

Final Business and Regulatory Impact Assessment (BRIA)

Title: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021

Purpose and intended effect:

This BRIA is focused on the set of measures included within the update to Scotland's Strategic Framework and the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021, which make amendments to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the updated Strategic Framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

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

Policy Objectives

We published Scotland's updated Strategic Framework on 23 February 2021 following the emergence of the Variant of Concern (VOC) B.1.1.7 in Scotland and with most of Scotland being protected at Level 4. The updated Protective Levels Framework, which was published on 13 April 2021, sets out what restrictions are in place across the different levels. The levels are designed to support our strategic intent to suppress the virus while restoring as much normality to people's lives as possible.

[Coronavirus \(COVID-19\): local protection levels - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-2021-04-13/pages/10-12.aspx)

In essence, the levels work by limiting members of different households from interacting in different settings and activities, where those settings and activities pose different risk factors for transmission of the virus. Decisions must be made about which activities and settings to restrict in order to achieve the required suppression of the virus. When different restrictions would have similar effects on transmission, difficult decisions must be made about which restrictions to apply. To help to make those difficult decisions, we consider the impacts on the four harms of the different options as well as the human rights engaged by the restrictions and the impacts on particular groups in society, including those with protected characteristics.

This is consistent with the principles and approach set out in our Framework for Decision Making in April 2020. We recognise that living with restrictions is tough for everyone in Scotland, with children and young people, vulnerable groups and businesses being particularly hard-hit.

The Regulations take progressively more restrictive steps as we move up the levels. All restrictions will be kept under review in the event of new information, such as a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response.

Background:

The COVID-19 pandemic has led to fundamental changes to everyday life for people in Scotland. While it has been necessary to take these extraordinary measures to respond to the pandemic in order to protect the right to life for Scotland's population and to protect the health of Scotland's population, the unequal impact of the pandemic, and the need to consider human rights and take an integrated and balanced

approach to ensuring the proportionality of the measures taken, have also been at the forefront of consideration of these actions during this emergency situation.

The Coronavirus (COVID-19): Framework for Decision-Making and Scotland's route map through and out of the crisis ("the Route Map") published in 2020 made clear that COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The Framework for Decision-Making identified four main categories of harm: direct health impacts, non-COVID-19 health harms, societal impacts and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing.

In October 2020, we published COVID-19: Scotland's Strategic Framework. This framework set out how we intended to respond to the crisis over the coming period, and introduced the levels framework. Since the publication of our original Strategic Framework the emergence of the Variant of Concern (VOC) B.1.1.7 has increased the transmissibility of the virus and is now the dominant strain in Scotland. This means that it is now more challenging to effectively suppress the spread of the virus. We have also begun the rapid roll-out of our vaccination programme.

We published an update to Scotland's Strategic Framework on 23 February 2021. In it we confirmed our strategic aim to "*suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible*" and set out how we will realise that intent.

[Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/Health/Coronavirus/Strategic-Framework-Update-February-2021)

Some harms will be felt over different time horizons: short, medium and long-term. Some may not be fully understood for many months or even years, such as the long term impacts on mental health and school attainment. However, even in these initial stages, it is clear that impacts have not been felt equally across the population. Consideration of the continued, but differential, impacts at the different levels is therefore critical to the decision making process.

Legislative 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 made provision which was 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 ("the 2020 Regulations") implement the Strategic Framework and came into effect at 6.00 am on 2 November 2020. These regulations revoked the additional temporary restrictions regulations

and the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. The 2020 Regulations have been amended by numerous amending Regulations since 2 November 2020.

In January 2021, it became urgently necessary to go beyond the requirements and restrictions set out in the 2020 Regulations. This is because of a changed assessment of the risks of transmission of the virus in light of the emergence of a new variant of COVID-19, as referred to above. Additional strengthening of Level 4 restrictions was immediately implemented in order to try to curb exponential growth, this included a requirement to stay at home for those in Level 4 – all of mainland Scotland and some islands. Over March and April 2021, we reached a point where the relaxation of some of these measures became possible.

In April 2021, a new Local Protection Levels table¹ was published (as discussed above). This publication outlined the future content of the levels based approach following the emergence of the new variant and to reflect the impact that increasing vaccination numbers has on transmission. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 implement many of the adjustments required to give effect to the new publication. Previous regulations amending the 2020 Regulations gave effect to relaxations in March and April 2021 (referred to above).

Decision making under the Strategic Framework system is intended to be straightforward and transparent. It builds on existing structures and processes and includes engagement with local leadership as decisions are taken. However, decisions will be made by Ministers, with input from relevant advisers, because implementing levels decisions is the exercise of a statutory power for the protection of public health, for which Ministers are responsible and accountable.

As soon as the Scottish Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, they must revoke that restriction or requirement.

The Scottish Ministers will regularly review the restrictions and requirements as well as the levels allocation for areas. Following reviews, Ministers may move any particular area, or the entire country, to a different level of restrictions. The timetable for easing restrictions sets out the dates on which we are aiming to move through the levels. The timetable is subject to the data available and the plans will be kept under review. Under the levels approach, Scottish Government will work closely with local authority leaders when making these decisions.

The *Framework for Decision Making* makes clear that the reviews will be informed by assessments of options for relaxation or restriction under their impact on the four harms, their viability, and broader considerations including consideration of impacts on businesses and the associated costs, equality impacts, the impact on human rights and consideration of various measures, for example, for specific sectors, industries or businesses.

The Scottish Government considers the impact of the provisions in the regulations on businesses, particularly the likely costs and benefits to the public, private and third sector. The following impact assessments consider the impacts of the various provisions and the restrictions at each protection level.

¹ [Coronavirus \(COVID-19\): local protection levels - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/local-protection-levels-2021/pages/1-introduction.aspx)

Title of proposal: Scotland's Strategic Framework: Early Learning and Childcare and Formal Childcare

Purpose and intended effect:

The objective of Scotland's Strategic Framework is to set out a sustainable response to the pandemic to be implemented until either a vaccine or highly effective treatments to the virus are developed. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five levels of protection.

This BRIA is focused on the set of Early Learning and Childcare (ELC) and formal childcare measures included within Scotland's Strategic Framework. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

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

Formal childcare refers to daycare of children services and childminders who are registered by the Care Inspectorate to deliver childcare. Formal childcare includes early learning and childcare for 3 and 4 year olds and eligible 2 year olds funded by local authorities under the Children and Young People (Scotland) Act 2014.

Childcare plays a fundamental role in supporting the response and recovery to the pandemic. At all levels, including in the recent lockdown, access to childcare has been prioritised, due its significant impact on children's development, and the ability of families to take part in work and study. Formal childcare, operating under a strict regulatory regime, with strong guidance, and applying a package of age appropriate measures has been open to those children who need it most throughout lockdown, and has reopened to all children in advance of the lifting of the stay-at-home restrictions from level 4 of the framework. Informal childcare has been permitted for essential purposes, and with clear guidance to parents and carers, during lockdown. This settled position, and focus on the impact of reduced access to childcare, has meant that changes in levels framework in April 2021 are limited. This assessment, carried out in April 2021 updates and builds on previous assessments of childcare policies.

ELC and formal childcare services were subject to an additional level of restriction beyond the Strategic Framework system of levels over the period from 26 December 2020. These additional restrictions ended on 22 February 2021 for ELC providers and on 15 March 2021 for school aged childcare providers. The objective of the additional restrictions imposed was to combat the spread of a new more transmissible strain of the virus identified in December 2020. As a precautionary measure, in the light of community transmission, new restrictions were imposed on the childcare sector, alongside wider lockdown measures in the community. These temporary restrictions were:

- Nurseries and other registered day care of children providers may only open to children from key worker families, or vulnerable children;
- Childminders currently caring for 12 or more children may only open to children from key worker families, or vulnerable children;
- Childminders caring for fewer than 12 children can operate as normal.

A separate BRIA was produced for these temporary additional restrictions².

The key measures relating to ELC and formal childcare in Scotland's Strategic Framework are set out in the table below:

² <https://www.gov.scot/publications/provision-early-learning-childcare-during-covid-19-pandemic-business-regulatory-impact-assessment-bria/>

Early Learning & Childcare and formal childcare Measures (socialising rules apply)	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
ELC/Formal Childcare	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with enhanced protective measures in place	Open – with enhanced protective measures in place
	Across all levels, subject to targeted intervention in response to local outbreaks which may impact on capacity				

Formal childcare is open at all levels of the framework. Guidance on the operation of settings lays out a package of age appropriate measures that reflect the levels approach, and provides for changes to the measures to be in place at different protection levels. We assess the overall impacts of the Strategic Framework as being positive, in the context of the pandemic, for young children, families and childcare, as the measures recommended for each of these Levels would enable ELC and formal childcare settings to continue to operate safely without significant impact on accessibility and capacity, so that:

- Children can access childcare options safely in order to support their learning and wellbeing;
- Families are supported to continue or return to work and other responsibilities;
- The childcare workforce is supported to work in a safe environment.

Settings in all protection levels may be asked, by local health directors of public health, to implement additional public health measures that may affect capacity. These may include for example, consistent small cohorts, minimising contact between cohorts, restriction of blended placements. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow settings to continue to operate. However, there may be circumstances in which, based on clear evidence and public health considerations, additional measures will be required. All such decisions will be made in line with the independent advice of local Directors of Public Health.

We know from sectoral engagement that these measures could have the impact of reducing capacity in individual childcare services, depending on their layout, staffing and delivery model, meaning it could be the case that fewer children and families would be able to benefit from childcare provision at current levels if such measures were reintroduced. This would have additional impacts on groups sharing protected characteristics.

The specific potential impacts on those with each of the Protected Characteristics of the introduction of measures associated with the different Levels of interventions set out in the Strategic Framework are set out below. A description of the measures described in the guidance can be found at:

<https://www.gov.scot/publications/coronavirus-covid-19-early-learning-and-childcare-services/pages/scotlands-strategic-framework/>

Advice from the CMO Sub Group on Education and Children's Issues, which informs guidance can be found at:

<https://www.gov.scot/publications/coronavirus-covid-19-advisory-sub-group-on-education-and-childrens-issues/#history>

Introduction

The ELC and formal childcare sector is a very important part of Scotland's economy and society.

Maintaining and widening access to affordable and high quality childcare provision is a critical enabler of economic recovery in the short term in particular through supporting parents and carers to work or study. In the longer term the childcare sector forms a crucial part of a wellbeing economy which provides opportunities for all to flourish.

Regulated childcare services are currently subject to [public health guidance](#) in order to operate. There is a core guidance document for [day care of children services](#). There are separate guidance documents for [childminding services](#), and [school aged childcare services](#). Whilst these documents are aligned with the core guidance document they include variations to reflect the unique nature of these services.

Given the wider benefits, both to children and families and to supporting economic recovery, the Strategic Framework clearly sets out an intention to prioritise keeping schools and regulated childcare, including early learning and childcare, open while ensuring the safety of children and young people and the staff who have worked hard to keep settings open. This is in recognition of the unique impacts of the pandemic on children and young people, coupled with the necessity to ensure it does not prevent them receiving the best start in life. With regards to childcare, and in particular funded ELC, it is recognised that the earliest years of life are crucial to a child's development and have a lasting impact on outcomes in health, education and employment opportunities later in life. It is widely acknowledged that the provision of universally accessible and high quality early learning and childcare (ELC) can play a vital role in helping to close the poverty-related attainment gap³.

To support this intention, there are measures in published guidance that would enable ELC and formal childcare services to continue to operate safely without significant impact on accessibility and capacity (for example changes to drop-off and pick up procedures, limiting contacts, maximising use of outdoor spaces and enhanced hand hygiene), so that:

- Children can access childcare options safely in order to support their learning and wellbeing
- Families are supported to continue or return to work and other responsibilities; and
- The childcare workforce is supported to work in a safe environment.

These measures apply at all levels of the framework, with some enhanced measures at levels 3 and 4. Any additional targeted measures required could impact on capacity in ELC and formal childcare services, as settings could be subject to interventions which could include the targeted use of measures previously in force in regulated childcare, from 15 July to 9 August. These additional measures may have an impact on capacity in services. This would be based on the evidence of transmission in ELC and formal childcare, and the need to protect and support those who are most at risk.

On the advice of public experts, the additional targeted measures previously in place included:

- Caring for children in small groups
- Minimising contact between those groups
- Strict restrictions on blended placements, whereby children could not access childcare provision in more than one location in a day
- Strict restrictions on staff movement across settings

We know from sectoral engagement (with more information set out below) that these measures had the impact of reducing capacity in individual childcare services, depending on their layout, staffing and delivery model, meaning it could be the case that fewer children and families would be able to benefit from childcare provision at current levels if such measures were reintroduced. There may also be a need to temporarily close settings in response to local outbreaks.

³ More information can be found in [Expansion of early learning and childcare: Quality Action Plan](#).

Overview of ELC and the Formal Childcare Sector in Scotland

The formal childcare sector in Scotland operates as a mixed economy model with a mixture of public, private, third and childminding sector providers. The formal childcare sector delivers services to both children aged 5 and under and to school-aged children (through, for example, out of school care provision and childminders).

As of 28 February 2021 there were approximately 1,820 private and third sector childcare settings, including out of schools care settings, 1,760 local authority nurseries and around 4,280 childminders registered with the Care Inspectorate.

In Scotland all children aged 3 and 4, and eligible 2 year olds, are entitled to funded Early Learning and Childcare (ELC). Many providers in the private and third sector deliver this service on behalf of the public sector, and receive payments from their local authority for the delivery of these hours. Local authorities currently have a statutory duty to ensure that 600 hours of funded ELC is available to all eligible children in their area. The sector is working towards the statutory roll-out of the expanded ELC entitlement of 1140 hours being introduced in August 2021. The statutory roll-out of 1140 hours was initially due to happen in August 2020, but was paused following the impact of the COVID pandemic. However, all local authorities are currently offering more than 600 hours of funded ELC, whilst some local authorities are offering the full 1140 hours to some or all families in their areas

Around 60% of private and 41% of third sector day care of children providers are currently estimated to deliver the funded Early Learning and Childcare (ELC) entitlement. On average the payments that these providers receive from their local authority for delivery of these hours are estimated to account for around a third of a private funded provider's total income, and around 60% of a third sector provider's total income – although there can be significant variations across providers. The remainder of their income comes from fees charged to parents and carers for non-funded hours (e.g. to children aged 0-2 or for additional wrap-around hours for children receiving a funded ELC).

Whilst there have been increasing numbers of childminders offering the funded ELC entitlement the numbers remain relatively low (the Scottish Childminding Association's [Early Learning and Childcare Audit 2019](#) reported that in July 2019 around 13% of childminders had been approved to offer funded ELC to 3 and 4 year olds).

The majority of staff working in ELC and the formal childcare sector are women: around 100% of registered childminders are women, 96% of staff in day care of children services⁴ and 94% of teachers delivering funded ELC are women.⁵

COVID-19 and ELC and Formal Childcare Sector

COVID-19 has impacted on formal childcare services in a number of ways, and some concerns remain:

- higher costs of delivery in order to meet the public health guidance requirements
- income from private sources may be below business as usual levels (due to potential restrictions on capacity as a result of the public health guidance, and lower levels of parental demand); and
- current financial and business support schemes start to be reduced and removed (in particular the Coronavirus Job Retention Scheme, now extended to September 2021), and repayments will start to be required on any support provided through loans (for example the Bounce Back Loan Scheme).

The Scottish Government undertook a survey of providers between 19-24 June 2020 in order to better understand the potential impacts of the reopening guidance (that was in place at the time) on their settings.

⁴ <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

⁵ <https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/>

The survey included questions regarding changes in costs, capacity and private income generation. This was intended to focus mainly on the impact of the reopening guidance for day care of children settings published on 15 June 2020 (which enabled these services to reopen from 15 July 2020 if they chose to do so), but replies were also received from some childminders regarding the impacts of the specific guidance for childminding settings. Childminding settings, along with fully outdoor day care of children settings, were able to reopen from 3 June 2020 and separate specific guidance for these settings were published on 1 June 2020.

There were 651 responses to the survey with 430 from private and third sector providers, and 221 from childminders and showed that:

- 52% of private and third sector respondents indicated that they expected an increase in staffing requirements.
- 79% of private and third sector respondents reported that they expected average costs to increase upon reopening compared to business as usual.
- 80% of private and third sector respondents reported that they expected capacity to decrease upon reopening compared to business as usual.
- 81% of private and third sector respondents expected their capacity for private income generation to decrease upon reopening compared to business as usual.
- 65% of childminder respondents indicated that they expected no change in costs or for costs to decrease.
- 49% of childminders responding to the survey expected no change, or an increase, in overall capacity.
- 45% of childminders responding to the survey expected no change, or an increase, in overall private income generation compared to business as usual.

An analysis of the survey results can be found at: <https://www.gov.scot/publications/survey-of-childcare-providers-on-impact-of-reopening-guidance-summary/>.

Formal childcare providers, as with organisations in other sectors of the economy, will have been able to access support through a range of measures introduced by the Scottish and UK Governments. The Coronavirus Job Retention Scheme has been a key support measure for the sector. 90% of private and 66% of third sector day care of children respondents to the Scottish Government survey of providers in June 2020 indicated that they had drawn on support from the Coronavirus Job Retention Scheme.

Childminders have been able to draw on support from the Self-employed income support scheme (SEISS) or the Scottish Government's Newly Self-employed hardship grant. We do not have figures for the number of childminders who have been able to draw on support through these schemes, however the Scottish Childminding Association (SCMA) have indicated that some childminders struggled to access support or received relatively low levels of support through the SEISS. The Scottish Government is carrying out an exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers, which will capture information on the impact of support available to the sector (further information is set out below).

In order to support the childcare sector, additional specific support has been made available:

- The Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement continued for the duration of closures, regardless of whether providers were open or closed (up until 10 August 2020). These payments also continued for the period of the temporary additional restrictions – which limited the capacity of services – over the period 26 December 2020 to 22 February 2021.
- To support day care of children providers in the private, voluntary/not for profit sectors with additional costs associated with meeting the public health guidance the Scottish Government introduced a Transitional

Support Fund which provided one-off grants ranging from £1,500 to £8,000 dependent on the size of the service. This Fund was open for applications between September and October 2020.

