy. And that, subject to the available data and evidence, these restrictions should be gradually and carefully eased.

Some changes to the lockdown restrictions are made by this instrument and are described below. Other changes have been made through Scottish Government guidance, available at www.gov.scot/collections/coronavirus-covid-19-guidance.

Accommodation for workers

The Amending Regulations amend the principal regulations to expand the list of reasons that accommodation providers may continue to offer their services. They may now offer accommodation to a person that is travelling for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for the person to work, or to provide services, from the place where they are living. This recognises that, as we move between the phases of the route map, workers in certain industries which routinely require travelling long distances will need access to accommodation.

Effects identified

Work within the construction and forestry sectors usually require several days/weeks to complete, often in remote locations, so there is no alternative to overnight accommodation. Without this relaxation, the work will not take place and result in a negative economic impact.

Accommodation providers (such as hotels, guest houses and self-catering) will benefit from being able to offer their services to workers.

Evidence of negative impact, direct or indirect

Given the on-site nature of the work, the remote locations in which it is largely undertaken and the limited number of contractors there are no alternatives to accommodating workers that could be implemented quickly enough to ensure seasonally dependent tasks are completed over the next few months.

Accommodation providers will benefit financially.

In terms of the scale of the requirement - for the forestry contracting sector the number of workers seeking overnight accommodation will be somewhere between 200 – 250. There are three main contracting companies each with around 50 workers, and a dozen or so smaller operators with up to 10 workers each.

For the wider environmental management sector, there are similar numbers of workers seeking overnight accommodation (100-200) comprising agency/NGO staff, dedicated project teams (e.g. national seabird survey, Woodland Trust croft woodlands) and contractors (e.g. peatland restoration, Natural & Cultural Heritage projects).

The durations and frequency with which individuals will use overnight accommodation will vary depending on proximity of work site to home base. Some staff will need just one or two overnights to complete their work. Some squads and project teams will need work 5 days and return home for weekends. Others working further from their home base may work 6 days with a rest day on location for the duration of the work.

Within construction, the proportion of workers requiring temporary accommodation will increase with remoteness from centres of population.

Proposed mitigating actions

Guidance on safe outdoor working for forestry and environmental management was prepared by FISA (the Forestry Industry Safety Accord) in consultation with HSE and published on 29 May 2020. This covers mitigation measures to reduce risk of infection, personal hygiene and equipment maintenance and storage. Analytical advice is that given

the outdoor nature of this work and the limited contact with hard surfaces the risk of contamination is very low.

Guidance on workplace safety and hygiene protocols will be published on 18 June 2020.

Summary of Relevant Impact

Positive impact for accommodation providers.

Positive impact on sectors which require workers to work in locations away from home (such as forestry and construction).

There may be a risk that existing providers that are currently open do not have sufficient capacity to accommodate additional guests arising from this regulatory change within current social distancing parameters, while volumes of business may not be sufficient to encourage additional accommodation providers to reopen at this stage.

Recent industry data (for week commencing 31 May 2020) suggests a small number of properties open across Scotland, with average occupancy and prices substantially below that experienced for the same time last year. This implies that there would be appropriate capacity to accommodate increases in demand from this measure.

Mandatory Use of Face Coverings/Masks on Public Transport

Summary of aims and desired outcomes of policy

These Regulations introduce a new offence making it unlawful for anyone, without reasonable excuse, to use a passenger transport service or passenger transport service premises without wearing a face covering. The Regulations provide police constables with the power to issue a Fixed Penalty Notice to anyone 18 or over, if an offence has been committed. They also provide a non-exhaustive list of reasonable excuses for not wearing a face covering, for example if it were to cause the person severe distress due to a mental or physical disability, or if a person removes the face mask temporarily in order to take medication. There are also specific exemptions from the requirement to wear a face covering including on a school transport service or where there is a partition between the person providing transport services and the public. The requirement on people to wear face coverings on public transport is deemed necessary by the Scottish Ministers to help prevent the onward transmission of coronavirus in that setting.

Executive Summary

The First Minister announced mandatory wearing of face coverings on public transport on Thursday 18 June. This will come into effect from 22 June and will apply to staff or passengers who are in buses, trains (including the Glasgow Subway), airlines, trams, ferries, taxis and private hire vehicles, as well as at railway stations, bus stations and at Scotland's airports.

This follows extensive consultation with transport operators, trade unions, passenger representative groups, COSLA, regional transport partnerships, Police Scotland, and British Transport Police. Transport Scotland have also liaised with transport officials in England, Wales and Northern Ireland where different approaches are being taken.

There are some exemptions to the policy. Exemptions will apply for the young (under 5 years of age), for health reasons for those people for whom a covering is inappropriate, when persons are taking sustenance or medication or for other justifiable reasons (such as in a protected environment such as a driver's cab or in response to passengers who request information and who may have a hearing impairment or rely on lip reading).

