

Business and Regulatory Impact Assessment (BRIA)

Title: Scotland's Strategic Framework - ADDENDUM for

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021

The following is an addendum to the document "Scotland's Strategic Framework: Other Measures BRIA" which can be found at the following [link](#). It is necessary to review this addendum in conjunction with the fuller BRIA to ensure the context of earlier decision making and measures are fully understood.

Purpose and intended effect:

In response to the new variant strain of the virus, the Scottish Government has announced a number of counter measures and restrictions which are necessary to counter the spread of Covid-19, and has made the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 ("the Regulations"), which 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.

Title of proposal: No-entry food and drink takeaway service

Purpose and intended effect: To reduce further the opportunities for interaction in enclosed spaces (indoors) in relation to businesses permitted to offer takeaway food and drink services. This will reduce the risk of transmission associated with the public interacting in an enclosed indoor space.

Policy Objectives: To require food and drink takeaway services in level 4 lockdown areas to only be offered to collecting customers on a no-entry basis i.e. purchases can only be dispensed in a manner where customers do not enter the premises, which, for example, may include the use of a hatch, non-internal counter such as a table across the threshold, or through an open/closed door. This measure will mitigate the risk associated with the public interacting in an enclosed indoor space.

Background: Food and drink businesses (that is bars, pubs, restaurants, canteens, cafes and takeaways) are permitted to offer takeaway services under current regulations. There is a range of operating models across the sector, ranging from no-entry where customers are served at doors or hatches, to systems that permit limited numbers, typically a maximum of 2 people physically distanced, to enter premises to make and or collect orders. The model will depend on the type of business and its physical infrastructure, and will incorporate both pre-orders and walk up orders.

Objective: Given the understood risk associated with people interacting indoors, including the increased likelihood of touching multiple hard surfaces, not observing physical distancing and removal of face coverings to converse with staff, it is necessary to reduce further the opportunities for this to take place in food and drink premises providing a takeaway service. Placing a requirement on businesses not to permit customers to enter premises will deliver this objective. Guidance will be strengthened on safe queue management and advice will be offered to encourage pre-order and or home delivery where possible to reduce queue formation, or reduce the time people may need to spend in queues.

Rationale for Government intervention: The current state of the pandemic is very concerning, with increasing infection rates, hospitalisations, those needing admitted to ICU care and deaths. This is putting Scotland's NHS under increasing pressure, particularly in light of the challenges from the greater transmissibility of the current variant of the virus. Risk associated with people interacting in enclosed indoor spaces, including the increased likelihood of touching multiple hard surfaces, not observing physical distancing and removal of face coverings to converse with staff requires further attention. It is therefore necessary to require that food and drink takeaway businesses in level 4 lockdown areas only offer collecting customers a service on a no-entry basis. Requiring no-entry mitigates the risk from interacting indoors in these settings while not prohibiting the service of takeaways, thus allowing economic activity to continue.

Consultation:

Public Consultation: No public consultation has been undertaken.

Business: The proposal has been discussed with the main hospitality trade bodies (The Scottish Licensed Trade Association, The Scottish Beer & Pub Association, UK Hospitality, The Scottish Hospitality Group, Scottish Tourism Alliance, as well as with the legal representatives of the licensed trade at TLT Solicitors and SLLP); and limitations on food-to-go have been discussed at various times with businesses involved in the sector. The proposal has also been discussed with local authority environmental health representatives.

Options: Three options have been considered:

- **Require that takeaways can only operate for collecting customers on a no-entry basis, either pre-order or walk-up i.e. goods can only be dispensed in a manner that does not require the customer to enter the premises. For example this could be via use of a hatch, non-internal counter such as a table across the threshold, or through an opened/closed door. The legal requirement however is that customers do not enter the premises. This delivers the policy intention and minimises economic impact.**
- Require delivery only. Not adopted at this time.
- Closure. Not adopted at this time.

Scottish Firms Impact Test: It is accepted that this measure will present some practical challenges for some operators i.e. lack of infrastructure, challenging layout of premises, need to keep doors open during cold and inclement weather etc. It should however be possible to comply with the requirement by making, in most cases, only moderate adjustments. If there is no hatch like facility then the threshold is the clear focal point for providing service, with staff practices reorganised around it. Some businesses already operate on this basis, or did so at times during 2020. Practical advice will be offered in updated sector guidance. There will need to be a renewed emphasis on safe queue management where they start to form, particularly if premises are situated near other essential premises that are still operating and may also be experiencing queues, such as pharmacies. Advice will be offered to encourage pre-order or home delivery where possible to reduce the formation of queues, or reduce the time people may need to spend in queues.

Competition Assessment: This measure does not prohibit the service of takeaways and all operators are treated equally – there are not adverse competition effects of the measure.

Consumer Assessment: Consumers must continue to observe all existing mitigating measures and requirements. The measure does not interfere with the consumer's ability to access takeaway services as only applies to the manner in which they collect their purchase i.e. outside the premises rather than inside the premises.

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test: N/A

Enforcement, sanctions and monitoring: Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

Implementation and delivery plan and post-implementation review: Regulations and guidance have been put in place to support the implementation of the measure. These regulations will come into effect from the 16 January 2021. We are continuing our constructive engagement with the sector, and will keep this measure under review.

Summary and recommendations: In light of the current transmission trends and pressures on Scotland's NHS it is necessary to ensure action is taken to reduce the risks associated with economic activity, while still allowing that activity to proceed where it is safe to do so. This BRIA for the measure of requiring food and drink takeaway businesses to operate for collecting customers on a no-entry basis only, ensures both these key considerations are balanced. The measure delivers health harm benefits in relation to the four harms assessment by reducing risk in the area of COVID and non-COVID health

(harms 1 and 2), maintains access to takeaway services for urban and rural communities (harm 3 – societal) and maintains economic activity (harm 4).