- The Temporary Restrictions Fund (TRF) was established in early 2021 to support childcare services impacted by the additional restrictions in place from 26 December 2020 to 22 February 2021 (for ELC services) and 15 March (for school aged childcare services).
- A Childminding Business Sustainability Fund was open for applications in March 2021. This Fund has provided a £750 grant to all registered childminding services to support their sustainability.
- Some childminding services, who struggled to access support through other routes were also previously able to access support through the Childminding Workforce Support Fund (CWSF), which has provided grants up to a maximum of £350. The Scottish Government has provided £420,000 to the Scottish Childminding Association to support delivery of this Fund.

At the time of writing (April 2021), and as indicated in updated Interim Guidance on Funding Follows the Child⁶ published in March 2021, the Scottish Government is carrying out an exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers, and to assess the impact of the financial support which has been available.

Policy Objective

In common with the other countries who have implemented similar measures⁷ the objective of the restrictions set out within the Strategic Framework is to ensure that the operation of ELC and formal childcare settings is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Any restrictions on operations 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 a vaccine and/or effective treatments, 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 is still emerging as is evidence about the different strains which continue to be identified, so we are committed to taking decisive action based on the best evidence available to us, while keeping this under constant review.

We have considered a wide range of evidence in developing the Strategic Framework, incorporating information from a variety of sources.

Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.⁸

⁶ <https://www.gov.scot/publications/funding-follows-the-child-and-the-national-standard-for-early-learning-and-childcare-providers-interim-guidance---update-march-2021/pages/introduction/>

⁷ For example, Denmark and Norway prioritised the reopening of childcare services, initially with a focus on small groups, but to ensure appropriate protective measures.

⁸ [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

We know from contact tracing, international evidence and scientific research that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters^{9,10}.

The Government recognises that transmission of the virus within households presents the highest risk, which is why gatherings in private dwellings was targeted first and will be restricted across all of the 5 levels.

However, other settings also have the potential to transmit the virus due to the risk factors. Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, is important in controlling the epidemic.

Scientific evidence on coronavirus transmission and children shows that younger children appear to have a limited role in the transmission of the virus, however early evidence in regards to Variant of Concern (202012/01) suggested that transmission was higher in all age ranges. Nevertheless, evidence to date has shown that the risk of Covid-19 transmission from children to children and children to adults in primary school and day care settings appears low, particularly when infection control measures are in place.

Current position of Early Learning and Childcare and Formal Childcare

Regulated childcare services are currently subject to [public health guidance](#) in order to operate. There is a core guidance document for [day care of children services](#). There are separate guidance documents for [childminding services](#), and [school aged childcare services](#). Whilst these documents are aligned with the core guidance document they include variations to reflect the unique nature of these services.

Details on the previous requirements on ELC and formal childcare providers were set out in the November 2020 BRIA¹¹.

Conclusion

Maintaining and widening access to affordable and high quality childcare provision is a critical enabler of economic recovery in the short term in particular through supporting parents and carers to work or study. In the longer term the childcare sector forms a crucial part of a wellbeing economy which provides opportunities for all to flourish, in particular by ensuring that children have the best start in life with lasting outcomes in health, education and employment opportunities.

Weighing these wider social and economic benefits, over the short and long term, against the transmission risk factors, which, as highlighted, indicate that younger children have a limited role in the transmission of the virus, the Strategic Framework sets out an intention to prioritise keeping schools and regulated childcare, including early learning and childcare, open while ensuring the safety of children and young people and the staff who have worked hard to keep settings open.

The Scottish Government has provided targeted support to ELC and formal childcare services during the period of the additional restrictions that were in place in early 2021. In particular this support was targeted at those services who remained open during this period to care for eligible children, recognising that opening for small numbers is likely to be financially challenging. The Scottish Government and COSLA also agreed that payments

⁹ Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

¹⁰ Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

¹¹ https://www.legislation.gov.uk/ssi/2020/344/pdfs/ssifia_20200344_en_002.pdf

for funded ELC would continue to those providers who normally receive them, whether or not children are in attendance, replicating the approach taken in Spring 2020.

Consultation

Public Consultation:

The Scottish Government has worked closely with the sector since the onset of the pandemic. In particular the provider representative organisations – Care and Learning Alliance (CALA), Early Years Scotland (EYS), National Day Nurseries Association (NDNA), Scottish Childminding Association (SCMA), and Scottish Out of School Care Network (SOSCN) – have been working closely with the Scottish Government and COSLA, through the ELC and Childcare Sector Recovery Working Group, to look closely at the financial sustainability of the sector throughout the pandemic response, and to inform guidance for the sector. This Working Group continues to meet regularly.

The Scottish Government undertook, over the period 19-24 June 2020, a survey of childcare providers to better understand the potential impacts of the reopening guidance for childcare services. This was intended to focus mainly on the impact of the reopening guidance for day care of children settings that was published on 15 June 2020, but replies were also received from some childminders regarding the impacts of the specific guidance for childminding settings (which was published on 1 June 2020).

The guidance documents at the time of the survey placed more restrictions on regulated childcare services compared to the current public health guidance.

The survey included questions regarding expected changes in staffing, costs, capacity and private income generation.

The survey results formed an important part of the evidence base used to determine where additional support for providers, to meet the requirements of the public health guidance, may be required. In particular the creation of the [Transitional Support Fund](#) for day care of children providers (this Fund was open for applications between September and October 2020).

There were 651 responses to the survey with 430 from private and third sector day care of children providers, and 221 from childminders.

The Scottish Government prepared the survey in collaboration with the Scottish ELC provider representative organisations.

A summary analysis of the survey responses is available on the [Scottish Government web site](#). As set out in the Purpose and Intended Effect section of this BRIA the survey results formed an important part of the evidence base used to determine where additional support for providers, to meet the requirements of the public health guidance, may be required. As highlighted above the Scottish Government is (at the time of writing in April 2021) carrying out an exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers.

Business:

In addition to the June 2020 survey of childcare providers the Scottish Government has continued to engage with childcare provider representative bodies (both individually and through the ELC and Childcare Sector Recovery Working Group¹²) and childcare providers.

¹² The ELC and Childcare Sector Recovery Working Group membership comprises Care and Learning Alliance (CALA), Early Years Scotland (EYS), National Day Nurseries Association (NDNA),

This has included receiving comments and input from these groups, and a small number of providers, on drafts of the various public health guidance documents for the sector. This feedback has, in particular, focussed on the importance of making sure that the guidance documents are clear and in helping to understand key practical constraints and challenges for providers resulting from the guidance.

The Scottish Government will continue to engage with the representative bodies and, where possible, providers on any further updates to the guidance documents.

At the time of writing (April 2021), and as indicated in updated Interim Guidance on Funding Follows the Child¹³ published in March 2021, the Scottish Government is commenced an exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers, and to assess the impact of the financial support which has been available.

Options:

This section sets out the range of options that have been considered, and we continue to work constructively with the sector to explore and assess alternatives as and when guidance changes. We will update guidance for regulated childcare services, if required, in line with scientific and public health advice

Guidance for regulated childcare providers will be informed by judgements based on the scientific and public health advice available at the time of writing. This will be informed by the [Advisory Sub-Group on Education and Children's Issues Group](#) who provide advice to support and inform the development of operational guidance for providers of learning, childcare and children's services.

This will ensure that all regulated childcare services – regardless of whether they are delivered by local authorities, private and third sector providers, or by childminders – are delivered in a manner which is consistent with wider efforts to control transmission of the virus and protects the health of children, their families, and the staff group.

Sectors and groups affected

These regulations will affect:

- Children and their parents, carers and wider family members
- All childcare settings
- All staff/volunteers that work within childcare
- Students on placements within childcare settings

The key measures set out in the guidance relating to ELC and formal childcare across the levels of the Strategic Framework are summarised in the table below:

Scottish Childminding Association (SCMA), and Scottish Out of School Care Network (SOSCN), as well as Scottish Government, COSLA and Care Inspectorate.

¹³ <https://www.gov.scot/publications/funding-follows-the-child-and-the-national-standard-for-early-learning-and-childcare-providers-interim-guidance---update-march-2021/pages/introduction/>

Early Learning & Childcare and formal childcare Measures (socialising rules apply)	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
ELC/Formal Childcare	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with enhanced protective measures in place	Open – with enhanced protective measures in place.
Across all levels, subject to targeted intervention in response to local outbreaks which may impact on capacity					

Our approach to assessing options

Within this BRIA we have compared the package of measures within each level against the baseline approach of level 0. This has allowed us to present the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on Early Learning and Childcare and Formal Childcare. We have also set out some other key options considered at each level. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

Our objective is to get all parts of the country to level 0 or level 1 and remain there if we can for the remainder of the pandemic. Within these levels, we would expect to see low incidence of the virus with isolated clusters, and low community transmission. Broadly, these levels are the closest we can get to normality without a vaccine or effective treatment which would allow us to move to Phase 4 of the Route Map and then back to normality. They would be similar to the measures in place during the summer, once we reached Phase 3. The Baseline and Level 1 are designed to be sustainable for longer periods.

In assessing the relevant options for each level we considered current and previous restrictions, international best-practice and examples, clinical and sectoral input, and proposals from policy colleagues, industry, and experts. We analysed the relative impact of each of the options on the spread of the virus, as well as the additional costs and benefits.

Options for ‘Baseline’

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality, whilst the vaccination roll-out continues to progress and more information becomes available on the overall efficacy of the vaccines including the impact on transmission and protection against emerging variants.

The protective measures set out in the non-statutory guidance documents – with separate guidance for [day care of children services](#); [childminding services](#); and [school aged childcare services](#) – represent the ‘core’ or standard protective measures that should be in place in all settings across all five protection levels. These measures have been augmented in line with scientific and public health advice in the current context of rising prevalence levels. Implementation and adherence to these measures is essential to ensuring the ongoing safety of children and young people, as well as the staff who have worked hard to keep settings open.

These standard protective measures represent the full suite of measures required at the Baseline (Level 0) and include:

- face coverings should be worn by all adults when physical distancing is not possible, but not when interacting with children
- specific guidance on singing in ELC settings; children sing in the course of activities and play, and should not be discouraged from doing so
- advice on the number of children in a group setting has been brought in line with primary class size numbers increasing to a maximum of 33 children. This does not change staffing requirements or ratios
- the approaches to shielding, support for specific groups, test and protect and outbreak management are aligned with the most up to date public health advice and approaches across education
- guidance on ventilation and temperature control
- peripatetic staffing and movement of staff between settings should be kept to a minimum and for essential purposes only

In addition to the implementation of these mitigations, at any protection level, settings may be asked to respond to local issues, and specifically to local outbreaks. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow schools and regulated childcare settings to remain open safely. However, there may be circumstances in which, based on clear evidence and public health considerations, specific settings require either to close, or to implement additional restrictions, for a defined period of time. All such decisions will be made in line with the independent advice of local Directors of Public Health, who will take account of wider public health considerations according to their statutory duties.

Any intervention is to ensure that regulated childcare services are delivered safely and in line with the latest scientific and public health advice. This guidance will evolve as required in accordance with the evidence.

Options for Levels 1 and 2

Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Level 2 is intended to apply for short periods of time.

The options considered for ELC and formal childcare under levels 1 and 2 were:

- Option A: Baseline (Level 0) measures
- Option B: Additional protective measures to Baseline (Level 0)

Although the prevalence of coronavirus in Scotland continues to evolve, we now know that young children are less likely to be affected by or transmit the virus. Advice from the Advisory Sub-Group on Education and Children's Issues states: *children in the age groups accessing early learning and childcare [N.B. 0-5 year olds] have a low susceptibility to COVID-19 infection, they also have a low likelihood of onward transmission.*

Therefore, subject to surveillance and mitigations being in place, it is judged that the Option A:Baseline (Level 0) measures will continue to apply at Levels 1 and 2. Option B was therefore rejected.

However, as highlighted in the section on the Baseline (Level 0) settings may be asked to respond to local issues, and specifically to local outbreaks at any level of the Strategic Framework. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow schools and regulated childcare settings to remain open safely. However, there may be circumstances in which, based on clear evidence and public health considerations, specific settings require either to close, or to implement additional restrictions, for a defined period of time. All such decisions will be made in

line with the independent advice of local Directors of Public Health, who will take account of wider public health considerations according to their statutory duties.

Options for Level 3

Level 3 is intended to apply for short periods of time.

Within level 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods (preferably less than 4 weeks), and only for as long as required to get the virus down to a low, sustainable level.

The options considered for ELC and formal childcare under Level 3 were:

- Option A: Baseline (Level 0) measures
- Option B: Additional enhanced protective measures to Baseline (Level 0)

Option A would see ELC and formal childcare services operate in-line with the standard protective measures that apply in the Baseline and Levels 1-2.

However, the evidence indicates that additional specific mitigations should be put in place to provide enhanced protection where services are located in areas designated at protection level 3 of the Strategic Framework. These enhanced protective measures will aim to tackle specific areas of higher potential risk as prevalence increases, including for those people most clinically at risk.

Under level 3 regulated childcare services are open with enhanced protective measures.

These enhanced measures will augment the standard protective measures in place for levels 0-2, while providing additional protective measures that do not further restrict capacity and therefore restrict access to childcare.

These enhanced measures are in addition to the suite of protective measures outlined throughout the core guidance. These measures have been designed to enhance protections in areas where evidence suggests there may be higher potential risks as prevalence increases, including for those people who are at the highest clinical risk. It is important to note that these measures are in addition to, not instead of, the protective measures set out in the main guidance (and which apply for areas in levels 0-2).

Any intervention is to ensure that regulated childcare services are delivered safely and in line with the latest scientific and public health advice. The enhanced measures for level 3 are:

- parents or guardians should discuss with their GP or clinician whether children with the highest clinical risk should still attend.
- the majority of workplaces can be made safe for staff. To ensure this remains the case, employers should ensure that individualised risk assessments for setting staff members with the highest clinical risk are in place and updated appropriately, and staff should speak to their employer to ensure all appropriate protections are in place.
- decisions on appropriate protections should be informed by individual risk assessments, and may include protective measures in the workplace, mitigations such as working remotely (e.g. at home or in different settings), or carrying out different tasks within their usual workplace. If protections cannot be put in place, they can discuss whether they need a fit note with their GP or clinician.

- settings should review use of peripatetic staff, to ensure that staff who by nature of their role support multiple settings only attend settings in person where it is demonstrably in support of the health and wellbeing of young children.
- staff with a single employer should only work across more than one childcare setting or service when it is absolutely necessary. Risk assessments should be carried out where staff are employed by more than one childcare provider.

Whilst Option B would require services to introduce enhanced measures it is not expected that these measures would result in impacts on capacity or income for formal childcare services. The measures may, however, result in certain services being required to make adjustments to their delivery models where required.

Ministers therefore judged that, on balance, additional enhanced protective measures (Option B) are required for Early learning and childcare and formal childcare services under Level 3 of the Strategic Framework.

Options for Level 4

Level 4 will be deployed only if absolutely necessary as a short, sharp intervention to address extremely high transmission rates.

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which, in the absence of an appropriate response, may pose a threat to the NHS to cope. This level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, and deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

The options considered for ELC and formal childcare under Level 4 were:

- Option A: Enhanced protective measures as apply at Level 3;
- Option B: Targeted interventions in addition to those at Level 3.

As set out previously, it was judged that, on balance, enhanced protective measures would be required for early learning and childcare and formal childcare services under Level 3 of the Strategic Framework.

Option B for regulated childcare services under Level 4 of the Strategic Framework would be for services to be open, but potentially subject to targeted intervention which may impact on capacity.

This could include targeted use of measures previously in force in regulated childcare, which may have an impact on capacity in services. For example, previous guidance documents for childcare services published in June 2020 placed a higher level of restrictions on service delivery in order to meet public health requirements.

Any targeted interventions would be based on the evidence of transmission in early learning and childcare (ELC) and wider childcare provision, and the need to protect and support those who are most at risk. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow settings to continue to operate. However, there may be circumstances in which, based on clear evidence and public health considerations, these measures will be required. All such decisions will be made in line with the independent advice of local Directors of Public Health.

To enable this further government interventions for regulated childcare services are expected under level 4 including:

- settings should be prepared to engage with enhanced testing responses to COVID-19 outbreaks, where recommended by the Incident Management Team. This may include more testing of people who do not have

symptoms to support outbreak management, and address areas where we are concerned about transmission. This includes undertaking more testing of close contacts of confirmed cases when recommended by our local health protection teams and more intensive use of other asymptomatic testing.

- to provide additional assurance, the Chief Medical Officer will issue a letter which is similar to a fit note that will last for as long as the local area is under Level 4 restrictions. This letter can be used in the few cases where, following updating of risk assessments and discussions with employers, it is not possible to make a workplace safe for staff.
- children on the shielding list should not attend in person.
- settings in areas in level 4 may be asked to implement additional public health measures that may affect capacity. These may include for example, consistent small cohorts, minimising contact between cohorts, and restriction of blended placements. Moving to level 4 does not automatically require the use of these additional measures. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow settings to continue to operate. However, there may be circumstances in which, based on clear evidence and public health considerations, these measures will be required. All such decisions will be made in line with the independent advice of local Directors of Public Health.
- the majority of workplaces can be made safe for staff. To ensure this remains the case, employers should ensure that individualised risk assessments for school staff members with the highest clinical risk are in place and updated appropriately, and staff should speak to their employer to ensure all appropriate protections are in place.
- decisions on appropriate protections should be informed by individual risk assessments, and may include protective measures in the workplace, mitigations such as working remotely (e.g. at home or in different settings), or carrying out different tasks within their usual workplace.

Under Option B some services may have to introduce targeted protective measures that could result in impacts on capacity and income, particularly if these measures are more closely in-line with the restrictions for day care of children services in previous guidance published in June 2020. The evidence, as set out in the Purpose and intended effect section of this BRIA, indicated that this guidance was expected, for most day care of children providers, to increase costs, and reduce both capacity and private income generating potential. Some of the cost pressures associated with meeting the requirements of more restrictive guidance, should already have been met by many providers due to physical adaptations that they will already have made (in order to reopen in July 2020) – and support to help them meet these cost pressures has been provided through the Transitional Support Fund. However, the Transitional Support Fund was not intended to cover lost income, and, although dependent on the nature of any further restrictions, it is expected that providers could face further capacity and income constraints.

