

**Title: Scotland’s Strategic Framework: Retail Sector – ADDENDUM**

The following is an addendum to the retail section (pages 39 – 56) of the document “Scotland’s Strategic Framework: Business Closures BRIA” which can be found at the following [link](#). It is necessary to review this addendum in conjunction with the fuller BRIA’s retail subsection to ensure the context of earlier decision making and measures are fully understood.

**Purpose and intended effect:**

1. In response to the new variant strain of the virus, the Scottish Government has announced a number of counter measures and restrictions and has made the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 9) Regulations 2020 (“the Amendment Regulations”), which will come into force on 26 December 2020 and amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Levels Regulations”). The objective of these interventions are to ensure that the health risks posed by the new strain of COVID-19 – which emerging evidence indicates is significantly more transmissible – are minimised as much as possible by limiting the occasions and number of people that can physically meet. These measures are therefore aimed at curbing the growth in the pattern of infection, to ultimately protect NHS capacity and save lives. There is an urgency and an impetus given the increased level of transmission which requires that these additional measures are considered and implemented quickly in order to have an impact on case numbers.

As part of these measures, in addition to the existing **retail** measures we intend to define essential retail more narrowly. The list of essential retailers will therefore be shortened with the removal of homeware stores, garden centres and plant nurseries which in turn therefore requires them to close with the exception of remote ordering for the purposes of ‘click and collect’. The descriptor in the Regulations previously termed as ‘hardware stores’ has also been further defined as “building merchants and suppliers of products and tools used in building work and repairs”. Additionally, to aid clarity and avoid ambiguity around some retail ‘services’ the following have now been listed as businesses which are required to close

- a tanning salon or premises which operates a self-tanning machine or a spray-tan booth,
- a travel agency,
- a premises laid out as a showroom to demonstrate products for installation in residential property, such as kitchen, bathroom, furniture or glazing showrooms

This addendum is focused on the changes to the set of retail measures included within Scotland’s Strategic Framework.

The key measures relating to the retail sector are set out in the table below:

	<b>Level 0 (Baseline)</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>
Retail sector	Open	Open	Open	Open	Non-essential retail closed (click & collect permitted)

Given the preventative and precautionary approach taken, which is deemed to be necessary, in respect of the new variant strain it was necessary to consider again whether any of the sub categories of essential retail that could remain open needed to be reviewed. The safety of people – customers, employees and business owners – is the number one priority and we are working with retailers to ensure that people can still undertake essential shopping safely. Guided by the need to ensure shopping is safe, we want people to use their local high streets, towns and city centres, to ensure that crowding is avoided, that good hygiene measures are in place and that physical distancing is maintained at all times. The increased risk around speed of transmission is the driver for finding further mechanisms to minimise the movement and mingling of people, particularly indoors, to key, essential purposes. The updates to the retail section reflect that overriding objective.

## **Conclusion**

Limiting social mixing as much of possible in all settings is the most effective measure against transmission of the virus until a vaccine becomes available more widely.

In common with the wide range of other countries who have implemented similar measures, the Strategic Framework seeks to limit business operation as part of an overall system to balance suppression of the virus whilst minimising wider harm to our health and wellbeing as well as minimising the wider social and economic harms associated with the measures. The levels approach sets out proportionate action to address the harm from the virus whilst acknowledging the wider health, social and economic harms. When the risk of COVID-19 rises, so too will the restrictions on these sectors. Similarly as the risk falls, restrictions will ease.

Across all of the five levels we seek to balance:

- The positive impact on the transmission rate of the virus through restricting the opportunity for mixing
- Enabling as many businesses as possible to remain open safely, in ways that enable firms to remain viable and reduce the likelihood of redundancies
- The important role that these businesses and venues play in maintaining our wellbeing
- The risk of people gathering elsewhere in less safe environments
- The economic costs, including wider costs and the impact on the supply chain.