It is therefore recommended that the requirement for takeaway services to operate for collecting customers on a no-entry basis only is a fair and proportionate measure in the current circumstances of the pandemic. The measure should only be kept in place for as long as it is necessary and will, alongside all other measures, be kept under review.

Title of proposal: Prohibit the consumption of alcohol in outdoor public places in level 4 lockdown areas

Purpose and intended effect: In level 4 lockdown areas, people must only leave home for essential reasons permitted under the regulations and must not exceed the limits for meeting others as prescribed by the regulations. In addition, people must not gather in groups where limits for meeting others may be breached and physical distancing and or face covering requirements not observed. These situations carry significant transmission risks, and are exacerbated where disinhibited behaviour is evident as a consequence of the consumption of alcohol. The purpose of this measure is to ensure conditions exist to support these overall requirements and remove potential risks of gatherings taking place, including those focused around the consumption of alcohol.

Background: There have been instances during the pandemic where gatherings have formed where the consumption of alcohol has been a focal point. A number of bye-laws exist in some local authority areas that already prohibit or restrict the consumption of alcohol in certain public places but this is not uniform. In the context of the current public health emergency is it necessary to ensure the consumption of alcohol in any outdoor public places is not permitted across all level 4 lockdown areas.

Objective: The purpose of this measure is to ensure conditions exist to support the stay at home requirement and remove potential risks of gatherings taking place, including those focused around the consumption of alcohol.

Rationale for Government intervention: The current state of the pandemic is very concerning, with increasing infection rates, hospitalisations, those needing admitted to ICU care and deaths. This is putting Scotland's NHS under increasing pressure, particularly in light of the challenges from the greater transmissibility of the current variant of the virus. There is an increased risk where gatherings form, and in particular where key mitigating measures are not being observed or people's ability to observe them is compromised, such as through the disinhibiting effects of alcohol. In level 4 lockdown areas this should not be happening in any case, however it is necessary to ensure the conditions exist to support the stay at home requirement and remove potential risks of gatherings taking place, including those focused around the consumption of alcohol. This measure supports that aim.

Consultation:

Public Consultation: No public consultation has been undertaken.

Business: The proposal has been discussed with the main hospitality trade bodies (The Scottish Licensed Trade Association, The Scottish Beer & Pub Association, UK Hospitality, The Scottish Hospitality Group, Scottish Tourism Alliance, as well as with the legal representatives of the licensed trade at TLT Solicitors and SLLP).

The proposal has also been discussed with local authority environmental health representatives.

Options: Two main options have been considered:

- **Prohibit the consumption of alcohol in any outdoor public place in level 4 lockdown areas – this delivers the policy intention.**
- Limited restriction of off-sales of alcohol - not adopted at this time.

<p><u>Scottish Firms Impact Test:</u> This measure does not restrict further the operations of businesses that are still permitted under current regulations.</p>
<p><u>Competition Assessment:</u> There are no adverse competition effects as a consequence of this measure.</p>
<p><u>Consumer Assessment:</u> This measure underscores the requirement for off-sales purchases to be taken home and not consumed in a public place. It does not remove the option for consumers to purchase off-sales.</p>
<p><u>Test run of business forms:</u> N/A</p>
<p><u>Digital Impact Test:</u> N/A</p>
<p><u>Legal Aid Impact Test:</u> N/A</p>
<p><u>Enforcement, sanctions and monitoring:</u> Regulations have been put in place to support the implementation of the measures. For the purposes of enforcement, a presumption applies that any liquid in a container conforms, or where the container is empty, the liquid did conform, to the description of the liquid on the container. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.</p>
<p><u>Implementation and delivery plan and post-implementation review:</u> Regulations and guidance have been put in place to support the implementation of the measure. These regulations will come into effect from 16 January 2021 and will keep this measure under review.</p>
<p><u>Summary and recommendations:</u> In light of the current transmission trends and pressures on Scotland's NHS it is necessary to ensure action is taken to support the stay at home requirement. This BRIA for the measure of prohibiting the consumption of alcohol in any outdoors public place in a level 4 lockdown area in Scotland supports this objective.</p> <p>It is therefore recommended that it is a fair and proportionate measure in the current circumstances of the pandemic, and bring uniformity to what is already a requirement in many local authority areas. The measure should only be kept in place for as long as it is necessary and will, alongside all other measures, be kept under review.</p>

Title: Scotland's Strategic Framework: Support services – child contact centres

Purpose and intended effect:

The objective of Scotland's Strategic Framework is to set out a sustainable response to the pandemic. The Strategic Framework includes measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary. Under the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, Ministers placed the whole of mainland Scotland in level 4 from 26 December 2020.

However, it is now urgently necessary to go beyond the requirements and restrictions set out in the 2020 Regulations. This is in response to a rise in COVID-19 cases across the country and a changed assessment of the risks of transmission of the virus in light of the emergence of a new strain (VUI 202012/01) of COVID-19 in November 2020. Early modelling and evidence suggests this strain is more highly transmissible (SAGE, 53%, up to 70% in other modelling), including amongst younger age groups. Modelling shows there is a need to further strengthen Level 4, akin to a 'lockdown' like the one implemented in March 2020, to mitigate the effect of increased transmission. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.12) Regulations 2021 introduce the latest amendments to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, including provisions in relation to child contact centres as follow:

- Child contact centres are to be required to close at level 4, with the exception of child contact centres provided by Local Authorities, which are to be allowed to remain open
- Child contact centres may remain open for the purpose of handover services which may take place either indoors or outdoors. Revised guidance will say that where possible handovers should take place outdoors.