Ministers judged that, on balance, additional enhanced protective measures (Option B) are required for Early learning and childcare and formal childcare services under Level 4 of the Strategic Framework in order to allow these services to continue to operate safely.

Scottish Firms Impact Test:

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

The majority of regulated childcare businesses are registered in Scotland. Most of the businesses operating in the regulated childcare sector are small or medium sized. There are a small number of larger number of businesses who operate a number of regulated childcare services across the country. The sector also includes around 4,300 childminders who are self-employed.

Table 1 provides an overview of the different types of regulated childcare services in Scotland.

Table 1: Registered childcare services as at 28 February 2021

Type of service	Number of registered services
<u>Day Care of Children services</u>	
Health Board	3

Local Authority	1,760
Private sector	1,057
Voluntary or not for Profit	764
Total Day care of children services	3,584
Childminding Services	4,281

Source: Care Inspectorate

The Scottish Social Services Council (SSSC) [Report on 2019 Workforce Data](#) reports that at the end of 2019 there were 37,370 people employed in day care of children services in Scotland (excludes childminders). This comprises of 17,520 employed in local authority services; 13,730 in private sector services, and 6,120 in voluntary/not for profit services.

Targeted interventions on regulated childcare services could have direct impacts on these providers through reductions in capacity and income generation, and potential additional operating costs. The potential impacts of more restrictive guidance were summarised in the Purpose and Intended Effect section of this BRIA, and more details are set out below.

Further targeted interventions on regulated childcare services would also be expected to impact on businesses in other sectors if they lead to reduce workers ability to access childcare.

What is the likely cost or benefit to business?

Under Level 4 of the Strategic Framework regulated childcare providers may be subject to interventions that could impact on their capacity, dependent on decisions made in line with the independent advice of local Directors of Public Health. Such interventions could, for example, be similar to those in previous guidance documents for childcare services published in June 2020 which placed a higher level of restrictions on service delivery in order to meet public health requirements.

If such interventions were to be introduced then the impacts on regulated childcare businesses could be in line with those identified in the survey of providers in June 2020. These results are summarised in the Purpose and Intended Effect section of this BRIA, and indicated that most private and third sector day care of childcare providers would expect to see their average costs of delivery increase, and for their capacity and income generation to decrease. The size of these impacts vary across different types of providers, including whether or not they deliver the funded ELC entitlement. In contrast childminders were less likely to expect costs to increase, but around half of the respondents to the survey expected reductions in capacity and income.

Changes to guidance can also create challenges for private and third sector ELC and formal childcare providers. Throughout lockdown and recovery, we have worked with the sector to support providers, and will continue to do so.

The regulated childcare sector, like many sectors of the economy, has experienced considerable financial pressures since March 2020 due to the reductions in private income flows in this period. The pandemic also hit at a time when the sector was in the final stages of preparing for the statutory roll-out of the expanded ELC entitlement of 1140 hours, which was previously intended to be introduced in August 2020 (with the statutory roll-out now being introduced in August 2021). As part of this preparation a number of providers offering funded ELC will have undertaken additional investment to expand their settings in order to deliver the increased entitlement.

Support for businesses facing restrictions

There is a comprehensive package of financial support from the UK Government and the Scottish Government for businesses to mitigate the negative impacts of the restrictions.

Through the UK government Coronavirus Job Retention Scheme employees working for businesses will receive 80% of their salary paid for by government.

This applies to all countries and regions of the UK and is not linked to specific tiers or restrictions.

- For periods ending on or before 30 June 2021 employers can claim 80% of an employee's usual salary for hours not worked, up to a maximum of £2,500 per month. From 1 July 2021, the level of grant will be reduced each month and employers will be asked to contribute towards the cost of their furloughed employees' wages.
- The UK Government has confirmed that the scheme has been extended until 30 September 2021.
- The UK Government also announced continued support for the self-employed through the Self-Employment Income Support Scheme.

Support has also been made available through the Bounce Back Loan Scheme and the Coronavirus Business Interruption Loan Scheme. In April 2021 the new Recovery Loan Scheme was launched.

All these support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented.

It is also important to note that we have set out a comprehensive package of financial support for businesses in the Early Learning and Childcare and formal childcare sector to mitigate the negative impacts of the restrictions both in 2020, and a new package of support in 2021 in response to the additional restrictions imposed from 26 December 2020.

Specific support for regulated childcare providers has previously been made available:

- To support providers the Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement continued for the duration of closures, regardless of whether providers were open or closed (up until 10 August 2020).
- To support day care of children providers in the private, voluntary/not for profit sectors with additional costs associated with meeting the public health guidance the Scottish Government introduced a £11.2 million Transitional Support Fund. The Fund closed to applications on 9 October 2020.
- Support has also been provided to childminders through the Childminding Workforce Support Fund, which has provided grants up to a maximum of £350 to help support childminders who have struggled to access support through other routes. The Scottish Government has provided £420,000 to the SCMA to support delivery of this Fund. The second round of applications to the Fund closed on 19 October 2020.

Specific support for childcare providers which has been made available in response to the additional restrictions brought in from 26 December 2020:

- To support providers the Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement will again continue for the duration of restrictions, regardless of whether providers were open or closed, and regardless of whether children are in attendance or otherwise.
- Day care of children providers, and childminders caring for 12 or more children, will be supported to remain open recognising the additional cost of doing so for very small numbers. Up to £3.8m will be available to provide grants to open settings in each four week period of the restrictions starting from 4 January 2021.
- The Temporary Restrictions Fund (TRF) was established in early 2021 to support childcare services impacted by the additional restrictions in place from 26 December 2020 to 22 February 2021 (for ELC services) and 15 March (for school aged childcare services). Up to £11.4 million has been available in total across the 3 Rounds of the Fund. Much of the funding available was to support the services who remained open during the period of restrictions, but faced additional costs of so doing so for very small numbers of children. Round 2 of the TRF included an Additional Support Grant for all services subject to the

restrictions (regardless of whether they were open or closed), whilst Round 3 (covering the period 1-26 March 2021) has been targeted at support for the School Age Childcare sector.

- Up to £3.2 million has been made available for the Childminding Business Sustainability Fund which was open for applications in March 2021. This Fund has provided a £750 grant to all registered childminding services to support their business sustainability in the light of the ongoing impact of the pandemic on their services.

The Scottish Government has commenced (in April 2021) an exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers, and to assess the impact of the financial support which has been available.

Competition Assessment:

As highlighted above the childcare sector operates as a mixed economy model with childcare providers in the public, private, third and childminding sectors.

All regulated day care of children services are subject to the same public health guidance regardless of whether they are in the public or private/third sector, whilst childminders are subject to separate guidance (which is aligned with the core guidance document for day care of children services).

Some of the potential enhanced and targeted protective measures at Level 4 could disproportionately impact some types of providers, due to differences in their delivery models. For example, restrictions on blended placements could disproportionately impact on childminding services.

The [survey of childcare providers](#) undertaken in June 2020, also indicates that the impacts – on costs, capacity, and income – of the enhanced protective measures will vary across providers. This reflects the differences across providers in the sector regarding the physical layout of buildings, relative ease of access to outdoor space, service delivery models, and staffing models.

There may also be potential impacts on services reliant on significant levels of attendance from children in another local authority area and where there are differences in the Level of the Strategic Framework that each authority is set at. This could restrict flows of children to services in another local authority area that is currently subject to a higher Level of the Strategic Framework.

The exercise that the Scottish Government is currently undertaking to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers, and to assess the impact of the financial support which has been available, will help to further inform our understanding of these impacts.

Consumer Assessment:

The following sets out the Scottish Government's initial view on the impact of the Early Learning and Childcare and formal childcare measures within the Strategic Framework on consumers.

Under the baseline and levels 1 and 2 it is expected that regulated childcare services are operating in line with standard protective measures. As highlighted above this is not expected to result in any significant measures for regulated childcare services beyond those already in place. It is therefore expected that under the baseline and level 1 there should be no, or very limited, additional impacts on families accessing ELC and wider childcare services from regulated childcare providers.

Under level 3 some enhanced protective measures may be required, and any additional requirements or changes in service delivery will need to be clearly communicated to families.

At Level 4 any restrictions on capacity as a result of targeted interventions that may be considered would be expected to impact on the level of paid for childcare provision that families can access.

Charging practices are for individual businesses, and we have encouraged businesses to be reasonable in their dealings with families in relation to ongoing fees and retainers for services not currently being accessed. However, we are aware that some providers are seeing to continue charging in some form, this may result in parents or carers making complaints to trading standards or through the courts if they consider that the charging practice is in breach of consumer protection laws.

The Competition and Markets Authority (CMA) has published a [statement](#) setting out its views on how the law applies to cancelled consumer contracts and refunds during the COVID-19 pandemic. The CMA has also provided [advice](#) and published an [open letter](#) to early years settings providing its views on the way consumer protection law applies where services cannot be provided due to public health restrictions.

Any targeted interventions required at Level 4 may also impact on the amount of funded ELC that can be accessed, dependent on the models of delivery in place across different providers and on local circumstances.

At all levels delivery of ELC and formal childcare will be in line with the latest public health guidance.

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:

Guidance has been put in place to support the implementation of the restrictions and we are continuing our constructive engagement with the sector.

Summary and recommendations:

Introduction

This BRIA has examined the Early Learning and Childcare and formal childcare measures within each level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.

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 Early Learning and Childcare and formal childcare, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view Early Learning and Childcare and formal childcare 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.

The text and table below brings together the benefits and costs by option as set out in this BRIA. The summary table below brings together the benefits and costs of:

- Enhanced protective measures in guidance at levels 3 and 4; and
- Targeted additional protective measures where required.

It compares these measures against the baseline / level 0 option. More detailed discussion of each of the levels and the options that have been considered by Scottish Ministers within levels is contained within the main body of this document.

Option A: Baseline and Levels 1 to 2

The baseline option (level 0 of the Strategic Framework) would see regulated childcare services operate in-line with the current 'core' or standard protective measures that are set out in the non-statutory guidance documents – with separate guidance for [day care of children services](#); [childminding services](#); and [school aged childcare services](#). These measures have been augmented in line with scientific and public health advice in the current context of rising prevalence levels. Implementation and adherence to these measures is essential to ensuring the ongoing safety of children and young people, as well as the staff who have worked hard to keep settings open.

Under the baseline option, and Levels 1-2, it is expected that, in general, regulated childcare services will not be subject to constraints on capacity and income. However, at any of these levels services may be asked to respond to local issues, and specifically to local outbreaks. Where this results in circumstances in which, based on clear evidence and public health considerations, specific settings require either to close, or to implement additional restrictions, for a defined period of time then there may be impacts on capacity, income and operating costs. All such decisions will be made in line with the independent advice of local Directors of Public Health, who will take account of wider public health considerations according to their statutory duties.

Option B: Potential Enhanced protective measures under the non-statutory guidance supporting the levels framework.

Measure	Benefits	Costs
Enhanced protective measures (Level 3 and 4)	<p>These enhanced protective measures would allow regulated childcare services to continue to remain open, and to be delivered safely and in-line with the latest scientific and public health advice.</p> <p>This will provide benefits to children by enabling them to continue to attend childcare services.</p> <p>As regulated childcare services can remain open it is expected that there will be continued</p>	<p>Whilst this would require services to introduce enhanced measures it is not expected that these measures would result in impacts on capacity or income. The measures may, however, result in certain services being required to make adjustments to their delivery models where required.</p> <p>Whilst it is not expected that the enhanced protective measures under Level 3 should impact on capacity, there is a time cost for services as they need to understand and implement</p>

	economic benefits from continuing to support parents and carers to work and study.	any additional measures contained in the guidance.
Targeted interventions in response to local outbreaks (All levels)	<p>By enabling regulated childcare services to remain open this will continue to benefit children and families, whilst ensuring the safety of children and young people and the staff who have worked hard to keep settings open.</p> <p>There would also be wider economic benefits as access to regulated childcare services can help support parents and carers to work and study.</p>	<p>Services may have to introduce measures that could result in impacts on capacity and income, particularly where these measures are more closely in-line with the restrictions for day care of children services in previous guidance published in June 2020 or there are restrictions as to who can access services (for example, under the restrictions in place in early 2021 childcare settings could only be open for children of key worker families and for vulnerable children).</p> <p>Some of the cost pressures associated with meeting the requirements of more restrictive guidance should already have been met by most providers due to physical adaptations that they will already have made – and support to help them meet these cost pressures has been provided through the Transitional Support Fund. However, the Transitional Support Fund was not intended to cover lost income, and, although dependent on the nature of any further restrictions, it is expected that providers could face further capacity and income constraints. The Temporary Restrictions Fund (TRF) has provided grants to providers who remained open during the restrictions in early 2021 to provide support with the higher costs associated with remaining open for small numbers of children.</p>

Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

It is also important to note that we have set out a comprehensive package of financial support for businesses in the Early Learning and Childcare and formal childcare sector to mitigate the negative impacts of restrictions.

As set out in the Scottish Firms Impact Test section of this BRIA there is a comprehensive package of financial support from the UK Government and the Scottish Government for businesses to mitigate the negative impacts of the restrictions.

Additional targeted support has also been made available by the Scottish Government for regulated childcare providers in direct response to the new restrictions imposed for the start of 2021 in order to help those who remained open to provide services to families who can access childcare at this time; this is in addition to support to the sector which was provided in 2020 to adapt their settings to the guidance.

The Scottish Government's exercise to gather evidence of the impact of COVID-19 on the business sustainability of ELC and other childcare providers will also look to assess the impact of the range of financial support which has been available to date.

Title of Legislation: Scotland's Strategic Framework: Informal Childcare

Purpose and intended effect:

This BRIA is focused on the set of **informal childcare** measures included within Scotland's Strategic Framework. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

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

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.

The key measures relating to **Informal Childcare** are set out in the table below:

Informal Childcare Measures (socialising rules apply)	Level 0	Level 1	Level 2	Level 3	Level 4
Informal Childcare	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Essential informal childcare only.

Purpose and intended effect: Scotland's Strategic Framework Informal Childcare Protections

Introduction

Informal childcare is a very important part of Scotland's economy and society.

Informal childcare encompasses care provided by families, neighbours and friends, which may be paid or unpaid. It also includes care provided on a paid basis by nannies (whether agency or self-employed) and babysitters. Nannies and babysitters sit within the informal childcare category due to the fact that they do not need to be registered via the Care Inspectorate or the Scottish Social Services Council (SSSC) and their services are not regulated. Generally this care is taking place in the place of residence of the child (or children) concerned, but it may take place in the home of the caregiver, or between multiple residences for example where friends or relatives share childcare.

Informal childcare is essential for many families, enabling parents (and women in particular) to work and families with a disabled child or parent to access vital support and respite.

The Strategic Framework allows for informal childcare arrangements to continue at all levels, subject to some restrictions at level 4. This means that at levels 0-3, informal childcare is permitted in line with Scottish Government guidance and advice provided on the Parent Club website about how to minimise risks.

We assess the overall impacts of the Strategic Framework at the level 0 to level 3 for children and families to be positive in the context of the response to the pandemic, as the measures recommended for each of these levels enable informal childcare to continue so that:

- Children can access childcare options with trusted adults beyond their household, supporting their wellbeing
- Families are supported to continue or return to work and other responsibilities
- Families with a disabled child or parent can continue to access childcare needed for respite.

At level 4, only essential informal childcare is permitted and Scottish Government guidance is that the caregiver should only look after children from one other household at a time. Essential informal childcare includes keyworkers, and those who work in an industry that is permitted to operate at level 4, who require informal childcare to go to work. This measure would have negative impacts on those families that do not require essential childcare, potentially affecting parent's ability to continue to work in non-essential roles and/or limiting contact between children and their extended families or networks.

At level 4 for care provided through family or friends it is advised that the child should move between households, rather than the friend or family member coming to the child's house to look after the child. However, there are situations where the guidance notes that the caregiver can come to the child's home, for example if the child has additional support needs or the family doesn't have transport. This could impact on families who rely on care through families or relatives in the child's own home. At level 4 babysitters and nannies can continue to look after children in the child's home, provided they are happy with the arrangement and the childcare is essential.

Informal childcare may also be used in different ways to formal childcare – e.g. someone helping to look after the children while the parent is at home (e.g. after the birth of a new sibling) and can provide a source of support for parents. At every level, another person is permitted to come into someone's home to provide care and support for a vulnerable person. This can include providing emotional support for someone whose wellbeing is at risk, including for those who are isolated because of disability or a caring situation or where they are a parent or carer of a child under the age of one.

If a household has only one adult living in it, this household (including, where applicable, any children who live with the single adult), and the members of one other household (of any size) can agree to form an 'extended household'. The guidance on extended households remains the same across all levels of the strategic framework, therefore, where families have formed an extended household, they will be able to access informal childcare with this other household from level 0 through to level 4. There are, however, many families for whom this is not applicable as they are not part of an extended household.

COVID-19 and Informal Childcare

Prior to the reopening of all childcare providers in July 2020, the position was that informal childcare could not be used, other than for key workers where it was essential and as a last resort. This had a number of economic and social impacts and several groups within the population have been adversely affected by the restrictions on childcare. Benefits of reopening informal childcare included economic benefits through enabling service users to return to work as well as improvements in wellbeing due to being able to share childcare responsibilities. When further lockdown restrictions were introduced from 26 December 2020, the decision was taken to allow essential informal childcare to continue, subject to some restrictions. This situation continued with guidance for levels being introduced in April 2021.

As informal childcare is unregulated there is no mechanism to accurately assess the degree to which it is used normally, or likely to be used in any easing of the lockdown restrictions. The Scottish Household Survey data suggests that around a quarter of families with a two to five year old (not yet at school) use informal childcare, alongside other types of childcare provision.

