

Final Business and Regulatory Impact Assessment

Title of Legislation: The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020

Purpose and intended effect:

The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government is using powers conferred by that Act to bring forward regulations to give local authorities greater enforcement powers in respect of businesses, premises, events and access to public outdoor places.

The need for the regulations must be reviewed at least once every 42 days. As soon as the Scottish Ministers consider that powers conferred by the 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 the regulations.

Policy Objectives:

Following the review required by 9 July 2020, Scottish Ministers decided to progress to Phase 3 of the route map. Since then, a variety of businesses have reopened and activities have been allowed to resume.

We are moving into a phase of the outbreak where outbreak management, rather than the national lockdown, is the principal tool for control and suppression of the virus. With much of the economy reopened or reopening, taking action swiftly and at the source of a potential local outbreak will help manage the risk of a second wave. Local action to take necessary and proportionate measures to reduce transmission risks will in many cases be the most efficient response and could avoid Scottish Ministers having to implement more wide-ranging and restrictive measures.

We have learned from the experience of dealing with the first set of local outbreaks. These Regulations provide the tools that those on the ground dealing with local outbreaks consider that they would have needed in order to have a chance of earlier controlling or preventing these.

The Regulations provide that a fixed penalty notice (FPN) issued under regulation 8 of the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 and regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 will be taken into account in determining the penalty payable where a FPN is issued under these Regulations. Regulation 14 makes a parallel amendment to the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 in order that FPNs issued under these Regulations will be taken into account in determining the penalty payable in relation to a FPN issued under them. This ensures that those who repeatedly breach the regulations are deterred from continued non-compliance.

Purpose and intended effect:

Background

As above

Objective

As above

Rationale for Government intervention

As above

Consultation:**Public Consultation**

We have not undertaken any public consultation on this measure but key stakeholders in the sector have been consulted, include local authorities and groups representing Environmental Health Officers.

Business

There has been regular and ongoing engagement with business groups during the period of lockdown on a wide range of business issues, including distancing, including the Association of Scotland's Self-Caterers and the Scottish Tourism Alliance. The Scottish Tourism Emergency Response Group, of which the STA is a member, also produced industry guidance on reopening.

Options:

Relying solely on direction-making powers for Scottish Ministers under the Coronavirus Act would have meant that broadly the same powers existed, albeit only belonging to national government. The option of conferring broadly similar powers on local authorities, with a role for national government in guiding and superintending their use, is considered appropriate to ensure that swift action could be taken to respond to local risks of transmission of coronavirus.

Scottish Firms Impact Test:

Not yet undertaken.

Competition Assessment:

N/A

Consumer Assessment:

N/A

Test run of business forms:

No statutory forms will be created.

Digital Impact Test:

N/A

Legal Aid Impact Test:

N/A

Enforcement, sanctions and monitoring:

The enforcement regime is equivalent to the regime applying in the national Health Protection Regulations, and will be familiar to the public, industry and the enforcement authorities. It provides for

sanctions (FPNs, and criminal charges) where compliance by agreement or encouragement has not been possible.

Implementation and delivery plan and post-implementation review:

In law, the need for these Regulations must be reviewed at least once every 42 days.

Summary and recommendations:

This proposal supports the re-opening and continued opening of a wide number of sectors of industry, by providing local authorities with a key outbreak management tool (and therefore making further restrictive national measures less likely) and by increasing consumer confidence in industries taking appropriate measures to control the risk of transmission of coronavirus.

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: 27th August 2020

Minister's name: John Swinney

Minister's title: Deputy First Minister and Cabinet Secretary for Education and Skills