These provisions are considered necessary to reduce the spread of coronavirus among children and young people, and in turn the wider population, in particular given the unknown risk of children spreading the increasingly prevalent new strain of the virus. Whilst child contact centres have been operating with additional hygiene and physical distancing measures, the risk remains that multiple families, staff and volunteers are mixing when they are in attendance at the centre at the same time. The closure of child contact centres is considered necessary to manage these risks and minimise the mixing of households and manage the risk of spread of the virus in this sector. Child contact centres provided by local authorities are, however, allowed to remain open. This is because they facilitate contact for looked after children, as well as children with multi-agency Child's Plans, children who are in receipt of Social Work support and who have a court order mandating contact with a looked after child. This will allow for their use of the centres to continue, to protect the wellbeing of these children.

This BRIA is focussed on options considered for the tightening of restrictions for child contact centres under additional level 4 restrictions or 'lockdown', including an assessment of the four harms:

- direct health harms associated with COVID-19
- broader health harms
- social harms
- economic harms

It also takes into account the European Convention on Human Rights right to family life (Article 8 of the ECHR provides that everyone has the right to respect for private and family life).

Background

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 first regulations”), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 came into force on 14 September 2020 and revoked and replaced the first regulations. They make provision which is substantially similar to the first regulations, as amended at the date on which they were revoked.

On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 (“the additional temporary restrictions”) set out additional restrictions, both nationally and specific to the central belt. These regulations suspended the effect of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 while the additional temporary restriction regulations were in force. The additional temporary restriction regulations were due to expire on 26 October but were extended by amendment until 6.00 am on 2 November to allow for consultation on the levels-based approach.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 implement the new Strategic Framework and came into effect on 2 November. These regulations revoke the additional temporary restrictions regulations and the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020.

Scotland's Strategic Framework

Decision-making under the new Strategic Framework system is intended to be more straightforward and transparent than it has been previously. It builds on existing structures and processes, will be informed by clinical advisers and evidence, and will continue the engagement with local leadership as decisions to move up and down levels are taken.

Decisions will continue to be made by Ministers, with input from relevant advisers, as implementing the restrictions outlined in the levels is the exercise of a statutory power for the protection of public health, for which Ministers are responsible and accountable.

Regular reviews of the levels system will take place and as soon as Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the spread of COVID-19, they must revoke that restriction or requirement.

Lockdown

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.12) Regulations 2021 introduce the latest amendments to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. These will come into force on Saturday 16 January and set out additional level 4, or ‘lockdown’, restrictions for mainland Scotland.

COVID-19 and support services

Child contact centres

Child contact centres are venues for conflict-free contact between children, parents and other people in the child's life. They offer a mixture of supported and supervised contact. Supported contact is where

centres only provide the facilities for the contact session and record that the contact took place, but not details of how it went. Supervised contact is where contact takes place in the constant presence of an independent person who observes and ensures the safety of those involved. Details may be reported back to the court. Child contact centres also facilitate handovers of children between parents where parents are unable to see each other.

No supervised or supported contact would be able to take place at a child contact centre (except where the centre is provided by a local authority) while level 4 restrictions are in place. Handovers of children will, however, still be able to take place. Handovers are encouraged to take place outdoors but may take place indoors if it would not be safe for this to happen outdoors.

Policy Objective

The objective of the restrictions set out within the Strategic Framework are intended to help control and suppress the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Rationale for Government Intervention

Strategic Intent

COVID-19 threatens health and life, but also how we live our lives, and our shared prosperity. The Scottish Government, in common with other UK nations, is committed to suppressing the virus to the lowest possible level, and keeping it there, until we have rolled out the vaccines and/or effective treatments are in place, and the virus is no longer the threat it is now. There is no acceptable number of people we are willing to let become infected.

The evidence base around transmission for this new virus, and its new variants, is still emerging, so we are committed to taking decisive action based on the best evidence available to us, while keeping this under constant review.

Transmission

We understand that one of the key risks for child contact centres is in relation to households mixing indoors. There is also the additional risk that even if families are separated children may seek to play with other children from another household. Where contact at child contact centre is also supervised, a member of staff will closely observe the contact session and in some cases a child welfare reporter (appointed by the court) may also be present.

Current position of child contact centres

The current key measures relating to **child contact centres** are set out in the table below:

Support service Measures	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
	Child contact centres can open.	As level 0	As level 0	Child contact centres can open but should be online	Child contact centres are advised to close and only essential contact should take place in person. Where

				where possible.	possible contact should be online.
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In the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 one of the exemptions at all levels for any travel restrictions or gatherings restrictions is where this is for participating in or facilitating shared parenting arrangements. In addition, holiday accommodation can be provided at Level 4 where this allows a person to participate in or facilitate shared parenting arrangements. In the regulations as amended on 5 January 2021 one of the examples of a reasonable excuse for not staying at home at Level 4 is where this is to participate in or facilitate shared parenting arrangements. Participating in or facilitating shared parenting arrangements is also one of the reasonable excuses for entering or leaving Scotland from parts of the common travel area.

Mitigations

The Scottish Government produced guidance for child contact centres in August 2020¹. This has been kept regularly updated.

The guidance contains information for contact centres which are continuing to offer handovers at Level 4. This includes mitigations around:

- Where possible handovers should take place outdoors;
- If handovers have to happen indoors then the time indoors should be minimised and physical distancing maintained;
- Face coverings should be worn if handovers take place indoors.

In addition, the guidance recommends that at level 4 where possible the child contact centre should facilitate contact virtually. This could either be through video technology such as zoom or by telephone. In addition contact could also be facilitated through letter box contact. The guidance acknowledges that this may not be possible in every circumstance, for example if a child is of a very young age, the required technology is not available or if there are sufficient safety concerns about virtual contact taking place. The guidance also states that virtual contact should continue to be supervised or supported.