Informal childcare fulfils many of the high-risk criteria for COVID-19 transmission, as transmission of SARS-CoV-2 is most strongly associated with close and prolonged contact in indoor environments. The highest risks of transmission are in crowded spaces over extended periods.¹⁴ That is why at various stages of the pandemic we have considered measures under the strategic framework on informal childcare and continue to include the position on informal childcare in the strategic framework, and have supplemented this with detailed advice on the Parent Club website.

Policy Objective

In common with the wide range of other countries who have implemented similar measures, the objective of the restrictions set out within the Strategic Framework is to ensure that the operation of informal childcare is appropriate to the level of COVID-19 risk within the local authority area, also taking into account the other restrictions in place. Any restrictions on operations 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 vaccination and treatment are demonstrated to be effective in controlling infection levels.

The evidence base around transmission for this new virus 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.

We have considered a wide range of evidence in developing the Strategic Framework, incorporating information from a variety of sources.

Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.¹⁵

We know from contact tracing, international evidence and scientific research that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters^{16,17}.

The Government recognises that transmission of the virus within households presents the highest risk, which is why gatherings in private dwellings was targeted first and will be restricted across all of the 5 levels. Informal childcare by its nature takes place in private dwellings and in most cases involves household mixing of adults and children and depending on circumstances may also involve mixing of adults from different households,

¹⁴ [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

¹⁵ [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

¹⁶ Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

¹⁷ Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

predominantly indoors. It is therefore necessary to restrict this activity at the highest threat level (level 4) in order to reduce transmission rates associated with such indoor mixing.

Other settings also have the potential to transmit the virus due to the risk factors. Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, is important in controlling the epidemic.

Scientific evidence on coronavirus transmission shows the risk of COVID-19 to younger children is very small and they are not a high risk for transmission of the virus¹⁸, and there is no evidence at present that the new variant (B1.1.7) has a more severe impact on children and young people than on adults¹⁹. In younger children, most infections are likely to be acquired in household settings, but the infection risk is greater for children that live in households where the probability of exposure is high (e.g. children of clinical workers)²⁰.

Current position of Informal Childcare

At present, mainland Scotland is in Level 4 and some island communities are in Level 3. Under level 4, only essential informal childcare is permitted.

At level 3 (the current restrictions for some islands) informal childcare is permitted in line with [guidance](#). At level 4 (the current restrictions for mainland Scotland and some islands) informal childcare is permitted in line with [guidance](#) but only where it is essential. Essential informal childcare includes keyworkers, and those who work in an industry that is permitted to operate at level 4, who require informal childcare to go to work, as well as those working from home who need informal childcare to support their ability to continue to work.

Conclusion

Childcare plays a fundamental role in supporting the response and recovery to the pandemic. At all levels, including in the recent lockdown, access to childcare has been prioritised, due its significant impact on children's development, and the ability of families to take part in work and study. Informal childcare has been permitted for essential purposes, and with clear guidance to parents and carers, during lockdown. This settled position, and focus on the impact of reduced access to childcare, has meant that changes in levels framework in April 2021 are limited. This assessment, carried out in April 2021 updates and builds on previous assessments of childcare policies.

Consultation

Public Consultation: We have had some correspondence from families that use nannies, stating the importance of them being able to use their nanny for childcare. We also received correspondence from nannies themselves who are concerned about their business viability and ability to care for families.

Business: We have had some engagement with nanny agencies about the impact of earlier restrictions on nannies. This has informed policy development and communication, ensuring that we are clear about when nanny services can take place and that decisions on when to restrict those services is based on evidence of impact. We have ensured that in our guidance on Parent Club that it is clear what is relevant for nannies.

Position/ Options:

Informal Childcare	Level 0	Level 1	Level 2	Level 3	Level 4
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¹⁸ [Coronavirus \(COVID-19\): framework for decision making - assessing the four harms - gov.scot \(www.gov.scot\)](#)

¹⁹ [Advisory+sub-group++advice+on+phased+return+for+schools++ELC+-+final+for+publication+-+3+February+2021+%28002%29+%28003%29.pdf \(www.gov.scot\)](#)

²⁰ [PHE: SARS-CoV2 susceptibility and transmission risk in children: an overview of current evidence from PHE surveillance work, 19 August 2020 \(publishing.service.gov.uk\)](#)

Measures (socialising rules apply)					
Informal Childcare	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Permitted – guidance provided at Parent Club website	Essential informal childcare only.

Level 0:
 Level 0 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality, without a vaccine or effective treatment in place.

Level 1:
 Level 1 is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

Levels 2 and 3 are intended to apply for short periods of time.

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be intended to be in place for relatively short periods (preferably less than 4 weeks), and only for as long as required to get the virus down to a low, sustainable level. At levels 3 we would expect families to consider the need for informal childcare and to take measures (informed by guidance) to reduce risks associated with any informal childcare which is required

Levels 0-3:
Option A: Permit informal childcare but provide advice about considering whether the childcare is necessary, and advise how to limit interactions and reduce risk of transmission.
Option B: Permit informal childcare but limit number of households mixing and permit only the children to travel to the other household. This option has been rejected given that childcare has been exempted from household gathering restrictions within the Covid Regulations. This recognises that informal childcare is essential for many families, enabling parents (and women in particular) to work, to access regular medical appointments and for families with a disabled child or parent to access vital support and respite.

Conclusion
 At level 3, Ministers have concluded that Option A is appropriate following advice from clinicians which supports the provision of guidance highlighting the importance of continuing to consider whether childcare is necessary, the risks associated with informal childcare (in particular indoor household mixing) and measures which can be taken to reduce those risks.

Level 4:
 Level 4 is considered to be a short sharp intervention to address extremely high transmission rates, however from 26 December 2020 most of Scotland has been in level 4 due to the increased transmission rate associated with the introduction of a new Covid-19 variant.

Within this level we have seen very high or rapidly increasing incidence, and widespread community transmission which reintroduced a threat to NHS services. This meant the introduction of measures close to a return to full lockdown. Measures introduced in level 4 were needed to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

Option A: Permit informal childcare but limit number of households who can mix.

This option was rejected due to the increased risk of transmission at level 4. At level 4 the public health concern is paramount, given the high incidence of the virus, wide spread community transmission and higher risks associated with transmission within households and outweighs the economic and social benefits associated with Option A. Including allowing families to receive the support of help with childcare, enabling parents to work, enabling nannies to continue to provide their services.

Option B: Limit to essential informal childcare including keyworkers, those in industries that are permitted to operate and those who need informal childcare to continue to work effectively from home.

This option means that informal childcare will be possible for those who are required to work. At level 4 the public health concern is paramount, therefore in most instances the child should move between households, rather than the caregiver coming to the child's house to look after the child. However, this will not be possible in all cases, particularly where the child has additional support needs or the child's parent/carer doesn't have transport and nannies and babysitters typically care for children in the child's home rather than their own, so this should still be permitted where they are happy with the arrangement and the childcare is essential.

For some families/caregivers, this may mean that they can no longer access their normal childcare arrangements and it will also impact on nanny and babysitting businesses. However, this level is only intended to be a temporary measure and not be in place long term.

Conclusion

At level 4, Ministers have concluded that option B is appropriate, given the heightened risk of transmission at this level. Although there is likely to be an impact on some families and on nannies and babysitters, this level is designed to be temporary, and the public health concern outweighs the economic and social impact due to the increased risk of in-home transmission. Where possible, children should enter another household for informal childcare to limit contacts between adults but not where this restricts how a nanny or babysitting business would normally operate; or where the child has additional support needs or the child's parent/carer doesn't have transport.

Scottish Firms Impact Test:

Informal childcare encompasses care provided by families, neighbours and friends, which may be paid or unpaid. It also includes care provided on a paid basis by nannies (whether agency or self-employed) and babysitters. The Scottish firms impact test is therefore just considered for nannies or babysitters.

Nannies, are not regulated as daycare of children services by the Care Inspectorate although childcare agencies, some of which provide nannies, are registered. For clarity, nannies and childminders are separate types of childcare providers. Nannies typically provide their service in the place of residence of the child(ren) concerned, whereas childminders operate within their own premises (often their own home). Childminders must be registered with the Care Inspectorate to operate and are covered under the ELC and the Formal Childcare Sector BRIA.

There is limited information about the number of paid for babysitters or nannies operating in Scotland, as they do not require to be registered. Nannies can be self-employed or could work via an agency. Nanny agencies are registered with the Care Inspectorate as Childcare Agencies. As at 22 March 2021, there were 17 Scottish Childcare Agencies registered with the Care Inspectorate²¹.

²¹ [Datastore - Care Inspectorate](#)

Some nannies operate as 'nanny shares' across 2 families. This involves the children of one family travelling to the home of the other family. Such arrangements are not permitted in level 4. In level 4, as the risk from indoor mixing is greater, in-home childcare of any kind (i.e. babysitters, family, nannies) is not advised, but is still permitted where it is essential and there is no other option. Guidance on what is essential, is set out on the Parent Club website²².

The restrictions at level 4 that informal childcare should be provided only where essential, could impact on the income of some nannies and babysitters.

Competition Assessment: N/A

Consumer Assessment:

At levels 0-3, informal childcare is permitted and care givers can look after children from other households at the same time. It is therefore expected that under levels 0-3 there should be no, or very limited, additional impacts on families who use informal childcare.

At level 4, only essential informal childcare is permitted and the caregiver can only look after children from one other household at a time. Essential informal childcare includes keyworkers, and those who work in an industry that is permitted to operate at level 4, who require informal childcare to go to work. It is therefore expected that there could be impacts on families who do not require childcare that could be classed as essential, especially where this disrupts normal routines in relation to supporting work.

Information about the guidance on informal childcare at each level is being communicated to families through social media and the Parent Club website, and also distributed via partners.

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test: N/A

Enforcement, sanctions and monitoring:

Childcare is exempted under The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. Non-statutory guidance and measures have been made available on gov.scot and primarily through the Parent Club website. There are no sanction or enforcement mechanisms.

Implementation and delivery plan and post-implementation review:

Regulations and guidance have been put in place to support the implementation of the measures.

Summary and recommendations:

Retaining childcare options for families is an important priority for government, recognising the importance of support to families with childcare including where that supports parents to work. That priority needs to be balanced against the importance of controlling the transmission of COVID-19, reflecting that in-home meetings have been a concern in relation to spread of the virus in the autumn.

The Strategic Framework is likely to have some impact on families, and on nannies, particularly at level 4 due the restrictions on who can access informal childcare at that level.

Nannies will be able to operate at all levels. This balances the importance of families having access to childcare, alongside public health risk posed by inter-household meetings in the context of different levels of community transmission. The level of restriction on informal childcare is therefore largely aligned with the prevailing limits on household meetings within the guidance.

At level 4, there will be a significant impact on informal childcare, but at this level, this is outweighed by the public health priority. Those still required to work outside of the home will still be permitted to use informal childcare, albeit the children will have to travel to the home of the caregiver, which may require changes to existing arrangements. This reflects the significant transmission risk present at level 4 and therefore considers it important to minimise that by restricting adult interactions.

A summary of the benefits and costs of the measures in the Strategic Framework is included below:

Measure	Benefits	Costs
<p>Levels 0-3</p> <p>Permitted, but advice provided about how to limit interactions and reduce risk of transmission particularly indoors.</p>	<p>Informal childcare can continue with following benefits:</p> <ul style="list-style-type: none"> - children can access childcare with trusted adults beyond their household, supporting their wellbeing - families are supported to continue to work or return to work and other responsibilities - families with a disabled child or parent can continue to access childcare needed for respite 	<p>The advice provided about considering whether informal childcare is necessary and is in line with household mixing rules may have impacts on parents ability to use their normal informal childcare arrangements, with any attendant economic and social impacts.</p>
<p>Level 4</p> <p>Essential informal childcare only.</p> <p>With guidance that requires that only children should enter another household for informal childcare to limit contacts between adults, except in certain circumstances or where this would restrict how a nanny or babysitting business normally operates.</p>	<p>This allows keyworkers, people in essential and permitted occupations and those who need childcare to carry out their role at home to continue to access informal childcare, with all the benefits set out in levels 0-3 above.</p> <p>There is an opportunity where there are single adults in the household to form an extended household, which could then allow access to informal childcare.</p>	<p>For those working in non-essential roles and occupations that are not permitted, the lack of access to informal child care may impact on the ability to work normally, or to return to work and may limit contact between children and families and networks, with negative impacts on wellbeing.</p>

Title of Legislation: Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 (Coronavirus) Restrictions: **Close Contact Services**

Purpose and intended effect:

The objective of Scotland’s Strategic Framework is to set out a sustainable response to the pandemic which can be implemented until the vaccine has been fully rolled out. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five levels of protection. The legal requirements within each level are set out in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.

This BRIA is focused on the impact of re-opening the close contact sector on 26 April 2021. A partial BRIA was published when static hairdressers and barbers were able to re-open on 5 April 2021 and is available [here](#). However, individual measures need to be viewed within the broader context of the package of measures within each level, with the strategic framework taking a four harms approach to considering which interventions are introduced at each level through assessment of:

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

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.

The key measures relating to Close Contact Services are set out in the table below. For the purposes of this BRIA, close contact includes, but is not limited to, hairdressing and barber services, beauty and nail services, hair removal services, tattoo, piercing and body modification services, fashion design, dress-fitting and tailoring services, indoor portrait photography and art services, massage therapies, complementary and alternative medicine services requiring physical contact or close physical proximity between persons but not osteopathy and chiropractic services, spa and wellness services, other services or procedures which require physical contact or close physical proximity between a provider and a customer and are not ancillary to medical, health, or social care services.

Close Contact Services	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
Close Contact Services delivered from a salon, shop or other static site, such as a home treatment room.	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Closed. As part of the transition from Level 4 to Level 3, hairdressers and barbers were allowed to open by appointment only from 5 April Regulations also permit

					sports massage provided to professional sportspersons, osteopathy and chiropractic services, and “other services or procedures which require physical contact or close physical proximity between a provider and a customer” and are “ancillary to medical, health, or social care services”.
Mobile Close Contact Services are those provided at a location outwith a fixed business premises which have as one of their uses the provision of the service, or a room which is used exclusively for the provision of the service – for example (but not exclusively) is situated within a private dwelling, hospice, or other care setting.	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Open, close contact guidance measures apply	Closed. Regulations permit osteopathy and chiropractic services, and “other services or procedures which require physical contact or close physical proximity between a provider and a customer” and are “ancillary to medical, health, or social care services”.

Background:

The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government used powers conferred by that Act to bring forward the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020 – and required all close contact services to close.

Since 26 March 2020 there have been a series of easings and tightenings of restrictions for close contact services.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 enabled hairdressers and barbers to re-open from 15th July 2020. Those Regulations also enabled the remaining personal and close contact services to reopen from 22 July 2020. The Scottish Government continued to ask mobile close contact services (with the exception of mobile hairdressing and barbers which reopened on 15th July) to remain closed whilst further guidance covering mobile close contact services was developed.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 implemented the Strategic Framework and came into effect on 2 November. On 26th December all local authority areas in mainland Scotland were moved into Level 4 under that Framework – and close contact services were accordingly required to close again in those areas.

On 5th April fixed-premises barbers and hairdressing services were permitted to open in Level 4 areas on an appointment only basis. On 26th April, local authority areas in mainland Scotland will move to Level 3 under the refreshed Strategic Framework. The remaining close contact services and mobile close contact services will be permitted to reopen from that day.

Purpose and intended effect: Scotland's Strategic Framework: Close Contact Services – 26 April easing of restrictions

Introduction

In 2019 there were an estimated 18,000 people employed in close contact services work in Scotland (Source - Business Register Employment Survey 2019) – categorised as non-essential retail non-medical therapy which includes hairdressers and other beauty treatments.

45.0% of employees work part-time in the other personal service activities sector (Source: Business Register Employment Survey 2019). Employment in the other personal service activities sector (SIC Division 96) is dominated by women who make up 80.7% of all jobs. 33.8% of those working in the other service activities sector (SIC Section S) are self-employed. (Source: Annual Population Survey, Jan – Dec 2019)

COVID-19 and Close Contact Services

In response to the current state of the Coronavirus pandemic and significant progress of vaccination roll out the Scottish Government is introducing various steps to ease restrictions. As part of this package hairdressing salons and barber shops who operate from a fixed premises were permitted to re-open, by appointment only, on 5 April 2021, through an amendment to the Level 4 restrictions on close contact premises.

All other close contact services, including all mobile services, will be permitted to re-open on 26 April 2021. Previously, only fixed premise based close contact and mobile hairdressing/barbering services could open in Levels 2 and 3. Mobile close contact services will be permitted in Level 2 and 3 from 26 April by virtue of an amendment to the Level 2 and 3 restrictions.

On 16 April 2021 the 'Stay local' requirement was amended, allowing travel within Scotland for social and recreational purposes only. Travel restrictions will see further amendments on 26 April 2021, where all of mainland Scotland will be put into Level 3. This poses no immediate issues regarding travel restrictions on the close contact sector, as it will be permitted to travel from one Level 3 area into another Level 3 area.

We expect those re-opening to follow close contact guidance and to ensure enhanced hygiene and physical distancing measures are in place alongside following the requirements on face coverings. These measures are being introduced in order to limit or remove any interaction between clients, and reduce the risk of transmission, and will remain in place to ensure we continue to work towards virus suppression.

Policy Objective

The objective of these changes are to phase a re-opening of the economy whilst ensure services can be carried out in a manner as safe as possible to employees and customers.

The safety of people – clients, employees and business owners – is the number one priority and we are working with stakeholders to ensure that people can attend these premises as safely as possible. Whilst the increased risk around the new variants was the driver for finding further mechanisms to minimise the movement and mingling of people, particularly indoors, to key, essential purposes, the success to date of the vaccination programme has allowed us to ease restrictions via a phased approach.

Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.

High-risk factors associated with transmission of the virus include indoor spaces, where ventilation and physical distancing may be less easy to maintain, and are places where people come together to spend prolonged periods of time (more than 15 minutes) in close proximity, enabling the virus to spread easily from person to person. Risks are further compounded by speaking loudly. Another risk factor is when a 2m distance cannot be maintained, as evidence suggests that 1m distancing carries between 2 and 10 times the risk of 2m distancing. Keeping surfaces clean and regulating movement throughout the setting is a further challenge.