## **Consultation**

**Further specific consultation on the amendments to the list of essential retailers was** precluded by urgent implementation timescales. However, there is a body of correspondence from businesses, customers and retail staff, we have also continued our engagement with sector representative bodies. We will continue to engage with the sector representatives and businesses and to keep decisions pertaining to essential retail under review, in particular in respect of any changes or new evidence which emerge.

## **Options:**

This section sets out the range of options that have been considered in respect of the specific changes made on 23 December 2020 and outlined at paragraph 2. There was no assessment nor was there any change to how the Strategic Framework would deal with essential and non-essential retail in levels 0-3. This is because these urgent considerations were focussed on the emergent nature of the situation and the fact that the majority of Scotland (including whole of mainland Scotland) was being put into level 4 at 00.01 on 26 December 2020. As such a review and consideration of retail in levels 0-3 was not warranted.

## **Additional Options considered for Level 4**

### **Option 1 – all retail remains open with mitigating measures in place (as per baseline (level 0) and levels 1-3) – Option rejected**

As per the original BRIA, continued operation of all retail in level 4 was rejected. Additionally, given the increased risks around the new strain it would not be appropriate to consider an expansive approach that permits all retail to operate.

### **Option 2 – existing retail regulations for level 4 (as at 02 November 2020) continue – Option rejected**

The emerging evidence of: the prevalence of the new variant in other areas of the UK, the fact the new variant has seeded in Scotland and its increased rate of transmission together meant that additional restrictions on retail permitted to remain open were necessary. Feedback (from customers, businesses and local authorities) had indicated during the recent level 4 restrictions in 11 local authority areas that there were some grey areas, in

particular around retail services, where greater clarity was required. It was therefore necessary to reassess if any elements of the existing retail regulations needed to be made clearer.

**Option 3 – additional measures in level 4 to those in the Levels as at 02 November 2020 are added with fewer retailers permitted to remain open – Option *partially* adopted**

Our starting point for determining what continues to be classed as essential retail for the purposes of the regulations was to undertake a comparison to the suite of regulations categorising essential retailers from earlier in the year and set those against the Levels regulations introduced for level 4 of the Strategic Framework. In doing so we could determine that the list at March was significantly tighter and that other classification of retailers were permitted over time. We also reviewed the reasons set out in the regulations which make up the ‘essential purposes’ for which people are permitted to travel out with their local authority area. There was also a consideration of the fact that the most recent regulations also permitted order ahead and collect services and online retailing opening up choice and access to consumers even in the event that a particular retailer was closed to in-store shopping.

It was concluded that the list should be reduced to take it closer to the ‘March’ list by removal of the classifications for homewares and garden centres/plant nurseries. ‘Homewares’ as a definition on its own may seem like a small change however it is a very broad category, which when permitted also permits several retailers which carry a much broader suite of products to remain open also. This creates an issue since the Scottish regulations define essential retailers, not essential ‘products’, the context for which is also subjective. Defining essential products also requires classification of millions of items in conjunction with defining such permitted contexts. The objective to reduce the amount of movement, mingling and interaction between people is more achievable therefore by removing certain classifications of retailer where their being open adds a reason or ‘magnet’ effect for the movement of people. Retaining ‘homeware’ as an essential retailer category also permitted a wide range of stores, which may not reasonably be described as essential in all circumstances, to remain open. In considering harm 3 and access to such goods for an urgent reason it was determined these could still be accessed via: one of the essential retailers permitted to remain open, an order ahead or click and collect mechanism or online. The same access mechanisms could also apply to garden centres/plant nurseries.