This guidance does not extend to child contact centres provided by local authorities, however these centres will not be affected by the Regulations. Child contact centres provided by local authorities are allowed to remain open, in order to continue to provide contact services to looked after children, as well as children with multi-agency Child’s Plans, children who are in receipt of Social Work support and who have a court order mandating contact. This will allow for their use of the centres to continue. This is considered necessary to protect the wellbeing of this group.

Conclusion

On child contact centres, the strategic framework should, as far as possible protect the right to family life (Article 8 of the ECHR provides that everyone has the right to respect for private and family life) whilst recognising what we understand are the potentially heightened transmission risks for these type of social gatherings.

These provisions will, as a result of child contact centre closures, mean that in some cases, contact may require to cease for the duration of the closure. Virtual contact may not be possible in every circumstance, for example if a child is of a very young age, the required technology is not available or if there are sufficient safety concerns about virtual contact taking place. The restrictions are, however, time limited, only applying when an area is subject to level 4 restrictions. It is considered that the closures are necessary in order to manage the outstanding

¹ [Coronavirus \(COVID-19\): child contact services guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/08/20200820-child-contact-services-guidance.pdf)

risks of coronavirus transmission in child contact centres. Whilst child contact centres have been operating with additional hygiene and physical distancing measures, the risk remains that multiple families, staff and volunteers are mixing when they are in attendance at the centre at the same time. The closure of child contact centres is considered necessary to manage these risks and minimise the risk of spread of the virus in this sector.

Part 1: child contact centres

Consultation

There has been no full public consultation, given the need to act quickly. However, the Scottish Government have consulted spoken to Relationships Scotland, Promoting Positive Contact, Inverclyde Family Contact Centre, Shared Parenting Scotland and Scottish Women's Aid.

In relation to child contact centres provided by local authorities the Scottish Government has engaged with Social Work Scotland the Scottish Children's Reporter Administration, Children's Hearings Scotland, Who? Cares Scotland, Scottish Association of Social Work. We have also engaged with local authorities through their representatives at Social Work Scotland.

The Scottish Government will review these proposed new restrictions. To help inform this review, we will hold discussions with child contact centre providers and other relevant stakeholders.

Options

Option A: All child contact centres to close by law for both handover and contact with the exception of child contact centres provided by local authorities

Under this option, all child contact centres would be required to close for handover and for supported and supervised contact.

We would not recommend this option. During the initial lockdown period when child contact centres were closed for both handover and contact, some support services reported instances of parents being forced into alternative handover arrangements that were potentially less safe for both the parent and the child.

With the appropriate mitigations, and since handovers can take a minimal amount of time in comparison to contact sessions themselves and can be facilitated outdoors in some cases, this could be done safely at a child contact centre.

Option B: Child contact centres with the exception of child contact centres provided by local authorities to close by law apart from handovers only done outside

Under this option, child contact centres would be closed by law but could continue to facilitate handovers of children between parents outside only.

We would not recommend this option. Whilst the risk of transmission of Covid19 is minimised if the handover takes place outside, child contact centres have expressed concern about this option. Handovers would normally take place at a child contact centre where the parents are not able to see each other. Requiring all handovers to be outside may increase the likelihood of parents having to see each other which may put one parent at risk where there are safety concerns.

Option C: child contact centres with the exception of child contact centres provided by local authorities to close by law but handovers allowed both indoors and outdoors

This option is the option that has been pursued within the regulations. This will require child contact centres (with the exception of those provided by local authorities) to close by law except for handovers. Handovers will be able to take place outside or inside. This option appears to be the most necessary and proportionate in striking the balance between the Article 8 right to a private and family life and the need to protect individuals from Covid-19, as well as the need to protect individuals from seeing their ex partners when handing over their children. Whilst this option will mean that in some cases the opportunities for contact to occur are reduced or possibly must cease for the duration of the closure, it is considered that this is necessary to manage the outstanding risks of coronavirus transmission in child contact centres. We propose to revise the Covid-19 guidance for child contact centres to say that where possible the handover should take place outdoors. If this is not possible then time indoors should be minimised as should the number of adults indoors. Physical distancing should be maintained and face coverings should be worn by staff and parents and children unless exempt.

Child contact centres provided by local authorities are to be allowed to remain open, in order to allow contact services for looked after children, children with multi-agency Child's Plans, children who are in receipt of Social Work support and who have a court order mandating contact to continue and therefore protect the wellbeing of these vulnerable groups.

Option D: Child contact centres to close by law with the exception of those provided by local authorities and required in every circumstance to facilitate contact virtually.

This option would mean that child contact centres would be closed by law but child contact centres would be required to facilitate contact virtually in every circumstance. Whilst this would protect an individual's ECHR article 8 right to family life it may not be feasible in every circumstance for a child contact centre to facilitate contact between a child and a parent in this way. A child may be very young and unable to engage with a parent virtually. In addition, in some circumstances, for example where there are safety concerns, it may not be considered in the best interests of the child or one of the parents for contact to be facilitated virtually.

Option E: Child contact centres to remain open only for contact for children under the age of 5 with the exception of child contact centres provided by local authorities

This option would mean that child contact centres would only be able to open for contact with a child under the age of 5.

We do not recommend this option as whilst this would seek to address concerns that maintaining contact virtually is more difficult with younger children it would still mean a large number of contact sessions would take place in the contact centre. Figures from Relationships Scotland, whose network is the main provider of child contact centre services in Scotland, show that in 2018/19 65% of children using their services were aged 0-4. In addition, data is still unclear about whether younger children spread the new variant of Covid19 more rapidly. Also, if a parent is seeing one child over 5 years of age and one under 5 at the same time it is not clear with this option if the contact with the older child would be able to be maintained.