The Government recognises that transmission of the virus within households presents the highest risk, which is why gatherings in private dwellings was targeted first and is restricted across all of the 5 levels.

However, other settings also have the potential to transmit the virus due to the risk factors. Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, is important in controlling the epidemic.

Close contact services, by definition, require close proximity between client and practitioner thus increasing the risk of respiratory and contact transmission, including through the use of any equipment . and materials such as towels. This risk is considered to increase in environments over which the practitioner has little control such as the client's own home.

The following table is taken from the details of interviews that have been completed as part of Test and Protect up to week ending 1st November 2020.

Place / event / activity	Number of cases that had visited these places	% of cases interviewed
Personal Care (Includes clients of nail salons, barbers, hairdresser etc.)	1900	21.4%

It is important to note that due to the way the data is collated, there may be some overlap between settings and whilst a case mentions that they have been at a particular venue or gathering event this does not imply nor guarantee that they acquired infection at that location.

Whilst these figures do not demonstrate that the infection was acquired in each setting, they do demonstrate the types of settings the individuals may have been in while potentially infectious themselves. It is important to note, too, that 20% of people tested were asymptomatic and that asymptomatic and presymptomatic transmission of COVID-19 is now known to occur. This means that people who have no symptoms can still be infectious to others.

Conclusion

Limiting mixing as much as possible in all settings is the most effective measure against transmission of COVID-19

However, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The limitations on close contact services are 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 transmission of COVID-19 rises, so too will the restrictions on the close contact services sector. Similarly as the risk falls, restrictions will ease.

Across all of the five levels we seek to balance:

- The positive impact on reducing the transmission rate of the virus through restricting the opportunity for mixing in close contact services settings
- Enabling as much of the sector as possible to remain open safely, in ways that enable firms to remain viable and reduce the likelihood of redundancies
- The important role that close contact service settings play in maintaining our wellbeing and in particular the wellbeing of vulnerable and protected groups
- The economic costs, and associated impact on the Article 1 Protocol 1 rights of business owners and operators, including taking into account wider costs and the impact on the supply chain.

Consultation:

Public Consultation: No (precluded by urgent implementation timescales). Throughout the process, engagement has been continued with stakeholders, alongside a body of correspondence from individual businesses, clients and close contact staff. We will continue to engage with the sectors as we bring forward guidance and keep decisions under review. Close Contact guidance has been published online with a facility for members of the public to issue comments to a Scottish Government mailbox.

Business: Business consultation has been ongoing throughout every stage on changes to close contact guidance, building on our regular engagement with the sector since the start of the pandemic.

Close contact guidance, and subsequent updates, have been developed in partnership with a number of representative bodies to ensure it provided timely, accurate, and appropriate advice to allow practitioners to conduct their trade safely but without severely compromising the scope of activities they can perform, unless it is considered unsafe to do so. Engaged bodies include, but are not limited to, the National Hair & Beauty Foundation, the British Association of Beauty Therapy & Cosmetology, the Scottish Massage Therapists' Organisation, the Federation of Holistic Therapists, and the UK Spa Association. These same bodies have been engaged on the development of guidance for Mobile Close Contact.

Throughout our extensive engagement we have listened to all of the concerns raised by industry representatives, and have worked in partnership with them to mitigate these concerns as far as the public

health emergency has made that possible. We are aware that it has not been possible to fully address all of the issues raised, but we have always sought to balance our continued support for the sector with our primary objective of suppressing the virus and saving lives.

We welcome the industry's engagement on all the key issues they have raised, as we have throughout the pandemic. We have continued to listen to their legitimate concerns about the inability to carry out a full range of treatments with mandatory face coverings and have co-produced a Frequently Asked Questions Document which provides additional clarity for practitioners and their clients.

We are continuing to work constructively with the close contact sector to address all their requests for further clarity and certainty. We are committed to ensuring that all of our decisions are made on the basis of the best available evidence, and recognise that continuous review of the current regulations will be important as we learn more about transmission through case studies and other sources of evidence. We will therefore continue to work with the sector on proposed additional mitigations, and keep the current measures within each of the levels under review.

Options:

This section sets out a range of options which have been considered, and we continue to work constructively with the industry to explore and assess alternatives.

Across all Levels there are a number of mitigating actions required/advised, including:

- Wearing of face coverings for all therapies and treatments
- Good hygiene, cleaning and ventilation practices
- Restricting the number of clients in salons and offering appointments-only services

Sectors and groups affected

These Regulations moving mainland Scotland to Level 3 will affect:

- hairdressing and barbering,
- beauty and nail services (including make-up services),
- hair removal services,
- tattoo, piercing and body modification services,
- fashion design, dress-fitting and tailoring services,
- indoor portrait photography and art services,
- massage therapies,
- complementary and alternative medicine services requiring physical contact or close physical proximity between persons, but not osteopathy and chiropractic services,
- spa and wellness services,
- other services or procedures which require physical contact or close physical proximity between a provider and a customer and are not ancillary to medical, health, or social care services.
- Customers of the above services
- Local Authorities

Our approach to assessing options

Within this BRIA we have compared the package of measures within each level against the baseline approach of level 0. This has allowed us to present the clinical evidence for intervention at each level setting out the health benefits, whilst acknowledging the potential impacts on close contact services. Throughout these measures we have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

Our objective is to get all parts of the country to level 0 or level 1 and remain there if we can. Within these levels, we would expect to see low incidence of the virus with isolated clusters, and low community transmission. Broadly, these levels are the closest we can get to normality which would allow us to move to Phase 4 of the Route Map and then back to normality. They would be similar to the measures in place during the summer of 2020, once we reached Phase 3. The Baseline and Level 1 are designed to be sustainable for longer periods.

The Baseline for static close contact services is similar to what was in place when the services resumed following lockdown on 15 July 2020 for hairdressing and barbering, and for 22 July 2020 for other close contact services. This included all the existing mitigations in place including mandatory wearing of face coverings, enhanced hygiene, cleaning and ventilation practices and limiting the numbers of clients on premises at any one time.

The intent for mobile close contact services was to enable these services to recommence with enhanced hygiene and other mitigations in place that would address the additional risks associated with operating services in differing venues. In addition a sufficiently low transmission number would mitigate some of the additional risks associated with entering multiple clients' homes to deliver these services. These include the limitations on providing the same degree of environmental control as is available when providing static services (such as cleaning communal surfaces; numbers of persons in the home, mandatory wearing of face coverings; ventilation etc.), along with transporting and cleaning linens and equipment between visits.

'Baseline' / Level 0

The Baseline (Level 0) is designed to be sustainable for longer periods. Within this level, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission. Broadly, this level is the closest we can get to normality, without fully suppressing the virus.

Close contact services (mobile and fixed premises) are permitted, with mitigating measures in place. Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

Options for Level 1

Option 1: Close contact services (mobile and fixed premises) are permitted, with mitigating measures in place.

Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

The low incidence of the virus at this level coupled with the effectiveness of mitigation measures mean that the sector can operate safely and the economic and social harms associated with closure of the sector are avoided.

Options for Levels 2 and 3

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations.

The measures would be introduced on the basis of evidence and preferably be intended to be in place for relatively short periods (preferably less than 4 weeks), and only for as long as required to get the virus down to a low, sustainable level.

The Article 1 of Protocol 1 ECHR rights of business owners and operators in this sector have been considered when assessing the impact of business closures, and continuing restrictions once businesses are allowed to re-open. We recognise the need to strike a balance between the need to protect public health and the rights of businesses to open and operate, albeit sometimes in a restricted manner, as soon as it is considered safe for them to do so. We have endeavoured to provide information to businesses to facilitate them operating in safe way, once they are able to open.

Options for Levels 2 and 3

Option 1: (baseline) Close contact services (mobile and fixed premises) are permitted, with mitigating measures in place.

Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

Allowing all services – both mobile and fixed premises – to remain open would have economic benefits in terms of jobs and business viability, and benefit customers who rely on these services.

There is considered to be a higher risk profile associated with operation in a client's home environment, where it is less easy to ensure mitigating measures are in place, mean that at level 3 – where there is increased incidence of the virus – there is a greater public health risk of permitting the mobile sector to operate fully. However, the success to date of the vaccination process, coupled with continued compliance of the regulations and guidance, limits these risks compared to previous periods throughout the pandemic and the economic and social harms of closing it are no longer outweighed by the public health risk.

Option 2: Close contact services carried out in fixed premises are permitted with mitigating measures in place and mobile close contact services are not permitted.

Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

As discussed under option 1 the risk profile associated with operating from a client's home environment is higher than operating from fixed premises. Under this option fixed premises are permitted with mitigating measures, but mobile close contact services are not permitted. There were an estimated 14,000 mobile close contact worked in Scotland between 2017-2019 (Source – Estimated form the Business Register and Employment Survey and the Annual Population Survey)

Option 3: Close contact services carried out in fixed premises are permitted with mitigating measures in place and mobile close contact services are not permitted with the exception of mobile hairdressing and barbering.

Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

As discussed under option 1 the risk profile associated with operating from a client's home environment is higher than operating from fixed premises. Under this option fixed premises are permitted with mitigating measures, but mobile close contact services are not permitted, with the exception of mobile

hairdressing and barbering. There may be lower risk associated with hairdressing and barbering compared to other close contact services because hair treatments can be delivered from behind the head with both practitioner and customer wearing masks throughout the procedure whilst some other types of close contact services may involve work in the high risk area in front of the face. The risks of transporting and cleaning equipment are judged to be less than other types of close contact services.

Conclusion

Option 1 is the preferred option

Close contact services (mobile and fixed premises) are permitted with businesses and service providers under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

This provides equal access to services for everyone, both mobile and static. It also prevents any further economic harm on the sector.

Options for Level 4

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is likely that this level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming of the NHS

Option 1: (baseline) Close contact services (mobile and fixed premises) are permitted, with mitigating measures in place.

Businesses and service providers are under a legal obligation to take measures which are reasonably practicable to minimise the risk of the transmission on their premises, and suitable measures will be contained in guidance.

Allowing all services – both mobile and fixed premises – to remain open would have economic benefits in terms of jobs and business viability, and benefit customers who rely on these services. However, at level 4 where there is high or rapidly rising incidence of the virus and widespread community transmission, coupled with an inability to physically distance when carrying out a treatment/service, the public health risks of permitting the sector to operate are fully outweighed by the economic and social harms of closing it.

Option 2: No close contact services (mobile or fixed premises) are permitted.

Stopping the delivery of all close contact services within a level 4 area is likely to impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and will have an economic impact in terms of loss of income for business and employees, as well as the potential for job losses. However, as part of a broader package of closures across business areas where transmission is likely to occur, this measure would have the most significant positive impact on transmission rates and spread of the virus. It would help virtually eliminate opportunities for people to meet in areas which are characterised by many of the high-risk factors associated with transmission of the virus identified by scientific evidence and modelling.

Despite the positive impact on the spread of the virus – as evidenced by the lockdown implemented in March 2020 – given the wider socio and economic negative impacts level 4 will only be implemented

where it is absolutely necessary to bring the virus under control, and even then only for the shortest possible period.

Option 3: Hairdressing and Barbering services, operating from a fixed premises only, are permitted.

Allowing fixed premises hairdressing and barbering services to remain open would have economic benefits with regards to those specific businesses, in terms of jobs and business viability, and benefit customers who rely on these services. However stopping the delivery of other close contact services is likely to impact on socialisation and general wellbeing, increasing the risks of harm from social isolation and will have an economic impact in terms of loss of income for business and employees, as well as the potential for job losses with regards to those specific businesses. This exception has been made because there may be a lower risk associated with hairdressing and barbering compared to other close contact services. Hair treatments can be delivered from behind the head with both practitioner and customer wearing masks throughout the procedure whilst some other types of close contact services may involve work in the high risk area in front of the face. Hairdressing and barbering services would be required to operate on an appointment only basis if permitted to open.

Conclusion

Despite the positive impact on the spread of the virus – as evidenced by the ‘Stay at home’ regulations implemented in January 2021 – given the wider socio and economic negative impacts level 4 will only be implemented where it is absolutely necessary to bring the virus under control, and even then only for the shortest possible period.

Due to the higher risk attached to these services, option 2 was selected to prevent further transmission.

The high incidence of the virus and widespread community transmission mean that Option 2 is considered to be the most appropriate, meaning close contact services are not permitted in Level 4 under the refreshed Strategic Framework. We recognise that this has a negative impact on the economic prospects of businesses operating in this sector, and represents an interference with the Article 1 Protocol 1 rights of such business operators. As stated above, in taking a decision to move to Level 4, the Scottish Ministers would consider, among other things, the rapid increase in prevalence of the virus and the need to suppress the virus as quickly as possible. Given the public health risks linked to widespread community transmission, and the impact of lockdown on reducing transmission rates, it is considered to be a necessary and justifiable interference with those rights to require businesses to close in a level 4 area. There are limited exceptions which allow ‘other services or procedures’ to be provided where ancillary to medical, health, or social care services. Current regulations also permit premises to provide sports massage services to professional sportspersons in Level 4.

In April 2021, Strategic Framework Business Fund recipients will automatically receive a combined final two-week payment from the Fund and a one-off restart grant to help them reopen:

Retailers in receipt of SFBF will be eligible for grants up to £7,500 based on rateable value:

- For properties with a rateable value below £51,000: £7,000 (£6,000+£1,000)
- For properties with a rateable value above £51,001: £7,500 (£6,000+£1,500)

As part of the transition from Level 4 to Level 3 in April 2021, hairdressers and barbers were allowed to open by appointment only from 5 April 2021. This was a short, time limited move as a result of an improving R number and success of the vaccination process, and was considered to be a proportionate easing which benefitted a significant number of businesses, yet was considered to be within the range of the “r headroom” available at that point in time. This is also a service used by and accessible to a large number of the population, but did not extend to mobile services, on account of the higher risk attached to those services. We would not expect static based hairdressers and barbers to be included in future Level 4 scenarios.

Scottish Firms Impact Test:

There has been engagement with close contact services industry bodies. This engagement is set out within the consultation section of this BRIA.

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

The majority of other personal service activities businesses operating in Scotland are micro and small businesses. It is estimated, based on Businesses in Scotland 2020 and 2019 Business Register and Employment Survey that there are 5,940 registered businesses in the other personal service activities sector in Scotland, directly employing 23,000 people. The measures within the Strategic Framework may impact disproportionately on small businesses who may experience cash-flow problems as a result of any further tightening of restrictions.

Table 2 below shows a Scotland-level disaggregation of characteristics of areas of the other personal service activities sector that may be affected by the measures discussed in this BRIA including estimates of employment, number of businesses and business sites and number of premises.

Table 2: Breakdown of the Scottish other personal service activities sector

Sector	Employment (2019)	Number of Registered Businesses (2020)	Number of Registered Business Sites (2019)
SIC (2007) 96 Other personal service activities	23,000	5,940	6,490

Source: Business Register and Employment Survey; Businesses in Scotland, NDR roll.

Sector	Number of Registered Businesses	Small Registered Businesses (<49 employees)	Medium-Sized Registered Businesses (50- <249 employees)	Large Registered Businesses (250+ employees)
SIC (2007) 96 Other personal service activities	5,940	5,910	30	10

Source: Businesses in Scotland 2020.

In addition to the direct jobs in other personal service activities, the sector also supports 2,000 jobs across its diverse supply chains (Source: OCEA).

- Women are significantly more likely than men to work in the other personal service activities sector. Women made up 80.7% of the workforce in 2019. (Source: Annual Population Survey Jan-Dec 2019)
- 19.1% of the other personal service activities workforce is aged 16-24 compared to 12.3% of the workforce as a whole. (Source: Annual Population Survey Jan-Dec 2019)
- 6.7% of the personal service activities workforce were minority ethnic. (Source: Annual Population Survey Jan-Dec 2019)
- 45.0% people working in the other personal service activities sector work part-time, compared with 34.0% for Scotland as a whole. (Source: Business Register Employment Survey 2019)

- A third (33.8%) of the workforce of the other services sector are self-employed, compared with 12.4% for Scotland as a whole. (Source: Annual Population Survey 2019)

Stricter restrictions within Scotland (than those in England) could potentially have medium term impacts on the future competitiveness of Scottish companies both within the UK and elsewhere.

- **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**

The Strategic Framework imposes commensurate conditions to other parts of the UK and Europe according to the prevailing transmission levels and risk conditions. The Strategic Framework requires face coverings to be worn at all times by both client and practitioner, unless exempt. Face coverings may not be removed to undertake a treatment in the “High Risk Zone” (the area in front of the face where splashes and droplets from the nose and mouth may be present, which can pose a hazard) even if the client is exempt and the area is uncovered. This differs to guidance in other parts of the UK where face covering removal is permitted in England and Northern Ireland for the purposes of treatment to that area. In Wales, the face covering can be removed for treatments if the practitioner is wearing appropriate PPE.

Country	Current status (16 Apr)	Close contact services
England	Restrictions are beginning to ease with a phased re-opening of the economy.	Open including mobile close contact
Wales	Restrictions are beginning to ease with a phased re-opening of the economy.	Open including mobile close contact
Northern Ireland	Restrictions easing	Open from 23 April
Ireland	Level approach. All of Ireland is currently in its highest level, Level 5 so it is in effect in national lockdown.	Closed. Plans to stagger re-opening from 4 May.
France	‘Metropolitan France and Martinique’ are currently under a 7pm – 6am curfew and must not travel further than 10km from their house for a non-essential reason.	Closed
Germany	Easing restrictions from 8 March 2021	Open
Italy	Country divided into red, orange and green zones. Restrictions vary across country.	Close contact closed in red zones but open in green and orange zones
Spain	It is up to each autonomous region to enforce their own controls. Measures vary across the country but restrictions are in place in each region	Regional approaches vary with different restrictions depending on region
Belgium	Stricter restrictions brought in as of 24 March 2021	Closed

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

For close contact services (mobile and fixed premises) which may continue to operate in levels 0-3 this will enable them to continue trading and providing employment. Some mitigations brought in to ensure that close contact services can take place in as safe a way as possible will impact on the types of services that can be offered, such as treatments within the area defined as the 'high risk zone', resulting in a loss of income.

