

Title: Scotland's Strategic Framework: Retail Sector – 2nd 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.

It is the 2nd addendum to the retail subsection. The 1st retail addendum, which related to a tightened definition of essential retail, can be found at the following [link](#).

Purpose and intended effect:

In response to the new variant of Coronavirus and consequent increasing number of new cases the Scottish Government is introducing a number of additional restrictions in order to further reduce the number of reasons people have for leaving home and coming into contact with others. As part of this package of measures the number of retailers who are able to operate click and collect services will be reduced through an amendment to the Level 4 restrictions on retail premises. These additional restrictions are in addition to the restrictions which came into force on 26 December 2020 and which are dealt with in the above earlier addendum. Those additional restrictions reduced the number of retailers listed as 'essential' who could remain open as well as making clear that a number of retail services which were non-essential should also be closed (such as showrooms). The restrictions coming into effect on 16 January 2021 make changes to the operation of click and collect and to outdoor car lots.

Non-essential retail has been closed across all of mainland Scotland (and some of our islands) since 26 December 2020. At that point, all of these retailers could continue to offer products via click and collect. On 05 January 2021 however a further amendment to the Coronavirus regulations was made implementing in law, a 'Stay at home' requirement unless for an essential purpose for which see those [regulations](#).

It is therefore the case that is already unlawful for a person to leave their home in order to undertake shopping or collect an ordered item unless it is to obtain supplies for the essential upkeep, maintenance and functioning of the household. The continuation of a fully available click and collect service from all, otherwise closed, non-essential retailers meant that there was confusion since that did not accord with a stay at home message and was having a knock-on effect on levels of compliance.

It was therefore desirable to invoke tighter restrictions to deter journeys and interactions which did not meet the requirement of fulfilling an essential purpose and as such a restriction on which, otherwise closed, retailers would be permitted to offer click and collect access. In considering which retailers should continue to be permitted to operate a collection service we reviewed those retailer categories most likely to provide access to products which could reasonably be considered essential and where access to them may be required urgently. This refined list of retailers who are currently closed but who can continue to operate click and collect is:

- Baby equipment shops
- Book shops
- Clothing shops
- Electrical good shops, including repair shops
- Footwear shops
- Garden centres and plant nurseries
- Homeware shops
- Key cutting shops
- Shoe repair shops

Feedback from Environmental Health and Trading Standards officers as well as correspondence received into Scottish Government indicated that click and collect services were not always being conducted in either the letter or spirit of the applicable regulations and in some circumstances facilitated customer access into the wider store.

We are therefore also tightening the operational restrictions for click and collect. For those listed retailers who are permitted to conduct a collection service they must now do so by staggered appointment, with where reasonably practicable a gap between each appointment, and with access to the premises only to the extent necessary to provide the service. These measures are being introduced in order to limit or remove any interaction between customers, remove where possible customers accessing the wider premises and reduce the risk of transmission. Customers should not be entering stores in order to pick up click and collect items unless the retailer can demonstrate that there is no practical alternative. Where they do have to enter the store they should not be permitted access to any more of the store than is necessary to collect their item.

Click and collect also remains permitted for essential retailers who are open to the public, and whilst they are not covered by the above regulatory restrictions they are being strongly encouraged in guidance to mirror the operational requirements where possible.

Outdoor car lots had been able to stay open. However in keeping with the stay at home regulations the operation of outdoor motor vehicle lots has also been further restricted to remove the risk of people browsing as this would not meet the legal requirement of an essential purpose. Instead these will only be open for the purposes of collecting a vehicle already purchased or for the delivery or collection of a vehicle for a repair, service or MOT.

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.

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:

	Level (Baseline)	0	Level 1	Level 2	Level 3	Level 4
Retail sector	Open	Open	Open	Open	Open	Non-essential retail closed (limited 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. 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 permitted business activities such as click and collect and to outdoor car lots 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 and directly with their members. 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 16 January 2021.

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. As such a review and consideration of retail in levels 0-3 was not warranted.

Additional Options considered for Level 4

Option 1 – retain all click and collect– Option rejected

Due to the increasing levels of COVID-19 cases we need to reduce the number of journeys people are making. Whilst click and collect services cannot be confirmed as being a driver of increased transmissions it is evident that being able to travel to undertake a collection could be contributing to people leaving their homes for reasons other than an essential purpose. We needed to consider all steps available to reduce the number of reasons people have for leaving their homes. People should only be leaving their homes for an essential purpose. People should only pick up an online order if it is for an essential purpose. Therefore there is a weakened argument for retaining the ability for all stores to provide a click and collect service. There was concern too about the confusion that arises from regulating that people must 'stay at home' in law whilst at the same time seemingly permitting journeys to non-essential retailers to 'click and collect'. This was having a negative impact on compliance.

Option 2 – close click and collect for all non-essential and otherwise closed retailers – Option rejected

All click and collect was closed during the lockdown restrictions introduced in March 2020 and given the high rates of transmission we considered whether it would be appropriate to mandate similar restrictions at this point. Although there is a greater risk of transmission with allowing any services to remain open we balanced this against the need for people to purchase and collect essential items in an emergency. Examples of a potential need for an urgent purchase which click and collect could support included for baby equipment, warm clothing and bedding, and household electronic items.