Background

In March, at the start of the lockdown, the Scottish Government encouraged members of the public to consider wearing face coverings on public transport, when shopping or in other enclosed public environments.

On 26 May that advice was reinforced and clarified for the public and transport sector employees. Guidance was issued by the Scottish Government making recommendations as to where and by whom face coverings should be worn and the circumstances where face coverings need not be worn on public transport (for instance, on certain ferries or, for transport staff, where other mitigation measures such as protective screens are present).

On 4 June the UK Government announced that face coverings would be mandatory in England on public transport from 15 June. The Scottish Government announced mandatory face coverings on public transport on Thursday 18 June. This will come into effect from 22 June and will apply to staff or passengers who are in buses, trains (including the Glasgow Subway), trams, airlines, ferries, taxis and private hire vehicles, as well as at railway and bus stations, and at Scotland's airports.

There will be an emphasis on personal and collective responsibility but enforcement, as a last resort, will be available by Police Scotland and the British Transport Police.

Scope of the policy

Physical distancing, hand washing and respiratory hygiene, are the most important and effective measures we can all adopt to prevent the spread of coronavirus. Therefore the wearing of facial coverings must not be used as an alternative to any of these other precautions.

Though the scientific evidence on the benefits of their use is limited, there may be some benefit in wearing a face covering when entering an enclosed space such as a public transport vehicle where physical distancing is more difficult and where there is a risk of close contact with multiple people. It is the aim that, through the mandatory wearing of face coverings we help rebuild public confidence in the use of our public transport.

The current guidance advises that face coverings should be worn by all passengers and staff on train services (including those of the Glasgow Subway), bus services and on the Edinburgh Tram and at bus stations and railway stations. On ferry services face coverings should also be worn by passengers and staff unless the ferry is open to the elements or in a public area where physical distancing can be achieved.

Consultees proposed that the scope of the requirement for wearing face coverings should align with the current guidance but be extended to taxis and private hire vehicles because of their role in the transport system. The case in respect of taxis and private hire vehicles was strongly made in order to rebuild confidence where issues of transmission risk are considered to be high for those saloon vehicles where drivers are not physically separated from passengers.

It is recognised that a number of railway stations have no enclosed environments and therefore the wearing of a face covering could be seen to misalign with health advice that face coverings need not be worn in an open environment; however, the view of consultees was that to secure public acceptability all railway and bus stations should be included.

There were additional requests that airports should be included, notwithstanding guidance for airports and aeroplanes having been produced by the European Aviation Safety Agency, supplemented by conditions of carriage by airlines and conditions of entry by airport operators.

Purpose of the Regulations

The Amending Regulations are designed to reduce the public health risks posed by coronavirus by limiting the further spread of the disease, and are therefore designed to prevent harm to individuals in Scotland.

The Scottish Government is satisfied that all of the measures are appropriate and proportionate, but it recognises that they contain extraordinary measures required to respond to an emergency situation. The Amending Regulation therefore contains the following safeguards:

- All measures contained in the instrument are time-limited and, unless amended, will expire at the same time as the Principal Regulations.

- Moreover, the need for the requirement is subject to a requirement to review restrictions or requirements at least every 21 days 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.

This impact assessment recognises the need to keep in sight the changing nature of this situation. It will therefore be subject to regular review to ensure that the effect of this legislation on people with one or more of the protected characteristics is kept in view.

Consultation

Delivery Partners

Engagement and consultation has been extensive across the various modes of public transport with operators. In addition Transport Focus have been consulted regularly throughout in respect of the guidance and will be further engaged prior to implementation of the policy. Trade Unions have also been heavily engaged and are, along with their members, supportive of making the wearing of face coverings on public transport mandatory.

Public Consultation

It was necessary to make and lay these Amending Regulations urgently to seek to reduce the public health risks posed by coronavirus from those who work on public transport and users of public transport. These measures are deemed necessary to maintain compliance with the public health guidance and limit the further spread of the disease.

The pace of the work on this has meant limited consultation with external stakeholders in Scotland. However, there has been discussion and dialogue by Transport Scotland with transport operators, trade unions, passenger representative groups, COSLA, regional transport partnerships, Police Scotland, the British Transport Police, and Public Health Scotland, which has shaped how the policy in Scotland will be implemented. Transport Scotland has also reviewed analysis from external organisations who have consulted on this issue, where possible. These include, for example, Disability Equality Scotland's snap poll on wearing of face coverings, which showed that almost all (98%) of those who responded indicated they would wear a face covering on public transport if mandatory; and analysis of a survey being undertaken by Transport Scotland which shows 77% of those who responded intend on wearing a face covering if using public transport.

Parliament

N/A

Business

Engagement and consultation has been extensive across the various modes of public transport with operators. In addition Transport Focus have been consulted regularly throughout in respect of the guidance and will be further engaged prior to implementation of the policy. Trade Unions have also been heavily engaged and are, along with their members, supportive of making the wearing of face coverings on public transport mandatory.