Option F: Child contact centres to make an assessment on whether contact should continue face to face.

This option would place an onus on child contact centre providers to decide whether or not contact should continue face to face in the contact centre.

This option has been taken by child contact centres provided by local authorities.

We do not recommend this option as this would put a significant responsibility on child contact centre staff. They may not have the full history of the reasons for contact taking place at a child contact centre. This would be especially relevant if a family is new to the child contact centre. Local authority child

contact centres are likely to have more information about a child and family and can make the decision about whether contact should be continued.

Option G: Guidance that child contact centres at Level 4 should close but nothing in law.

This is the current position at level 4. This has led to some child contact centres reopening whilst the majority have remained closed.

With the current concerns on the increased transmissibility of the new variant of the virus, Ministers may wish to ensure that child contact centres are shut by law to reduce the risk of transmission of the virus.

In addition, closing child contact centres may increase the safety of child contact centre staff and volunteers who have to facilitate and supervise contact at a close range.

Option H: Close child contact centres with the exception of child contact centres provided by local authorities and allow contact to move to an unregulated venue

This option would mean that for the duration of time that child contact centres are closed contact could take place at an unregulated venue, for example, a parent's home. This would allow contact to continue.

We do not recommend this option because a child may be having contact at a child contact centre for reasons of safety, particularly where it is supervised contact. It may not be in the child's best interests for the contact to move to an unregulated place. This could also expose a child to additional risk of transmission of Covid19 as there is guidance for child contact centres on cleaning toys between families and cleaning surfaces. It would not be possible to replicate this guidance in for example a private home.

Option I: Close child contact centres with the exception of child contact centres provided by local authorities and allow children to maintain contact with their family member unsupervised online

This option would mean that for the duration of time that child contact centres are closed contact could be maintained virtually without supervision.

We do not recommend this option because a child may be having contact at a child contact centre for reasons of safety, particularly where it is meant to be supervised. It may not be in the child's best interests for the contact to become unregulated even if done online. It could also expose the other parent to risk as the parent having contact could seek to obtain information from the child, for example, about location of the child/ex partner and school etc.

Recommendations

We consider that Option C is the most necessary and proportionate response to the risks presented by coronavirus at present. Option C provides for child contact centres (except for those provided by local authorities) to close by law but remain open for handovers, which could take place indoors or outdoors. We would also propose to review the impact of this option over time. To help inform this review, we would hold discussions with child contact centre providers and also other key stakeholders.

It is noted that, following Ministers' decision to implement a 'lockdown' in all level 4 areas, currently being mainland Scotland, Option C has been considered the necessary and proportionate approach by Ministers. Therefore, child contact centres (except for those provided by local authorities) will be closed by law apart from for handovers.

Scottish Firms Impact Test:

What proportion of businesses are registered in Scotland?

All the child contact centres that would be affected are registered as charities in Scotland.

Our understanding of the current restrictions in the rUK in relation to level 4 equivalents is in the table below. This table should be treated with caution as restrictions in rUK may change at short notice.

	Child contact centres
England	<p>It is permitted for supported and supervised child contact centres to continue to offer services to children and families.</p> <p>Some child contact services will be unable to open, for the time being, particularly those only offering supported contact. There are various reasons for this, which might include the ability of the centre to keep families safe, any shortage of staffing as a result of self-isolation or restrictions posed beyond their control, by a landlord for example.</p> <p>Those centres remaining open should give extra consideration to how they will keep families separate and socially isolated, bearing in mind the increased risk.</p>
Wales	<p>The Welsh Government is recommending that people do not travel to or from Tier 4 areas, for the purpose of using child contact centres if they do not usually live in this area.</p>
Northern Ireland	<p>Child contact centres remain open. They will have risk assessments in place that guide them to be able to do this safely. They will also have additional measures in place that will help them to keep you and your children safe.</p> <p>Households are not allowed to mix indoors, in private homes. Exemptions are in place to allow children to have contact with parents they do not live with. There are also exemptions for child care and household bubbles.</p>

It is not foreseen that child contact centre restrictions in Scotland will disadvantage Scottish companies within the UK, or elsewhere in Europe.

• How many businesses and what sectors is it likely to impact on?

There are currently 45 privately-run child contact centres in Scotland. 42 of which are members or associate members of the Relationships Scotland Network. There are also 3 independent child contact centres. One of the independent child contact centres, in Aberdeen, has not reopened since the initial lockdown in March 2020.

Local authority child contact centres sit apart from this, providing for contact services for looked after children, as well as children with multi-agency Child's Plans, children who are in receipt of Social Work support and who have a court order mandating contact. As they will be allowed to remain open, they are not impacted.

-• What is the likely cost or benefit to business?

The Scottish Government guidance for child contact centres states:

“At level 4 there will be a very high incidence of the virus and widespread community transmission, therefore providers are advised to suspend face-to-face contact services. During this time providers should provide services online or by telephone wherever possible. Areas would not be expected to remain at level 4 for a significant amount of time.”

On the whole providers in Scotland did suspend face-to-face services during the Level 4 restrictions pre-Christmas and offered online alternatives (e.g. Zoom contact) where possible. However, some also held face-to-face sessions where virtual contact was not appropriate – for example if a child was very young. There was a consistent theme where providers continued to offer handover services, on the basis this could be considered differently to other face-to-face services in terms of minimising risk of transmission. The Scottish Government understands that the majority of child contact centres have shut since the announcement of lockdown measures on 4 January.

Requiring the child contact centres to shut by law may have a financial impact on child contact centres

The funding Relationships Scotland received from the Big Lottery, which covered the bulk of their members' contact centre costs, ended on 31 March 2020. The Scottish Government have provided Relationships Scotland with £700,000 in 2020/2021 to meet these costs. This figure has not altered as a result of Covid19 pandemic.