Whilst on-line delivery could fulfil these needs in a number of areas there was recognition that there would be circumstances which necessitated obtaining something urgently or more locally. There was recognition that Scotland has a diverse geography, not all of which can obtain free or next day delivery so there was a risk that there could be long delays for deliveries in certain rural and remote areas and that these can also incur significant costs.

Click and collect has a number of benefits; it largely or completely removes in store browsing, people mingling and dwell time. It limits to the minimum, and in some cases already removes, any contact with others. There were concerns that completely restricting click and collect would increase funnelling to those retailers still open adding pressure and loading more people into them. Additionally some retailers were advising that their on-line delivery services are under pressure and almost at capacity, which removing click and collect as an option would exacerbate.

A proportion of the Scottish mainland is not within a reasonable distance of the large, supermarket - style retailers which are permitted to open where consumers may be able access products urgently such as a kettle, warm bedding or winter footwear. Removal of click and collect therefore has equity and access implications, in particular for those who may not be able to, nor wish to, travel to large essential retailers in urban or peri-urban areas

As a result a decision was made that complete removal of all click and collect should not be pursued and should remain available for customers needing urgent access to items for an essential purpose.

Option 3 – retain click and collect for certain retailers with further operational restrictions – Option adopted

From a harm 3 perspective, retaining click and collect allows people to access products for an essential purpose (especially in winter) that are available locally, quickly, without waiting time for delivery or having to travel greater distances to buy them in-store. For many retailers click and collect is also free rather than incurring delivery costs.

Based on the above consideration of the first two options a decision was made to allow click and collect to remain open for a list of retailers where we needed to retain immediate or urgent access for customers who needed to purchase something for an essential purpose. Consideration was given to the list of retailers, based on reasons of urgency or reasonable likelihood of meeting the legal requirement to serve an essential purpose. This included consideration of a variety of different 'life' events that may necessitate retention of that access. Such considerations included the early arrival of a baby, an urgent or unplanned house move, and seasonal factors such as needing warm bedding, clothing or winter footwear. Consideration was also given to book shops due to the ongoing closure of schools, colleges and universities and the need for access to educational and academic books, resulting in book shops being included in the regulations. Repair shops (shoes, electrical and key cutting) are also included to ensure people can access repair of items – particularly where they may not be able to afford replacement.

We considered carefully the need to retain access to items locally for rural communities since there were risks identified in limiting availability of goods and potentially making communities more vulnerable by increasing reliance on online deliveries that can be affected by weather, especially at this time of year. There is also immediacy and cost implications for more remote consumers who may require items quickly and out of necessity and for whom on-line order and delivery will add both time and delivery charges to the purchase.

Concurrently, in concluding that option 3 – partial retention of click and collect for essential purposes - was the preferred outcome we recognised that there were remaining potential risks around the operation of click and collect where customers are entering the premises of otherwise closed retailers. We examined the previous, unrestricted, permission for click and collect to continue operating and concluded that further operational restrictions should be introduced in regulation to reduce the interaction between retail staff and customers and between customers. In particular the desired outcome was to ensure, wherever practicable, that all click and collects would take place in a contactless and 'off premises' way, such as an outdoor collection area or boot drop – something several retailers had already adopted. In order to minimise the likelihood of either queuing outside a closed retailer to collect a purchase or for customers to be interacting with each other, it was concluded that staggered appointments systems should be required in regulation to ensure that there was an 'air gap' between customers arriving and departing.

In line with the move to restrict and limit click and collect to only those retailers which could be meeting a customers' essential requirement in law it was also deemed necessary to bring a similar measure in around the operation of outdoor car lots and car showrooms. Whilst indoor showrooms were already closed by law the fact that outdoor car lots remained open for 'browsing' and ordering ahead a new vehicle did not meet with the new legal requirement to stay at home. The operation of outdoor car lots was therefore amended to restrict that these businesses could open only to enable the collection of an already purchased vehicle or to drop off or collect a vehicle for service, MOT or repair. This again was to achieve the objective of removing the reasons to leave the home and to bring vehicle buying into line with other retail where browsing is not permitted and people should only be visiting a retailer for an essential purpose.

Business support

The Strategic Framework Business Fund provides grants of up to £3,000 per week for businesses that are required by law to close in response to regulations introduced to control the spread of COVID-19. The financial support available to businesses through this fund is responsive to the needs of businesses based on the restrictions in place in their local authority area. Retailers that are required to close in Level 4 are therefore eligible for support through this fund, as well as recently announced additional one-off top-up grants of £6,000 or £9000. Businesses have to claim the Strategic Business Fund through their Local Authority to be paid that top-up. This is in addition to the Non-Domestic Rates Relief that we extended to all rate-paying businesses across Scotland at the outset of the pandemic in March. Through our Local Authority Discretionary Fund, councils can target additional support to where they feel this is needed within the context of their local economy and business community and have the option to further support betting shops in their area.

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: limited the number of businesses permitted to offer click and collect and tightened operational restrictions around its usage. Additionally, to ensure that car buying was aligned with the retailing of other goods and that non-essential journeys are not generated by browsing in outdoor vehicle lots the regulations on their operations are also restricted to: the collection of an already purchased vehicle and the drop off or collection of a vehicle for service, MOT or repair. .

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: 22nd January 2021

Minister's name: Michael Russell

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