All close contact services will be required to close in level 4, with the exception of fixed premises hairdressing/barbering and premises based sports massage provided to professional sportspeople meaning complete loss of income and further costs incurred in relation to staff and premises, also resulting in loss of income for property owners and supply chain providers.

Competition Assessment:

The closure of mobile hairdressing/barbering services in Level 4 put these businesses at a competitive disadvantage, in the period between 5 April and 26 April 2021, to fixed premises salons which could operate.

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

The requirement for most services to close in level 4 may lead to closures and associated job losses among non-hairdressing/barbering suppliers operating from fixed premises.

- **Will the measure limit the choices and information available to consumers?**

There is a likelihood that the close contact services measures in the strategic framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

Consumer Assessment:

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

There is a likelihood that the close contact services measures in the strategic framework will limit the choices available to consumers through limited availability among providers and lack of locally available alternatives where providers are required to close.

Consumers will be able to access close contact services in levels 0 to 3. Consumers will be advised against travel to higher/lower local levels, under travel restrictions, limiting available choice of providers and services, particularly for consumers with no access to a car and reliant on public transport. Allowing mobile services to resume in levels 0 to 3 will provide more choices for those consumers.

- **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 strategic framework
<p><u>Test run of business forms:</u></p> <p>N/A</p>
<p><u>Digital Impact Test:</u></p> <p>N/A</p>
<p><u>Legal Aid Impact Test:</u></p> <p>N/A</p>
<p><u>Enforcement, sanctions and monitoring:</u></p> <p>Regulations have been put in place to support the implementation of the measures. Associated guidance has also been introduced. 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></p> <p>Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. We are continuing our constructive engagement with the sector</p>
<p><u>Summary and recommendations:</u></p> <p>Introduction</p> <p>This BRIA has examined the close contact service measures within each level of the Strategic Framework and compared these measures with the baseline option, the equivalent of Level 0 in the Strategic Framework.</p> <p>Background</p> <p>The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus.</p> <p>Whilst this BRIA is focused on close contact services, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view close contact services measures in the context of this wider package of actions.</p> <p>Options Appraisal</p> <p>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.</p> <p>Option 1: Baseline</p> <p>The baseline option (effectively level 0 and 1 of the Strategic Framework) would have a positive economic impact on close contact services through their revenue generation, employment of staff, and on supply</p>

chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission in close contact service settings.

Close contact services are characterised by many of the high-risk factors associated with transmission of the virus. The health risks posed would increase as the R rate increased meaning there would be potential for increased community transmission and multiple clusters.

Higher rates of infection may ultimately impact negatively on the close contact service sector as trade made be reduced due to customers being anxious about social interaction, particularly in indoor venues. The workforce may be affected by higher levels of sick workers due to high rates of COVID-19, or larger numbers of staff self-isolating for 14 days.

Option 2: Strategic Framework

Measure	Benefits	Costs
Close contact services, including mobile, permitted to operate in levels 0 - 3	Close contact services can continue to operate with mitigating measures in place. As well as hairdressing/barbering, other types of mobile close contact services are permitted to open under the Strategic Framework regulations.	Measures to ensure good hygiene and to mitigate transmission, such as appropriate PPE and hand sanitiser, will incur costs.
Closure of close contact services	Level 4 will be deployed only if absolutely necessary intended to address extremely high transmission rates. Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS to cope. It is anticipated that closing close contact services (along with the package of other measures under level 4 of the Strategic Framework) would contribute to a reduction in transmission rates.	Evidence from the lockdown period shows that the immediate closure of businesses led to a collapse in income and immediate cash-flow and viability challenges for many sectors of the economy. Closure will threaten viability of businesses putting jobs at risk and leading to higher unemployment.

Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

There is a comprehensive package of financial support from the UK Government and the Scottish Government for businesses to mitigate the negative impacts of the restrictions.

We are replacing the pattern of recurring payments made through the Strategic Framework Business Fund (SFBF) with a one-off Restart Grant for business in the retail, hospitality and leisure sector specifically to support them in meeting the costs associated with the costs of re-opening

In April 2021, SFBF recipients will automatically receive a combined final two-week payment from the Fund and a one-off restart grant to help them reopen:

Retailers in receipt of SFBF will be eligible for grants up to £7,500 based on rateable value:

- For properties with a rateable value below £51,000: £7,000 (£6,000+£1,000)
- For properties with a rateable value above £51,001: £7,500 (£6,000+£1,500)

This support is in addition to the UK government Coronavirus Job Retention Scheme.

- This applies to all countries and regions of the UK and is not linked to specific tiers or restrictions.
- From July 2021, the Government will fund a percentage of wages for hours not worked alongside employers' contributions up to at least 80%.

These support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented.

Title of proposal: Coronavirus regulations limiting work allowed in other people's homes

Purpose and intended effect:

Our strategic intent remains to *suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible*. The Strategic Framework explains how we will use all of the tools we have available to get coronavirus to the lowest possible level and keep it there, including the revised local protection levels.

The purpose of limiting in-home work is 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 regulations, there is an exemption to the rules against gathering in private dwellings where the purpose of the gathering is work. This has been narrowed to limit the exemption so that individuals from outside the household may only gather in a house for work for the purpose of the upkeep, maintenance or functioning of the dwelling where it is essential to that purpose.

The intention of this 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).

We view this intervention as necessary. The four harms approach sets out the risks. Work in someone else's home is relevant under a number of the Harm 1 factors – it is indoors, involves a number of people from outside the household, is likely to involve significant contact with internal surfaces and given the nature of the home, other controls (such as distancing and ventilation) may be difficult to implement.

The limitation to the work exemption only applies under Level 4 of the Coronavirus Regulations. In other levels, work (without further restriction) is an exemption to restrictions on gathering in a private dwelling. Further, essential work for the upkeep, maintenance and functioning of the house may still be carried out.

Consultation:

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

Options:

Option 1 - No action

The current regulations are deemed appropriate given the risks of transmission from working in someone else's home at the levels of prevalence for areas in Level 4.

Option 2 – Remove the restriction

Removing the restriction would allow a broader range of work to be carried out. It could be replaced by guidance to the same effect (as was the case in the original Level 4 restrictions). This would create additional transmission risk in areas that still had higher prevalence of the virus (Level 4), when there are more transmissible variants than previously. The effect of removing the restriction occurs when areas move out of Level 4.

Scottish Firms Impact Test:

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

The requirement applies 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 businesses whose work is impacted by the restrictions [Coronavirus support for Businesses in Scotland - Find Business Support](#)

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.

Test run of business forms:

N/A no business forms being introduced

Digital Impact Test:

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.

Legal Aid Impact Test:

There is no identified Legal Aid impact

Enforcement, sanctions and monitoring:

The 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.

Implementation and delivery plan and post-implementation review:

The 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.

Summary and recommendations:

In summary, we recommend that the regulations remain as is. The allowance of work on someone else's home for essential purposes limits the potential negative impacts of the restriction. While a number of businesses and tradespeople will be affected, business support is in place.

Title of proposal: Life events: specifically marriages, civil partnerships and funerals

Purpose and intended effect:

The objective of Scotland's Strategic Framework update²³ is to set out a sustainable response to the pandemic which can be implemented until the vaccine has been fully rolled out. The Framework covers the four key harms of the virus, how we will work to suppress the virus, and sets out our proposal to move to a strategic approach to outbreak management based on five levels of protection. The legal requirements within each level are set out in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, as amended (most recently by the Regulations noted above).

This BRIA is focused on the impact of restrictions on life events, specifically marriages, civil partnerships and funerals. However, individual measures need to be viewed within the broader context of the package of measures within each level, with the Strategic Framework update taking a four harms approach to considering which interventions are introduced at each level through assessment of:

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

The Strategic Framework update and updated protection levels include measures across a wide number of settings and provides a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each protection level is designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

The key measures relating to life events are set out in the table below.

	<u>Level 4</u>	<u>Level 3</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Level 0</u>
<u>Life events (e.g. weddings, funerals)</u>	<u>Weddings/Civil Partnerships** – 20</u> <u>Funerals – 20</u> <u>No post-funeral / wedding receptions</u>	<u>Weddings/Civil Partnerships – 50</u> <u>Funerals – 50</u> <u>Post-funeral/wedding receptions permitted – maximum 50</u>	<u>Weddings/Civil Partnerships – 50</u> <u>Funerals – 50</u> <u>Post-funeral/wedding receptions permitted – maximum 50</u>	<u>Weddings/Civil Partnerships – 100</u> <u>Funerals – 100</u> <u>Post-funeral/wedding receptions permitted – maximum 100</u>	<u>Weddings/Civil Partnerships – 200</u> <u>Funerals – 200</u> <u>Post-funeral/wedding receptions permitted – maximum 200</u>

**** Note: 5 (6 if an interpreter is required) until 26 April 2021**

Policy Objectives:

The objective of the restrictions set out within the Regulations and Strategic Framework update and protection levels is to ensure that the numbers able to attend these life events (marriages, civil partnerships and funerals) at each protection level is appropriate to the level of COVID-19 risk within the area affected by the protection level, also taking into account the other restrictions in place.

²³ <https://www.gov.scot/publications/coronavirus-covid-19-strategic-framework-update-february-2021/>

Title of proposal: Scotland's Strategic Framework – BRIA for Life Events for Policy Changes to the Strategic Framework and The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021

Purpose and intended effect:

Background:

On 23 February 2021, the First Minister set out the Scottish Government's priorities and indicative timeframe for easing restrictions. The easing of restrictions is set against a backdrop of progress in the vaccination programme rollout, a reduction in test positivity rates, and fewer Covid patients in both hospital and intensive care.

This BRIA is focused on the set of life events measures for marriages, civil partnerships and funerals included within the Scottish Government's timetable for easing restrictions.

Under Scotland's Strategic Framework update, decision-making is intended to be straightforward and transparent. It builds on existing structures and processes, is informed by clinical advisers and evidence, and continues engaging with local leadership.

Decisions 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. The easing of restrictions for life events which are proposed in the Scottish Government's timetable for easing restrictions follows this responsibility of Ministers.

Funerals

The Competition and Markets Authority estimates that the average cost of a funeral in the UK in 2019 was £3,911, with an average weighted growth of 4.0% per year.²⁴

The National Records of Scotland's (NRS) death statistics show that there were 58,108 deaths in Scotland in 2019. The COVID-19 pandemic has sadly resulted in an increase in the number of deaths in Scotland. This means that more funerals have taken place than is usual at certain times of 2020, particularly during wave 1 (late spring 2020). NRS has published provisional death statistics for 2020 which show the total number of deaths in Scotland in 2020 was 64,085²⁵. The overall excess number of deaths caused by COVID-19 is not yet available, however in the final quarter of 2020, between 1 October and 31 December 2020, the number of deaths were 12.5% higher than the same period over the previous five years.²⁶

²⁴

https://assets.publishing.service.gov.uk/media/5e4fba6bd3bf7f3938182cb0/Comp_btwn_FDs_pricing_levels_and_trends_-_web_version_---.pdf

²⁵[Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/births-deaths-and-other-vital-events-quarterly-figures)

²⁶[Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/births-deaths-and-other-vital-events-quarterly-figures)

Unfortunately, there is no data available on the number of funerals that take place in Scotland each year, however, it is likely that for the vast majority of people who die in Scotland, their funeral will be held in Scotland.

The funeral sector in Scotland consists of publically and privately owned organisations and businesses. In the main, the funeral sector can be described as comprising mainly burial authorities, cremation authorities and funeral directors businesses. A breakdown of each is set out below.

A burial authority can currently be either local authorities or privately owned/operated.

Approximate numbers of burial grounds in Scotland:

- 2,413 in total
- Of these, 1,086 are in use, owned and operated by local authority burial authorities
- 1,242 are historic grounds that are the responsibility of local authority burial authorities
- 85 are owned and operated by private burial authorities

Accurate local authority burial ground numbers can be readily determined. The numbers set out above are based on returns of all 32 local authorities. However, exact numbers of private burial authorities remain an estimate, based on information gathered with assistance from local authorities and private burial authority representatives. A definitive figure of private burial authorities and grounds is not known currently.

Cremation authorities own and operate Scotland's crematoriums. Similar to burial authorities, many operate multiple crematorium, however an authority may also operate only a single facility. There are a variety of operation models, both public and private. A cremation authority can currently be either a local authority or privately owned/operated.

Numbers of crematoriums currently operating in Scotland:

- 31 in total
- 14 owned and operated by local authorities
- 17 privately owned and operated

Funeral director businesses play an important role as an intermediary throughout the process and procedures around a death and have a fundamental role in caring for people after they have died. Funeral directors liaise with a variety of public bodies such as registrars, local authorities and the NHS to make arrangements for the appropriate registration of a death, followed by burial or cremation arrangements, on behalf of a client.

A funeral director business can be corporately owned and operated or independently owned and operated.

Approximate numbers of funeral directors currently operating in Scotland:

- 400 businesses
- 700 branches in total

Post-funeral gatherings such as wakes - In the National Funeral Cost Index Report 2019²⁷, Royal London estimated that the average combined spend on venue hire and catering at funeral wakes in the UK was £837 per funeral. Similarly to funeral services, there is no published data on the number of post-funeral gatherings that take place each year so the estimated value to the economy is difficult to quantify. However, the National Funeral Cost Index Report 2020²⁸, which assessed funerals in the time of Covid-19, noted that as a result of the pandemic, 56% of UK respondents were unable to have a wake or celebration of life.

²⁷ [national-funeral-report-2019.pdf \(royallondon.com\)](#)

²⁸ [royal-london-national-funeral-cost-index-2020-funeral-report-web.pdf](#)

On funeral services and post funeral gatherings, it is difficult to provide data on the number of businesses and employees working in this sector. For some, it will be their sole employment but others will work on a part-time, casual or temporary basis. Post funeral gatherings tend to take place in hospitality venues or private homes.

While funeral services have necessarily taken place throughout the pandemic, varying levels of restrictions have been in place at different times. For example, in the early stages of the pandemic only a person's household and close family could attend the funeral. Where no household or close family members were in attendance, friends could attend.

Since July 2020, up to 20 people (not including funeral directors/cremation or burial authority staff or the celebrant) have been able to attend a funeral with strict 2 metre physical distancing between households. Physical distancing requirements means that the numbers able to attend a particular venue, such as a small crematorium service room, may be less than the maximum of 20 people. Like many other businesses - burial authorities, cremation authorities and funeral directors have been required to ensure their premises are 'COVID secure' by complying with relevant guidance.

Marriage ceremonies and civil partnership registrations

The wedding industry is an important part of Scotland's economy and society.

The average cost of a wedding in Scotland in 2017 was reported to be £19,791.²⁹ Based on the number of marriages registered in Scotland in 2019,³⁰ if this remained the average spend, the wedding industry in Scotland might have been worth around £519 million in 2019. In 2018, a Visit Scotland briefing, which noted this average also suggested that the average Scottish wedding cost more than that, at £35,674, and that the Scottish wedding industry was on that basis, worth around £963 million.³¹ We have not been able to validate these figures. Scotland also attracts couples who wish to marry here. Around 20% of marriages that take place in Scotland are between parties who do not live here, providing an additional economic boost.

We know the wedding industry is a significant and varied sector, however it is difficult to provide accurate information on the number of businesses and employees working in this sector. The businesses forming part of the supply chain include hospitality, photography, clothing, hairdressers, beauticians, musicians, florists and so on. For some, wedding related work will be their sole employment and others will work in other areas. Stakeholders say that this sector supports 15,000 part time jobs but we have not been able to validate this figure. A Visit Scotland report estimates that 50,000 jobs are provided by hotels in 2017/2018.

There has been a reduction in the numbers of marriages taking place in Scotland. The National Records of Scotland publishes quarterly statistics on vital events.³² There were 117 marriages in the second quarter of 2020, compared with an average of 7,938 second quarter marriages for the previous five years. There were 3,789 marriages in the third quarter of 2020, compared with an average of 10,647 third quarter marriages for the previous five years. There were 5,056 marriages in the fourth quarter of 2020, compared with an average of 6,066 fourth quarter marriages for the previous five years. The fourth statutory report on marriage and civil partnership published 15 February 2021, shows that NRS

²⁹ [The UK Wedding Report 2018 | Wedding Advice | Bridebook](#)

³⁰ [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](#)

³¹ [PowerPoint Presentation \(visitscotland.org\)](#)

³² [Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](#). The total number of marriages for 2020 is provisional.

were aware of 1904 marriages having been solemnised and 13 civil partnerships having been registered in the period 1 December to 31 January.³³

The incomes of wedding venues and businesses in the wedding supply chain have been significantly impacted because of the reduced number and reduced scale of weddings and we are aware of their concerns about financial viability. On 25 January 2021, the Scottish Government announced a £25 million fund to support the wedding sector and its supply chain. This fund is now closed.

Current position for life events

The **current** position on key measures relating to **life events** are set out in the table below:

Table 1: Current position on life events

Life Events Measures	Level 0	Level 1	Level 2	Level 3	Level 4 / 'lockdown'
Weddings/ civil partnerships	– 50 person limit - Receptions permitted subject to 50 person limit	– 20 person limit - receptions permitted, 20 person limit	As level 1	As level 1	– 5 person limit (or 6 with interpreter) - No receptions
Funerals	– 50 person limit - Post-funeral gatherings permitted, 50 person limit	– 20 person limit - Post-funeral gatherings permitted, 20 person limit	As level 1	As level 1	– 20 person limit - Post-funeral gatherings not permitted

Conclusion

On marriage ceremonies and civil partnership registrations, the Strategic Framework should take account of religious and belief requirements and the right to marry under the European Convention on Human Rights,³⁴ in addition to recognising what we understand are the potentially heightened transmission risks for these types of social gatherings. For receptions, the risks of transmission in hospitality settings where food, drink and alcohol may be consumed will also be relevant.

Marriage and civil partnership is important to couples and to society more widely, and the Scottish Government recognises that the right to marry is an important one. This is why it has remained possible for couples to marry. The Scottish Ministers are under a duty to end any restriction or requirement imposed by the health protection regulations as soon as that measure is no longer necessary to control the spread of coronavirus in Scotland. However, in reaching decisions on how to best to ease restrictions, we must also continue to take account of the evidence available which suggests that such gatherings of family and friends can involve a higher risk of transmission than is the case in other contexts. This evidence is referred to at Transmission below.