Sectors and groups affected

Public Transport providers as well as private coach and taxi companies.

Benefits

- The Amending Regulations are designed to reduce the public health risks posed by coronavirus by limiting the further spread of the disease, and are therefore designed to prevent harm to individuals in Scotland.
- The Amending Regulations will facilitate the reopening of transport providers businesses and the wider reopening of business in Scotland.
- The Scottish Government is satisfied that all of the measures are appropriate and proportionate, but it recognises that they contain extraordinary measures required to respond to an emergency situation. The Amending Regulation therefore contains the following safeguards:
 - All measures contained in the instrument are time-limited and will, unless amended, expire at the same time as the Principal Regulations.
 - Moreover, the need for the requirement is subject to a requirement to review restrictions or requirements at least every 21 days 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.
- This impact assessment recognises the need to keep in sight the changing nature of this situation. It will therefore be subject to regular review to ensure that the effect of this legislation on people with one or more of the protected characteristics is kept in view.

Costs

It is not anticipated that the Amending Regulations will add any additional costs to business. Arrangements are in place to utilise existing provision held by the rail industry which will be shared for distribution at major bus stations. In addition appropriate signage is being made available, free of charge, and can be downloaded from the Transport Scotland website.

Any provision of free face coverings to the public would be strictly time limited as an introductory measure.

Provision of face covering for staff will continue to be required as normal.

Summary and recommendation

The First Minister announced mandatory face coverings on public transport on Thursday 18 June. This will come into effect from 22 June and will apply to staff or passengers who are in buses, trains (including the Glasgow Subway), trams, ferries, taxis and private hire vehicles, as well as at railway stations, bus stations and the tram stations at Edinburgh Gateway and Edinburgh Airport and at Scotland's airports.

This follows extensive consultation with transport operators, trade unions, passenger representative groups, COSLA, regional transport partnerships, Police Scotland, and British Transport Police over the past few days. Transport Scotland have also liaised with transport officials in England, Wales and Northern Ireland where different approaches are being taken.

There are some exemptions to the policy. Exemptions will apply for the young (under 5 years of age), for health reasons for whom a covering is inappropriate, when persons are taking sustenance or medication or for other justifiable reasons (such as in a protected

environment such as a driver's cab or in response to passengers who request information and who may have a hearing impairment or rely on lip reading)

- **Summary costs and benefits table**

Please note, there will be no costs to business as free supply of face coverings will be provided at key rail and bus stations. Appropriate signage will also be made available free of charge (downloadable from the Transport Scotland website).

It should be noted that any provision of free face coverings to the public would be strictly time limited as an introductory measure.

Provision of face covering for staff will continue to be required as normal working practice.

Options	Benefits	Costs
Supply of face coverings		Free supply at key rail and bus stations.
Appropriate signage		Free of charge, downloadable from Transport Scotland website.

Consumer Assessment

The Scottish Government definition of a consumer is “anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future.” When considering the impact of policies, the effect on consumers whose circumstances make them more vulnerable should be given particular weight. In general, there will be a need to carry out a more in-depth assessment if the answer to any of the following questions is yes:

- Does the policy affect the quality, availability or price of any goods or services in a market?
- Does the policy affect the essential services market, such as energy or water?
- Does the policy involve storage or increased use of consumer data?
- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

The Amending Regulations affect the availability of accommodation to some consumers.

Test run of business forms

No new forms will be introduced as a result of the Amending Regulations.

Digital Impact Test

In considering the Amending Regulation's policy objectives, we do not foresee any inconsistencies with the increasing shift of economic, social and governmental interactions online.

Legal Aid Impact Test

The legislation is considered to have minimal implications in terms of legal aid. While any individual (excluding a "body corporate or unincorporate") is entitled to advice and assistance on a matter of Scots law, subject to financial eligibility and liability to pay a contribution, the number of prosecutions of individuals as a result of the regulations is expected to be very low. Prosecution would be expected to be a last resort.

Enforcement, sanctions and monitoring

The business aspects of the Principal Regulations are enforced by Local Authorities, who can take a number of actions to ensure businesses comply with the Regulations.

There will be an emphasis on personal and collective responsibility but enforcement, as a last resort, will be available by Police Scotland and the British Transport Police.

The face coverings aspects of the Amending Regulations will also be enforced by the police.

Implementation and delivery plan - How will the proposal be implemented and in what timescale?

The coming in to force date for the provisions relating to the mandatory wearing of face coverings on public transport is 22 June 2020.

Post-implementation review

All measures contained in the Principal Regulations 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 Principal 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.

Declaration and publicationSign-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: Michael Russell

Date: 18th June 2020

Minister's name: Michael Russell

Minister's title: Cabinet Secretary for Constitution, Europe and External Affairs.