The Scottish Government is aware that child contact centres receive legal aid funding. This may have reduced as a result of the closure of child contact centres due to the pandemic.

The Scottish Legal Aid Board estimate that up to £0.5 million a year is sanctioned by them in relation to contact centres. The full amount of this funding is unlikely to have been paid in this financial year as child contact centres were closed during the initial lockdown and also some were shut prior to Christmas if they were in Level 4 areas.

Competition Assessment:

Our view is that the proposed measures for child contact centres in 'lockdown' (effectively enhancing protection in Level 4) would not cause an impact in themselves on competition between businesses.

• Will the measure directly or indirectly limit the number or range of suppliers?

All child contact centres (except those provided by local authorities) will be required to close as a result of the restrictions. It is envisaged that the majority of child contact centres will reopen when the restrictions allow and it is safe to do so. They will not, however, be required to do so and may choose to remain closed for in-person contact. This may therefore lead to varied number and range of child contact centres open as restrictions ease. The Covid19 crisis may lead to child contact centres looking to undertake more of their services online and therefore could seek to rationalise their physical buildings. We understand that one centre run by a Relationships Scotland member service may not reopen, but this was decided before the current measures came into effect.

• Will the measure limit the ability of suppliers to compete?

It is not envisaged that closure of child contact centres will limit the ability of suppliers to compete as all those in Level 4 areas would be required to close by law apart from handovers.

• Will the measure limit suppliers' incentives to compete vigorously?

It is not envisaged that closure of child contact centres will limit suppliers incentives to compete vigorously as all in Level 4 areas would be required to close by law apart from handovers.

• Will the measure limit the choices and information available to consumers?

The closure of child contact centres by law will mean that parents, courts and solicitors when considering what is in the best interests of the child would not be able to expect in person contact to take place at a child contact centre to take place until these restrictions are lifted. apart from for handovers. However,

the lockdown is envisaged to be short lasting and so individuals could be referred to a child contact centre when they reopen.

Consumer Assessment:

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

No

- **Does the policy affect the essential services market, such as energy or water?**

There is no expected impact on markets for essential services.

- **Does the policy involve storage or increased use of consumer data?**

No.

- **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

This is unlikely to occur as a consequence of the policy.

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test:

The closure of child contact centres will have an impact on the Scottish Legal Aid Board as the Scottish Legal Aid Board estimate that work up to a value of £0.5 million a year is authorised by them in relation to contact centres. It is unlikely that legal aid payments to contact centres will reach this value in this financial year. Although solicitors were able to claim early payment of child contact centre costs for completed work, on-going work was not possible, as child contact centres were closed during the initial lockdown and also some closed prior to Christmas if they were in Level 4 areas.

Enforcement, sanctions and monitoring: The guidance pertaining to child contact centres will continue to be reviewed regularly.

Implementation and delivery plan and post-implementation review:

As noted above Ministers have determined that Option C is the necessary and proportionate approach relation to child contact centres.

Regulations and guidance will be reviewed and updated to support the implementation of the measures to 'lockdown', effectively tightening the restrictions at Level 4 of the strategic framework.

The Scottish Government will carry out a review of the decision to close private child contact centres apart from handovers and will consult with private child contact centre providers and other relevant stakeholders.

Summary and recommendations:

Introduction

This BRIA has examined the child contact centre restrictions in light of increased transmission of COVID-19 and the emergence of a new variant.

Background

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.

Whilst this BRIA is focused on child contact centres, measures are also being taken to reduce opportunities for transmission across a range of sectors and settings. It is important to view these measures in the context of this wider package of actions.

Options Appraisal

The Strategic Framework includes a range of actions designed to suppress virus transmission. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

Main recommendations for Level 4

The recommendation is to close child contact centres (except for those provided by local authorities) by law at Level 4 apart from handovers. Guidance will be updated to encourage child contact centres where possible to facilitate contact virtually. Guidance will also be updated to recommend that if handovers are taking place they are done outside where possible. If they are done inside then time should be limited as should the number of people involved and face coverings should be worn by individuals unless exempt.

Title of proposal: Ban on the enforcement of eviction orders in the rental sector within areas subject to levels 3 and 4 restrictions.

Purpose and intended effect:

Background:

Action was taken to introduce a 6 week ban on the enforcement of eviction orders across both the private and social rented sectors from 11 December 2020 to 22 January 2021 due to ongoing efforts to control the spread of the virus. However, the detection of a new and more transmissible variant of Coronavirus and significantly increasing prevalence's of the virus across Scotland means that further action to protect tenants from eviction is required.

In normal circumstances, tenants in both the private and social rented sectors may face eviction for a wide range of reasons, for example rent arrears or a landlord wanting to live in the property themselves, that can lead to thousands of evictions a year. The current pandemic may also mean that tenants are more likely to find themselves in financial difficulty due to the current outbreak and more likely to have difficulties meeting their obligations under their tenancy agreement. The outcome of an eviction significantly increases the risk that those households may seek to stay with friends and family or have nowhere to safely go and increase the spread of the virus. In addition, increased homelessness at this time will also add further pressure to already stretched housing, health and other public services .

Objective:

To prevent Sheriff Officers from being able to serve or enforce eviction order instructions made by private and social landlords within areas subject to level 3 and 4 restrictions, at a time when the prevalence of Coronavirus has increased significantly.