³³ [Coronavirus \(Scotland\) \(No.2\) Act 2020: fourth report on marriage and civil partnership - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/consultations/2020/11/20201120-marriage-civil-partnership)

³⁴ Article 12, [European Convention on Human Rights \(coe.int\)](https://www.european-convention.europa.int)

Funerals are important events and following funeral restrictions at a time of grief is extremely difficult, especially when many family and friends wish to pay their respects. Funerals should not be delayed and the funeral sector has worked extremely hard to ensure that funerals can take place safely during the COVID-19 pandemic.

However, funerals are highly emotional and incredibly difficult events and physical distancing is more likely to be forgotten. The strategic framework should take account of the important role a funeral plays in the grieving process but should also recognise what we understand are the potentially heightened transmission risks for these type of social gatherings. This evidence is referred to at Transmission below. For post-funeral gatherings such as wakes, the risks of transmission in hospitality settings where food, drink and alcohol may be consumed will also be relevant.

The rest of this BRIA discusses the key proposed regulatory and policy changes in relation to maximum attendance at marriages, civil partnerships and funerals (and their respective receptions). This requires a change to the Regulations³⁵ for Level 4 to remove the limit on the number of people able to attend a marriage ceremony or civil partnership currently set at legal minimum being 5 or 6 people with an interpreter.

Setting a cap on the maximum number of people permitted at each protection level remains a matter of judgment as evidence and analysis cannot identify precisely a number limit which will most effectively balance proportionality and public health risk. These numbers will be set out in guidance and will be kept under review to ensure our approach balances proportionality with public health.

Objective:

The objective of the restrictions set out within the Regulations and Strategic Framework update is to ensure that the numbers able to attend these life events (marriages, civil partnerships and funerals) at each protection level is appropriate to the level of COVID-19 risk within the area affected by the protection level, also taking into account the other restrictions in place.

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 the virus is no longer the threat it is now.

While the evidence base around transmission for the virus, and new variants, continues to develop, we are committed to taking decisive action based on the best evidence available to us. These actions are also kept under constant review to ensure measures are necessary and proportionate, in light of evidence related to significant vaccination progress and declining infection rates.

Transmission

We do not have empirical evidence at present suggesting that transmission has been occurring at marriages and civil partnerships in Scotland. Nor do we have any evidence of outbreaks linked to such events in Scotland. However, we do have anecdotal evidence from our informal consultation with stakeholders for the respective sectors (discussed below). We do not have empirical evidence available

³⁵ [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

of outbreaks occurring at funerals in Scotland, however we are aware that a small number of outbreaks have occurred at post-funeral gatherings.³⁶

However, we understand that one of the key risks for marriages, civil partnerships and funerals as life events is in relation to ensuring individuals and household groups maintain physical distancing in a context where they are likely to know each other and want to interact. These are emotional or otherwise important life events and individuals will usually want to interact closely with others to comfort or to congratulate. For example, anecdotal evidence from funeral sector stakeholders suggests that physical distancing is often not maintained at funerals, particularly as families and friends leave the formal funeral service venue and mingle outside. Likewise, views from some wedding sector stakeholders would suggest that public health measures can be forgotten, particularly before and after the ceremony itself. Transmission risk is a combination of environmental and behavioural factors. Generally, understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, is important in considering the overall risk of transmission.

The risk elements such as sharing of food and the consumption of alcohol are particularly relevant to receptions or post-funeral gatherings. The UK Government has summarised the evidence of the significant risk of transmission in the hospitality sector.³⁷

Alcohol could also exacerbate some of the behaviours associated with risk of transmission as this can cause people to lose their inhibitions. Advice from the World Health Organisation during the Covid-19 pandemic is to 'stay sober so that you can remain vigilant, act quickly and make decisions with a clear head, for yourself and others in your family and community'.³⁸

Evidence published by SAGE has highlighted that "family celebrations" typically constitute a very high transmission risk.³⁹ SAGE has also published evidence noting that in Japan, China, South Korea, and Indonesia that some super-spreading events originated from wedding venues, including that "large outbreaks have been occurred [sic] in family, friend, work-related and other gatherings including weddings and birthday parties."⁴⁰

A recent publication⁴¹ from the Technical Advisory Group in Wales serves to bring together literature to support a general view of marriages and civil partnerships and receptions, identifying the key environmental risks associated with such events in the context of Covid-19. It refers to evidence that close interaction with friends and relatives in a familiar and relaxed environment may lead to an 'intimacy paradox' whereby a place we think is safe is in fact risky.⁴² The publication also notes that the risk is greater with larger events and those which are inter-generational and that "Increased transmission is likely to result from more social mixing during celebrations, often involving gatherings beyond habitual networks and across regions, and in larger groups".⁴³

Balanced Intervention

³⁶ Additionally, we are aware of data-based evidence that funerals/wakes have been a source of outbreaks in Northern Ireland- <https://www.publichealth.hscni.net/publications/covid-19-clusteroutbreak-summary>

³⁷ [Transmission risk in the hospitality sector - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/transmission-risk-in-the-hospitality-sector)

³⁸ [WHO/Europe | Media centre - Fact sheet - Alcohol and COVID-19: what you need to know \(2020\)](https://www.who.int/europe/media-centre/fact-sheets/alcohol-and-covid-19)

³⁹ [SPI-M-O: Consensus statement on events and gatherings, 19 August 2020 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/spi-m-o-consensus-statement-on-events-and-gatherings-19-august-2020)

⁴⁰ [SARS-COV-2: Transmission Routes and Environments, 22 October 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/sars-cov-2-transmission-routes-and-environments)

⁴¹ [wg40655 COVID \(gov.wales\)](https://gov.wales/government/publications/wg40655-covid)

⁴² [S0922 EMG and SPI-B - Mitigating risks of SARS-CoV-2 transmission associated with household social interactions.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/s0922-emg-and-spi-b-mitigating-risks-of-sars-cov-2-transmission-associated-with-household-social-interactions)

⁴³ [S0866 Key Evidence and Advice on Celebrations and Observances during COVID-19.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/s0866-key-evidence-and-advice-on-celebrations-and-observances-during-covid-19)

The Regulations and policy decisions related to the Strategic Framework update are intended to balance the essential need for the bereaved to hold a funeral service for the deceased and people's right to marry under Article 12 of the European Convention on Human Rights, while mitigating further the risk of transmission associated with people gathering together (for example people attending a funeral and funeral sector staff), in the context of risk presented by new variants. The easing of restrictions (increasing attendance at funeral services and marriage ceremonies at each protection level [except for funerals at level 4 which remain at 20], and permitting post-funeral gatherings and receptions with increased numbers in attendance in Levels 0-3) introduced in the policy changes within the updated Strategic Framework are intended to help ease our way back to normal ways of living while continuing to aid in the control and suppression of the spread of the virus. Importantly, this will also allow the public, and businesses, to plan ahead accordingly, and additionally enabling the public, for whom funerals and weddings are unique, important, and emotive events, to have a higher number of friends and loved ones with them on these occasions.

Consultation:

PART 1: FUNERALS

Public Consultation:

Specific consultation with the public on the regulations and policy changes was precluded by urgent implementation timescales. However, correspondence received from the public has been taken into consideration. Correspondence continues to be received on a daily basis about restrictions on attendance at funeral services, indicating that the public find the current level of restrictions on funeral services (up to 20 people) extremely tough.

Overall, however, the public has not shown similar discontent via correspondence about post-funeral gatherings being disallowed. Further, since the announcement of the Regulations on 4 January, no complaints have been made through public correspondence regarding the ban on post-funeral gatherings in enhanced Level 4/lockdown.

Business:

Discussions with the funeral industry (including the Deceased Management Advisory Group [DMAG] – a UK funeral industry led group with representation from the funeral sector UK trade associations, and the Scottish Government's Funeral Industry Core Stakeholders Group [FICS]) have helped inform the decisions on easing funeral attendance restrictions.

Specifically, we have consulted with our stakeholders following the announcement (16 March 2021) of the easing of restrictions. We sent an urgent request seeking views on the following issues:

- Increase attendance from 20 to 50
- Venue size
- Attendance at burials – impact of increase in numbers
- Any further increase above 50 maximum attendees
- A potential change to capacity of venue-based approach rather than a 'cap'/maximum number approach
- Support the Burial and Cremation Team could offer

The responses are summarised here:

- Stakeholder comments suggested there was not strong support for increasing the maximum from 20 to 50 while all other restrictions for physical distancing etc. remain in place.
- Concern was expressed that announcing the increase to maximum 50 people a few weeks in advance of coming into effect on 26 April could lead to families seeking to delay funerals until after that date in anticipation of having more people attend. This has the potential to impact negatively on death management and mortuary storage capacity.

- Multiple stakeholders highlighted that many crematoriums will not be able to accommodate 50 people while having to maintain physical social distancing of 2 metres between household groups. It was noted that a change to 1 metre physical distancing would ease this strain, and might be welcomed.
- Stakeholders noted it is important for the message to increasingly focus on physical distancing. They noted it was important to be clear to bereaved families that certain venues cannot accommodate 50 people, and that this messaging will require careful handling. They also noted there is a risk that more people will turn up at a crematorium in anticipation of 50 being allowed, then not be permitted into the service room and will instead gather closely at the door or in the car park.
- If part of a funeral service is in a church (or funeral director premises) which can accommodate 50 more easily, and is then followed by a cremation service which cannot, stakeholders perceived this may be difficult for the bereaved to cope with and mean some of the funeral party can only attend part of the whole funeral service.
- Responses highlighted that the bereaved may shop around for a crematorium that will permit 50 people in their service room. This could lead to greater travel within and outwith local authority areas.
- More people attending a funeral means more time is required to clean between each service – therefore crematoriums will have to provide fewer services each day (impacting on death management to some extent) or shorter services (which will have a negative impact on the bereaved). Additionally, contact tracing of mourners will take longer.
- A suggestion was to move to invitation only for funerals as happens in Wales, which a stakeholder expressed would have minimal implications for venues and may support contact tracing. (NB: Any consideration of this type of approach would require very careful and sensitive consideration, due to the nature of funeral attendance in Scotland and the potential for it to add stress to the bereaved who are organising the funeral.)
- One stakeholder observed moving to an approach based on capacity would perhaps be more manageable however may encourage use of different funeral directors or crematoriums and travel to different local authority areas.
- There are concerns about the role of funeral directors and venue staff relating to how larger funerals will be managed (i.e. whether there will be police involvement and/or how staff might manage these) and where responsibility lies for managing expectations about numbers.
- Concern about staff being exposed to more people, and therefore being at increased risk of infection, was raised.
- The industry would welcome the Scottish Government taking the lead on public messaging to (i) request that people not delay funerals; and (ii) that while 50 is the new maximum number of attendees permitted, this may not be possible due to venue capacity once physical distancing is accounted for.
- Burials are less of a concern as they are outside, but it was noted that with greater numbers of attendees, contact tracing will take longer.

The retention of provisions in the Regulations to allow post-funeral gatherings (e.g. wakes) should be read in conjunction with BRIAs affecting the sectors supplying post-funeral gatherings, in particular, the BRIA for the hospitality sector.

PART 2: MARRIAGES AND CIVIL PARTNERSHIPS

Public Consultation:

Specific consultation on the regulations was precluded by urgent implementation timescales. However, we took account of the correspondence we have received, mostly from couples seeking to marry, often taking the position that the number of people permitted to attend a marriage or civil partnership is too low, and requesting that children under 12 or professionals employed by the couple such as a photographer are excluded from the limit. Some correspondents have noted the impact the uncertainty is having both financially and on their health and wellbeing. The most common request in recent correspondence is for greater certainty around marriage in the future in order for couples and suppliers to plan ahead and concerns about alcohol being permitted at receptions.

Business:

We have consulted with the following stakeholders:

- Religious and belief bodies
- National Records of Scotland
- Association of Registrars in Scotland
- Musicians' Union
- My Scotland Wedding
- Scottish Wedding Industry Alliance

We took account of the outcomes of an informal consultation exercise with 20 religious and belief bodies on the impact of reducing the numbers who can attend to 5 or 6 under the tighter protection level 4 restrictions that were introduced on 8 January 2021. There were a limited number of responses (7) to this informal consultation. The Scottish Government is aware from this most recent exercise and previous informal consultation that religious and belief bodies may have views on how many people should attend a marriage. For example, some bodies have religious requirements or preferences for more people to be present at a ceremony than the legal minimum.

Some registrars have reported concerns about safety, particularly travel into Scotland for marriages and civil partnerships from the Common Travel Area. They reported that registrars have had varied experience working with venues to implement the guidance. They have also observed a lack of adherence to public health guidance before or after the ceremony or registration, noting the removal of face coverings for photographs and the lack of physical distancing, where sometimes more family and friends can be waiting outside the venue to join the celebration.

We have also taken account of our consultation representatives of musicians. Key issues raised included allowing low level live music at receptions and ways to make our guidance clearer for musicians employed at weddings. It was also raised as to whether face coverings are required while the musicians are actively engaged in playing.

We have met regularly with representatives of the wedding industry who have raised a range of issues, including the publication of a wedding-specific route map by the Scottish Government. They have advised that they need at least 50 people at wedding receptions (with alcohol) to become economically viable. They dispute the evidence that receptions with mitigations in place constitute a higher transmission risk than in other hospitality settings. They ultimately want a capacity based approach.

The following key issues have been raised:

- An immediate move to permit up to 20 guests at a wedding including receptions at level 4
- Alcohol must be permitted at receptions in order for business to be viable
- A move in April to allow 50 guests to attend a wedding
- Publishing a wedding-specific route map
- Numbers determined by venue capacity with physical distancing between households
- Arrangements permitting travel for guests attending a wedding, along with overnight accommodation and a meal, should be in place to support the new arrangements
- Resuming mobile close contact services and bridal attire
- Consideration be given to when physical distancing and face coverings indoors will no longer be legal requirements and for this to be coordinated with the position in England. SWIA have raised some concerns about wedding business being lost to England.

Options:

PART 1: FUNERALS

We have updated the Strategic Framework in light of the changed context of lower infection rates and vaccination progress. However, in order to suppress and a maintain the virus at the lowest possible level, there is a continuing need for restrictions, including for life events, to help minimise the opportunities for transmission of the virus. The following sections set out the range of options we have considered. This approach enables us to ease restrictions gradually and safely before the vaccination programme has reached its full extent. In the meantime, we undertake to regularly review the restrictions to take account of developments, including the impact of the vaccination programme, and monitor changes in the virus and the national and international context.

Option A: No change

Funeral services, commemorative events and post-funeral gatherings can go ahead with up to 20 people in levels 1 - 4 and 50 people in level 0, as set out in the original Strategic Framework and protection levels table. This limit was also applied to marriage ceremonies and civil partnership registrations at the same levels until January 2021 when the position was changed for marriage ceremonies at level 4. Scottish Ministers set levels at 20 people (in guidance), and 20 was selected because it was considered that it allowed more than just close family members to attend, giving broader family and some friends the opportunity to attend (depending on family size), but also took into account the potential risks of transmission associated with funeral services and post-funeral gatherings.

Choosing this option would mean the restrictions continue to allow only 20 people maximum in levels 1-4. Even at this level, those who are grieving find funeral restrictions difficult. While this option may be accepted by members of the public who have become accustomed to arranging and attending funerals with only 20 people in attendance, as wider restrictions ease, it may no longer be proportionate to limit attendance at funerals to a maximum of 20 people across levels 1-4.

Conclusion

On balance this option was not recommended - maintaining the current limit on numbers would not appear to be proportionate in the context of our progress in suppressing the virus and the vaccination programme, as well as wider easing of restrictions.

Option B: Capacity Based Approach (with no upper cap)

We have considered alternative options to the limit on numbers set out in the Strategic Framework such as basing the numbers on the capacity of the venue to host a funeral service or post-funeral gathering with physical distancing between households.

This option would see no cap on the total number of people able to attend a funeral, commemorative event or post-funeral gathering. Instead, it would see attendance restricted solely by the capacity of the venue and physical distancing. If this option were chosen, decisions on capacity would be taken locally by each venue in line with sectoral guidance and each venue would communicate venue capacity and seating arrangements locally.

Potential benefits of a capacity based approach

Larger numbers of people may be able to attend a funeral service (the size of the venue and physical distancing requirements may continue to significantly restrict numbers) – potential positive health and wellbeing effect, and protection of ECHR Article 8 rights.

- A capacity-based approach may make it easier to manage public expectations, e.g. it will be for the public to contact the venue to discuss limits on numbers. The public will not have a pre-conceived idea of how many people should be able to attend a funeral.
- This approach may be viewed as a more proportionate approach than setting a maximum cap on attendance.

Potential risks of a capacity based approach

- Stakeholder feedback is that it may be difficult to communicate differences in numbers at each venue.
- There will be added logistical challenges for operators in managing the numbers attending, particularly if people simply turn up on the day. There may be further logistical challenges for operators in determining capacity of the venue and risk assessing pinch points at doors etc.
- Because funerals are not covered by the general rules on gatherings and households, limiting the total number of people provides a level of protection against the potential harm of very large numbers gathering (if capacity allows).
- It is also notable that these large gatherings of people will likely know one another very well at a time where they may be less likely to physically distance (or comply with other necessary health measures) and more likely to console each other at a time of grief. Available evidence suggests that gatherings for marriage and civil partnership constitute a higher public health risk than for example individual groups of people gathering in pubs, restaurants or places of worship.
- From a business perspective, that increased demand for funerals may well be placed on larger venues. Stakeholder feedback suggests that this may be more likely to occur in metropolitan areas whereby the venue may still be within their local authority area. It is also possible that people may travel outwith their local area to venues where they can arrange a funeral where more people can attend, however we cannot be certain of this as it has not yet been tested (caps on attendance have been consistent across protection levels in Scotland to date, except at level 0 which no local area has yet reached). While not ideal, this issue could be mitigated by issuing strong local communications and working closely with local stakeholders to minimise disruption during the transition phase.