Additionally, it was apparent that the Levels Regulations were sufficiently clear on the retailing of ‘goods’ but not of ‘services’ provided via a retail premises. There were elements identified where clarity was required for the sector, consumers and for local authorities. Clarity was also required to enable businesses to access business support funds. As such [under schedule 5, paragraph 1](#) Levels Regulations as amended by the [Amendment Regulations](#) it was deemed necessary to add in the following retail services for clarity that these were also non-essential and should close:

- a tanning salon or premises which operates a self-tanning machine or a spray-tan booth,
- a travel agency,
- a premises laid out as a showroom to demonstrate products for installation in residential property, such as kitchen, bathroom, furniture or glazing showrooms

We considered whether the total or partial removal of hardware stores should also be included. However we accepted that there are potentially consumer impacts and harm 3 (social) considerations with such a decision. In terms of small or basic household repairs, particularly in winter when weather events may cause disruption, complete removal of hardware stores to the public would result in requiring people to engage a tradesperson or incur call out charges for a repair that they may be able to undertake themselves. Materials for repairs may also be needed urgently to secure a property or ensure it is wind/water tight. Complete removal of hardware stores could therefore have a disproportionate impact and also might have an unintended consequence of tradespeople having to enter houses to conduct repairs (with a potential increased transmission risk) that could have been carried out by the householder were they able to access a hardware store. This led us to conclude that instead the descriptor of hardware should be refined to define it more clearly and to make it less open to varying interpretations. As such that term has been removed and replaced instead with “building merchants and suppliers of products and tools used in building work and repairs”.

The intent of level 4 restrictions on retail continues to be the mitigate of the opportunity for transmission of COVID-19 between and among customers and retail staff. The new variant has resulted in the need to minimise further the reasons why people are moving around, mingling and interacting, particularly indoors. As such it was determined that narrowing the list of essential retailers is a proportionate way to aid achievement of that objective. It is important that businesses can continue to offer access to items for essential purposes. The retention of order ahead and click and collect mechanisms along with online retailing is to ensure that access between business and consumer is maintained.

The businesses which must close at Level 4 are set out at in [schedule 5 of the Levels Regulations](#). Those that can remain open are:

- a) food retailers, including food markets, supermarkets, convenience stores and corner shops
- b) off-licences and licensed shops selling alcohol (including breweries)
- c) pharmacies (including non-dispensing pharmacies) and chemists
- d) newsagents
- e) building merchants and suppliers of products and tools used in building work and repairs
- f) petrol stations
- g) car repair and MOT services
- h) bicycle shops
- i) taxi or vehicle hire businesses
- j) banks, building societies, credit unions, short-term loan providers, savings clubs, cash points and undertakings which by way of business operate a currency exchange office, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers
- k) post offices
- l) funeral directors
- m) laundrettes and dry cleaners
- n) dental services, opticians, audiology services, chiropody services, chiropractors, osteopaths and other medical or health services, including services relating to mental health
- o) veterinary surgeons and pet shops
- p) agricultural supplies shops and agricultural markets
- q) storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in this sub-paragraph
- r) car parks
- s) public toilets
- t) livestock markets or auctions
- u) outdoor markets, and outdoor car lots

Businesses which are allowed to stay open will be expected to follow all other applicable legal requirements, rules and guidance.

## **Conclusion**

For the reasons outlined above and to achieve the objective and imperative to reduce, where possible, the movement, mingling and interaction between people, particularly indoors, we have therefore: further limited the number of businesses permitted to remain open in level 4, have refined the descriptor of hardware retailers and have added to the list of businesses required to close as outlined in the opening paragraphs. To ensure access to products for a reason of urgency, permitted as an essential purpose, we have retained some elements that were included in the [schedule 5, part 1 of the Levels Regulations](#) such as click and collect, which permits a business to continue to make deliveries or provide a collection service to fulfil orders received online, by phone, text or post.

## **Declaration and publication**

Sign-off for addendum to the BRIA in respect of the regulation update dated 23 December:

I have read this addendum to the original Business and Regulatory Impact Assessment completed for the Levels Regulations, which pertain to the Strategic Framework on its introduction. I am satisfied that, given the urgent need for an amendment to those Regulations, for reasons of public health, this update represents a reasonable view of the options considered and potential impact of the measures set out in the Regulations as amended by the Amendment Regulations and in guidance. I am satisfied that potential business impact has been considered as part of that options analysis.

**Signed: Michael Russell**

**Date: 24<sup>th</sup> December 2020**

**Minister's name: Michael Russell**

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