Rationale for Government intervention:

A new variant of SARS-CoV-2 has been detected called B.1.1.7 or VOC-202012/01. The latest evidence from Imperial College, published on 31 December presents a consensus that this new variant has a substantial transmission advantage, with an increased rate of transmission estimated to be somewhere between 0.4 and 0.7. The percentage of cases composed of this new variant is increasing rapidly in Scotland, from 42.7% on 31 Dec to 47.5% on 3 January. It is very likely that this strain will further increase in dominance in Scotland in a similar way to that already seen in London and SE England.

This evidence presents a significantly altered public health landscape to when the current ban on the enforcement of eviction orders for a shorter period was introduced, making the need to reduce the risk of mixing households (a significant possibility should evictions occur) ever more vital. This increased risk of transmission provides clear evidence of the need to prevent almost all evictions.

As this is a public health intervention, levels 1 and 2 (where risk of the virus spreading is greatly reduced) have been excluded from this extension to ensure that the interventions are proportionate and only applying to those areas with greatest risk of spread.

Consultation:

Public Consultation:

Given how urgently the regulations are required as a result of the unprecedented challenges currently faced, no formal public consultation has taken place. However, the regulations reflect concerns highlighted by members of the public, key stakeholders and Members of the Scottish Parliament.

Business:

In order to respond as quickly as possible to help slow down the spread of the virus, formal consultation with business was not possible. However, measures in the regulations reflect concerns highlighted by business stakeholders – in particular, the exemptions relating to serious antisocial behaviour or criminality.

Options:

Three options have been considered: i) Do nothing and allow the current ban on the enforcement of eviction orders to end on 22 January 2021; ii) Introduce regulations that would see a ban on the enforcement of eviction orders only apply to areas under level 4 restrictions; iii) Introduce regulations that would see a ban on the enforcement of eviction orders apply to areas under level 3 and 4 restrictions.

Option i) was immediately ruled out. The measures taken to respond to the coronavirus outbreak must reflect the magnitude of the challenge presented by it. Doing nothing will not help slow down the spread of the virus and will leave renters facing homelessness at a time when the prevalence of Coronavirus is significant. There is a significant risk therefore of people sharing houses and being forced to go into other people's houses to find a place to stay.

Option ii) was ruled out as protection from homelessness must also be afforded to those areas subject to level 3 restrictions, where prevalence of the virus remains high. In addition, when sheriff officers are undertaking an eviction they must remain in the house with the tenants for a potentially prolonged period of time to help ensure their belongings are packed and removed. Other businesses, where this kind of close contact in the home is required (such as hair dressers) are not allowed in the home at level 3; and

Option iii) is the Scottish Government's selected option as it provides public health protection to those areas subject to the toughest restrictions for both tenants and sheriff officers. In particular, reducing the risk of tenants being forced to enter the home of (possibly multiple) other households. The regulations will continue to be reviewed

Scottish Firms Impact Test:

As already noted, the urgency with which the regulations are being brought forward has not allowed for any consultation with Scottish business or consumers.

As landlord will be unable to evict this could lead to a loss of income, in particular if landlords are seeking to evict on the grounds of unpaid or reduced rent. Measures to support tenants over the pandemic had already created an increased notice period and this will have further impact on businesses. Other businesses that may also have limited impact include letting agents with a potentially reduced turnover of business.

Landlords can vary widely in size and scale so impacts may be felt differently from a landlord with a small portfolio of properties compared with a larger business with a larger portfolio of properties or even buildings.

Mitigations to this include access to an interest free government loan for those landlords with 5 properties or less, an interest free loan for eligible tenants and including only levels 3 and 4 in the extension of the ban on evictions.

Competition Assessment:

As the regulations to protect tenants from the enforcement of eviction orders will apply equally to all private and social landlords – and all Sheriff Officers - it is unlikely to have any impact.

Consumer Assessment:

The regulations protecting tenants from eviction orders being carried out provide increased protection for consumers during the current outbreak.

Test run of business forms:

The regulations do not create any new business forms.

Digital Impact Test:

Legal Aid Impact Test:

The Scottish Government does not expect the regulations to have implications for legal aid.

Enforcement, sanctions and monitoring:

Landlords must follow the correct legal procedures for ending a tenancy; not doing so is a criminal offence and enforced by Police Scotland. The First-tier Tribunal For Scotland (Housing and Property Chamber) and Sheriff Court for social housing have a role in ensuring landlords comply with all their legal requirements before granting a repossession order. The regulations being introduced from 22 January will make it an offence for a Sheriff Officer to carry out an eviction where the property is located within an area subject to level 3 or 4 restrictions.

To examine the impacts and outcomes of the new Private Residential Tenancy, the Scottish Government has developed a monitoring and evaluation framework. As part of this the Scottish Government is actively monitoring repossession cases that come before the First-Tier Tribunal for Scotland (Housing and Property Chamber). Social landlords are required to report their performance annually to the Scottish Housing Regulator, this includes the number of notices served and the number of repossessions. This will allow the impact of these provisions to be monitored.

Implementation and delivery plan and post-implementation review:

Guidance for landlords and tenants will be updated on the Scottish Government website as soon as feasible. This will ensure that landlords and tenants can access information about their amended rights and responsibilities during the period these regulations apply to.

We also expect organisations such as the Scottish Association of Landlords and The Society for Sheriff Officers and Messengers at Arms to produce guidance for their members on the impact of the regulations.

As set out in legislation, parliament will review the need for and the proportionality of the regulations every 21 days.

Summary and recommendations:

The purpose of the regulations is to allow Scottish Ministers to prevent people being evicted from their home, within areas subject to level 3 and 4 restrictions, during the coronavirus outbreak in Scotland.

Title of proposal: Amendments to Coronavirus regulations to limit allowed work in other people's homes

Purpose and intended effect:

The purpose is to amend the Regulations to reduce the number of reasons that individuals may gather in other people's homes by restricting the scope of the exemption for work.

Within the current version of the regulations, there is an exemption to the rules against gathering in private dwellings where the purpose of the gathering is work. This allows for tradespeople or others to enter into a home to complete work (e.g. deliveries, repairs or installations) without being in breach of the regulations. There is currently no specifics in the regulations on whether particular types of work are or are not allowed.

The supporting guidance for level 4 sets out that only 'essential' work should be completed in other people's homes within level 4. The intention of this guidance is to reduce the amount of work carried out (and so reduce the number of people entering other's homes). The expectation is that 'essential' work includes repairs to ensure the household can continue to function, but not cosmetic/ casual work (such as redecorating or kitchen replacements). The guidance does not rule out any particular types of work because it is recognised that some work usually seen as unnecessary may be essential in certain circumstances (such as installing a new kitchen where the old one had already been removed).

The intention is to update the regulations to include a new restriction on gatherings in the home for the purpose of work on the home, so that such work can be carried out only if it is essential for the purpose of the upkeep, maintenance or functioning of the dwelling. This will bring the existing guidance into law.

We view this intervention as necessary given that we are aware businesses intend to carry on work which we do not believe would meet the essential requirement. Though the requirement is already in guidance, this does not appear sufficient to stop businesses.

Consultation:

We have not carried out any consultation with the business or public, given the short timetable for implementation. The new regulations already exist as part of guidance, which has been highlighted to business groups through the ongoing engagement we have with them.

Options:

Option 1 - No action

Given the current prevalence of the virus, and the other restrictions in place, a do nothing approach was considered an inappropriate response. .

Option 2 - Tighten guidance and recirculate to regulators and business organisations

Currently, the approach is to include the restriction to essential work only is in place in the guidance. It was decided that this option was not providing sufficient force to limit working in other people's homes, and so it was decided the requirements should be added to the regulations.

Option 3 - Tighten guidance and put in regulation

This option was chosen. The existing approach of implementing through guidance was not viewed to be having sufficient effect.

Scottish Firms Impact Test:

The requirements will impact Scottish firms, where at least part of the business involves working in other people's homes.

The requirement will apply to all businesses operating in Scotland, whether they are Scottish firms or not. It should not affect the operations of Scottish firms outside Scotland. There should therefore be limited impact on their competitiveness.

The requirements will affect a range of businesses and sectors. This will include larger firms where work in other people's homes makes up only part of the business (for example a retailer or service provider who includes delivery and installation as part of their offering), as well as small firms/ sole traders for whom working in other people's homes is the core of their business. (for example, independent plumbers, joiners, painter and decorators)

Labour market statistics show that at least 30,000 individuals are self-employed in trades that may be affected by the changes, including carpenters/ joiners, plumbers, electricians and decorators. We do not know specifically how many of these will be affected, as some will continue to undertake 'essential' work and others may be carrying out work in other settings (workplaces other than an individual's home are not covered by the change to regulations).

The Scottish Government has business support in place for business whose work is impacted by the restrictions. We are reviewing our business support in the context of the impact of the tighter restrictions introduced on Monday 4 January to understand the impact of these on tradespeople and what, if any, support we are able to provide in order to support them in surviving the pandemic

Competition Assessment:

It is expected that there should be limited competition impacts, as all businesses/ tradespeople who operate in other people's homes will be affected by the changes.

Between tradespeople/ firms, there may be some differential impact between those who specialise in different types of work, where one is more likely to be 'essential' (and thus continue). However, given all non-essential work is expected to stop, they will not be able to take on this business from the firms/ individuals who specialise in it.

Businesses where the work in other people's homes is only a part of the operation may be less affected (as they may be able to continue their other operations). However, typically the work in other people's homes is done in service to their wider operations, and thus they are unlikely to take any extra existing business.

Consumer Assessment:

The amendments to the regulations should impact the services that individuals are able to access while the restrictions are in place. This is by design, as we want to limit the presence of other individuals carrying out work in their homes to only where the work is essential.

Given the design of the amendments, the consumer should not be restricted from accessing essential services required for the upkeep, maintenance and functioning of the household.

<p><u>Test run of business forms:</u></p> <p>N/A no business forms being introduced</p>
<p><u>Digital Impact Test:</u></p> <p>There should be no digital impact. There is an exemption for work necessary to maintain the operation of the household, which is likely to include installation/ repair of internet/ technology. There should therefore be no wider impact.</p>
<p><u>Legal Aid Impact Test:</u></p> <p>The proposed changes are amendments to existing regulations, and so should have no legal aid implications.</p>
<p><u>Enforcement, sanctions and monitoring:</u></p> <p>The proposed amendments do not create any new offences, but modify regulations currently in force to narrow an existing exception from the restriction on gatherings. Existing enforcement and sanctions will apply.</p>
<p><u>Implementation and delivery plan and post-implementation review:</u></p> <p>The new requirements will be implemented as part of the regular updates to the regulations, and will come into effect alongside the other amendments. Effectiveness will be monitored via engagement with enforcement bodies and analysis of data on the prevalence of the virus.</p>
<p><u>Summary and recommendations:</u></p> <p>In summary, we recommend that the amendment to the regulations be implemented. The requirement for work on someone else's home to be essential already exists in the guidance, and so we already expect businesses to be adhering to it. The change to place this restriction on a statutory footing is necessary to ensure compliance thereby ensuring that we are limiting the spread of the virus as much as possible. While a number of businesses and tradespeople will be affected, business support is in place.</p>
<p>Declaration and publication</p> <p><u>Sign-off for BRIA:</u></p> <p>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.</p> <p>Signed: Michael Russell</p> <p>Date: 15th January 2021</p> <p>Minister's name: Michael Russell Minister's title: Cabinet Secretary for Constitution, Europe and External Affairs.</p>