Conclusion

This was not the recommended option. On balance, the high-risk criteria associated with these events has been the basis for the continued approach taken by the Scottish Government to place an upper limit on the number of people who can attend. The approach taken for funerals cannot be considered in isolation but in the context of other variants and the vaccination programme. And also in relation to the approach being taken in other areas, including areas such as health and education, all of which have an impact on our ability to suppress the virus.

The numerical limits combined with the capacity based approach ensures that number cannot exceed a certain limit and therefore can be more safely managed with physical distancing. This approach also offers a level of certainty and clarity to families and the funeral sector. The Scottish Government will keep this under review and assess how a solely capacity based approach would work in practice.

Option C: Increase the number limits while retaining a cap

Currently the cap on funeral attendance across levels 1 - 4 is set at 20 people (as set out in the original Strategic Framework and the related protection levels table).

The Scottish Ministers are under a duty to end any restriction or requirement imposed by the health protection regulations as soon as that measure is no longer necessary to control the spread of coronavirus in Scotland. However, the risks that apply to such gatherings, means that a balanced approach is essential as we continue to monitor the effect of changes to the restrictions overall.

Potential benefits of increasing numbers while retaining a cap

- Larger numbers of people than were previously permitted under the restrictions will be able attend a funeral service (capacity with physical distancing permitting) – potential positive health and wellbeing effect, potential protection of ECHR Article 8 rights. It also demonstrates a step-wise opening up of funerals, responding to public desires to hold funerals which can accommodate greater numbers of family and friends. Thus, increasing limits on attendance across levels 1-4 would prove popular with the public.
- Because funerals are not covered by the general rules on gatherings and households, limiting the total number of people provides a level of protection against the potential harm of very large numbers gathering (if capacity allows). Funerals are different from other events; they are more risky because people know each other very well and are more likely to spend time mingling and may be less likely to physically distance.
- Caps provide articulable upper limits (because funerals are not covered by the general rules on gatherings and households).
- Caps would also apply to post-funeral gatherings, where NPIs may not be followed and other behaviours associated with higher risk of transmission (e.g. alcohol use) are often present.

Potential risks of increasing numbers while retaining a cap

- Communication and messaging to the public is complicated. It requires two-fold messaging, to cover (i) the cap at local authority level, and (ii) the capacity at venue level because many will not be able to accommodate higher attendance while maintaining physical distancing.

- This approach may be viewed as a less proportionate approach than setting numbers by capacity of the venue.
- From a business perspective, that increased demand for funerals may well be placed on larger venues. Stakeholder feedback suggests that this may be more likely to occur in metropolitan areas whereby the venue may still be within their local authority area. It is also possible that people may travel outwith their local area to venues where they can arrange a funeral where more people can attend, however we cannot be certain of this as it has not yet been tested (caps on attendance have been consistent across protection levels in Scotland to date, except at level 0 which no local area has yet reached). While not ideal, this issue could be mitigated by issuing strong local communications and working closely with local stakeholders to minimise disruption during the transition phase.

Conclusion

This was the recommended option as it accounts for the need for easing restrictions to proportionate levels in the context of reduced infection rates and vaccination progress, while also recognising the continued risk that funerals and post-funeral gatherings pose to transmission. This option provided a level of certainty and clarity for the public and funeral sector and enable the restrictions to be significantly eased. The numerical limits helps to ensures that numbers cannot exceed a certain limit and can be more safely managed with physical distancing.

The Scottish Government will keep this under review and assess how a capacity based approach with no upper limit would work in practise with the arising practical implications for the sector. Increasing the limit(s) to a particular cap is a matter of judgement based on an assessment of the current evidence for Scotland and our approach to balancing health, social and economic harms so as to minimise overall harm. We have published data and evidence on the “four harms” of COVID-19. These are the direct impact of COVID-19, other health impacts, societal impacts, and economic impacts.⁴⁴

Recommendation

Scottish Ministers chose Option C. This decision was taken in light of the data on COVID-19 infections in Scotland and the progress made on vaccinations, as well as the need to consider restrictions on other policy areas. Please see Part 3 below for more detail regarding the specific decisions for attendance at each protection level for ‘life events’.

PART 2: MARRIAGES AND CIVIL PARTNERSHIPS

We have updated the Strategic Framework in light of the changed context. However, in order to suppress and a maintain the virus at the lowest possible level, there is a continuing need for restrictions, including for life events, to help minimise the opportunities for transmission of the virus. The following section set out the range of options we have considered, including the range of views we have received from stakeholders, where some stakeholders have been arguing for significant easing but others were seeking continued (and increased) restrictions.

This approach enables us to ease restrictions gradually and safely before the vaccination programme has reached its full extent. In the meantime, we undertake to regularly review the restrictions to take account of developments, including the impact of the vaccination programme, and monitor changes in the virus and the national and international context.

⁴⁴ [COVID-19 in Scotland \(data.gov.scot\)](https://data.gov.scot)

Option A: No change

This would mean the restriction at protection level 4 remaining that only 5 people may attend a marriage ceremony, or 6 if an interpreter is required. This restriction reflects the legal requirements for solemnisation of a marriage in Scotland: the couple, the celebrant or registrar, two witnesses and if necessary, an interpreter. This arrangement continued to allow for marriages to take place, reflecting the right under Article 12 of the European Convention on Human Rights for men and women of marriageable age to marry.

Maintaining the current position would address some of the safety concerns from local authority registrars.

However, continuing to limit the number of persons permitted to attend at Level 4 may have impacted members of those religions that have a requirement or preference for more people to be present at a ceremony than the legal minimum. In order to minimise the impact of the restrictions and ensure that the impact is proportionate to the circumstances, we must take appropriate account of religious requirements and preferences for numbers who should attend. Increasing the numbers permitted to attend a marriage or civil partnership to the previous limit of 20 people would meet the requirements and preferences of religious and belief bodies of which we are aware. It has also been considered that only the numbers permitted at Level 4 need be increased to 20 people to mitigate the impact on some religious and belief bodies. If we increased the limit on the numbers who could attend a marriage ceremony or civil partnership registration at Level 4 to 20 people, this would ensure numbers can be safely managed in all venues and would provide clarity and consistency across protection Levels 1-4.

However, maintaining the current restrictions at 20 people at lower protection levels would not address the concerns raised by couples in correspondence about the impact on not being able to have the wedding of their choice. Nor would it address the concerns raised by representatives of the wedding industry increasingly concerned about the financial viability of their businesses. Based on the evidence available, this would fall some way short of the 78-80 guests reported to be the average for a wedding in the UK.⁴⁵

Conclusion

This was not the recommended option. On balance, maintaining the current limit on numbers would not appear to be proportionate in the context of our progress in suppressing the virus and the vaccination programme, as well as wider easing of restrictions.

Option B: Capacity based approach (with no upper cap)

We have considered alternative options to the limit on numbers set out in the Strategic Framework such as basing the numbers on the capacity of the venue to host a marriage, civil partnership or reception with physical distancing between households. There are a number of benefits and risks to consider in taking this approach including:

Potential benefits of a capacity-based approach:

- address the concerns raised by couples; and
- allow businesses to be self-sustaining.

Potential risks of the capacity-based approach as:

- potentially increasing the risk of transmission to many more households at the same event

⁴⁵ [The UK Wedding Report 2018 | Wedding Advice | Bridebook](#)

- increasing travel within and to Scotland with the anticipated easing of travel restrictions
- increasing the practical considerations (for example pinch points at toilets and exits)

Available evidence suggests that gatherings for marriage and civil partnership constitute a higher public health risk than for example individual groups of people gathering in pubs, restaurants or places of worship. This is because they will involve close family and friends who will want to interact and who may be emotional, so compliance with physical distancing and other necessary health measures may be more difficult. Some representatives of the wedding industry have suggested that weddings now resemble any other gathering that may take place in a hospitality settings. Views from some registrars are that public health measures can tend to be forgotten as family and friends celebrate together, including before and after the event itself.

Further, marriages and civil partnerships can also take place in a wide variety of locations, including hospitality settings, places of worship, registration offices and outdoor public and private spaces. The limit on the number of people attending used in conjunction with the capacity based approach helps to ensure that the numbers cannot exceed a certain number and therefore can be more safely managed with physical distancing no matter where the event takes place.

Conclusion

This was not the recommended option. On balance, the higher risks associated with these events has been the basis for the continued approach taken by the Scottish Government to place an upper limit on the number of people who can attend irrespective of the chosen venue. The approach taken for marriage, civil partnership and receptions cannot be considered in isolation but in the context of the transmission risk, as well as other variants and the vaccination programme. And also in relation to the approach being taken in other areas, for example, it is important that we consider the impact of changes such as the return to school, all of which have an impact on our ability to suppress the virus.

The numerical limits combined with the capacity based approach ensures that number cannot exceed a certain limit and therefore can be more safely managed with physical distancing. This approach also offers a level of certainty and clarity to couples and the wedding industry. Some stakeholders have requested a move to a capacity based approach with no upper limit on the numbers permitted to attend. The Scottish Government will keep this under review and assess how a solely capacity based approach would work in practise with the practical implications arising for venue managers hosting such events, for example, at outdoor weddings in public spaces.

Option C: Increase the number limits while retaining a cap

There is a right under Article 12 of the European Convention on Human Rights for people of marriageable age to marry. The current restriction at protection level 4 continues to permit a marriage to take place with the minimum number of people required and so allows for the exercise of this right. The limit at 20 people, as was applied at Levels 1-4 before 8 January 2021, takes account of religious and belief preferences and requirements for more people to attend than the legal minimum. However, we know that representatives of the wedding industry have said that they need at least 50 guests at wedding receptions to operate their businesses viably.

The Scottish Ministers are under a duty to end any restriction or requirement imposed by the health protection regulations as soon as that measure is no longer necessary to control the spread of coronavirus in Scotland. However, the higher risks that apply to such gatherings, means that a balanced approach is essential as we continue to monitor the effect of changes to the restrictions overall. We have received a range of views from stakeholders, arguing for both significant easing but others were seeking continued restrictions.

Conclusion

This was the recommended option as it struck a better balance between reducing the risk of transmission and mitigating broader harms in the context of increasing vaccine roll-out. This option provided a level of certainty and clarity for couples and the wedding industry and enabled the restrictions to be significantly eased. The numerical limits help to ensure that numbers cannot exceed a certain limit and therefore can be more safely managed with physical distancing.

As outlined above, some stakeholders have requested a move to an approach based solely on venue capacity. The Scottish Government will keep this under review and assess how a capacity based approach with no upper limit would work in practise with the practical implications arising for venue managers, given marriages and civil partnerships can take place in a wide variety of locations and the risks associated with such events. Increasing the limit(s) beyond what is required to minimise any impact on religious and belief bodies and people of faith is a matter of balance and judgement based on an assessment of the current evidence for Scotland and our approach is to balance health, social and economic harms so as to minimise overall harm. We have published data and evidence on the “four harms” of COVID-19. These are the direct impact of COVID-19, other health impacts, societal impacts, and economic impacts.⁴⁶

As outlined in more detail below, Ministers determined that increasing the indicated number of people able to attend a marriage or civil partnership, (subject to physical distancing) at each level was proportionate and appropriate. Given the significant progress of the vaccination programme in Scotland and in consideration of the data available, it was determined that retaining the current restrictions at each protection level would not be proportionate. Increasing the number of people able to attend at each protection level enables restrictions to be significantly eased while the Scottish Government continues to assess how a capacity based approach with no upper limit would work in practise for marriages and civil partnerships.

PART 3: DECISIONS AT EACH LEVEL OF STRATEGIC FRAMEWORK

We have updated the Strategic Framework in light of the changed context. However, in order to suppress and maintain the virus at the lowest possible level, we considered that there is a continuing need for restrictions, including for life events, to help minimise the opportunities for transmission of the virus. The following section set out the range of options we have considered. This approach enables us to ease restrictions gradually and safely before the vaccination programme has reached its full extent. In the meantime, we undertake to regularly review the restrictions to take account of developments, including the impact of the vaccination programme, and monitor changes in the virus and the national and international context.

Mindful of Ministers selecting Option C above for both funerals and weddings/civil partnerships, this section provides more detail on the decision made for each level of the Strategic Framework. We have compared the proposed package of measures within each level against the position of allowing 20 people (in Levels 1-4) and 50 people (in Level 0) at marriages, civil partnerships and funerals in place from the implementation of the Strategic Framework on 2 November 2020, and the updated regulation prohibiting post-funeral gatherings from early January 2021 in areas under ‘lockdown’/enhanced Level 4.

The options provided at each level for increasing the attendance caps for life events differ to the standard numbers for indoor events to take account of the increased risk of transmission at these events. In determining the caps judgement must be applied. The numbers in place in the updated Strategic Framework and related protection levels table could be adjusted up or down, both now and in the future. The numbers will be kept under regular review.

⁴⁶ [COVID-19 in Scotland \(data.gov.scot\)](https://data.gov.scot)

The Scottish Government will use six conditions recommended by the World Health Organisation assessing whether it is safe to proceed with each new set of easing. These criteria are outlined below:

World Health Organisation criteria for easing restrictions

- Evidence shows that COVID-19 transmission is controlled
- Sufficient public health and health system capacities are in place to identify, isolate, test and treat all cases, and to trace and quarantine contacts
- Outbreak risks are minimized in high vulnerability settings, such as long-term care facilities (i.e. nursing homes, rehabilitative and mental health centres) and congregate settings
- Preventive measures are established in workplaces, with physical distancing, handwashing facilities and respiratory etiquette in place, and potentially thermal monitoring
- Manage the risk of exporting and importing cases from communities with high-risks of transmission
- Communities have a voice, are informed, engaged and participatory in the transition

Options for level 0

1. Maintain protection level 0 position at 50
2. Increase protection level 0 position to 200

Option 2 was selected. The numbers who may attend a marriage, civil partnership, or funeral (and reception/post-funeral gathering), in an area affected by protection level 0 is much closer to normality and contributes to protection of human rights (particularly ECHR Article 8 rights). For example, based on the evidence available about the average number of guests at a wedding, this limit would be significantly higher than the 78-80 guests reported to be the average for a wedding in the UK.⁴⁷ The same information about average attendees at funerals is not available.

This offers a combined approach based on venue capacity with a maximum upper limit. This approach helps to ensure that numbers should not exceed a certain limit and therefore can be more easily managed with physical distancing. The Scottish Government continues to assess how a capacity based approach with no upper limit would work in the context of the risks associated with such events, and the need to ensure numbers can be safely managed in the wide variety of locations where marriages and civil partnerships can take place.

Consultation with representatives of the wedding industry has suggested that a minimum of 50 attendees was essential to ensure the viability of their businesses. This would have positive impact on the wedding industry and the associated supply chains with couples having more choice over their wedding, allowing them share a significant day with more family and friends. It would also contribute to the protection of the ECHR Article 1, Protocol 1 rights of businesses and suppliers. However, the maximum upper limit would only apply where a venue has the capacity to hold 200 people with physical distancing.

Funeral-related feedback from the public throughout the pandemic has suggested that adhering to the 20 person limit has been extremely difficult, and this would permit greater flexibility for people to pay their respects (capacity of venues with physical distancing permitting). In particular, this would enhance people's opportunities to mourn their loved one at a funeral service with larger numbers of people than previously set at Level 0, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights. We remain mindful, however, that many funeral venues, particularly crematoriums and funeral directors premises, will not be able to accommodate this many people with physical distancing.

⁴⁷ [The UK Wedding Report 2018 | Wedding Advice | Bridebook](#)

Options for level 1

1. Maintain protection level 1 position at 20
2. Increase protection level 1 position to 100

Option 2 was selected. Increasing the number of people able to attend a wedding or funeral to 100 reflects our progress in suppressing transmission of the virus and the vaccination programme. This limit would be higher than the reported average number of guests at a UK wedding as referenced above and contributes to the protection of human rights (particularly ECHR Article 8 rights).

This offers a combined approach based on venue capacity with a maximum upper limit. This approach helps to ensure that numbers cannot exceed a certain limit and therefore can be more easily managed with physical distancing, while the Scottish Government continues to assess how a capacity based approach with no upper limit would work in the context of the risks associated with such events, and the need to ensure numbers can be safely managed in the wide variety of locations where marriages and civil partnerships can take place.

Consultation with representatives of the wedding industry has suggested that a minimum of 50 attendees was essential to ensure the viability of their businesses. This would have positive impact on the wedding industry and the associated supply chains with couples having more choice over their wedding, allowing them share a significant day with more family and friends. It would also contribute to the protection of the ECHR Article 1, Protocol 1 rights of businesses and suppliers. However, the maximum upper limit would only apply where a venue has the capacity to hold 100 people with physical distancing.

Funeral-related feedback from the public throughout the pandemic has suggested that adhering to the 20 person limit has been extremely difficult, and this would permit greater flexibility for people to pay their respects (capacity of venues with physical distancing permitting). In particular, this would enhance people's opportunities to mourn their loved one at a funeral service with larger numbers of people than previously set at Level 1, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights. We remain mindful, however, that many funeral venues, particularly crematoriums and funeral directors premises, will not be able to accommodate this many people with physical distancing.

Options for level 2

1. Maintain protection level 2 position at 20
2. Increase protection level 2 position to 50

Option 2 was selected. Increasing the number of people able to attend a wedding or funeral to 50 reflects our progress in suppressing transmission of the virus and the vaccination programme. This limit would increase the number permitted to attend bringing it closer to the reported average number of wedding guests at a UK wedding as referenced above and contributes to the protection of human rights (particularly ECHR Article 8 rights).

The offers a combined approach based on venue capacity with a maximum upper limit. This approach helps to ensure that numbers cannot exceed a certain limit and therefore can be more easily managed with physical distancing, while the Scottish Government continues to assess how a capacity based approach with no upper limit would work in the context of the risks associated with such events, and the need to ensure numbers can be safely managed in the wide variety of locations where marriages and civil partnerships can take place.

Consultation with representatives of the wedding industry has suggested that a minimum of 50 attendees was essential to ensure the viability of their businesses. This would have positive impact on

the wedding industry and the associated supply chains with couples having more choice over their wedding, allowing them share a significant day with more family and friends. It would also contribute to the protection of the ECHR Article 1, Protocol 1 rights of businesses and suppliers. However, the maximum upper limit would only apply where a venue has the capacity to hold 50 people with physical distancing.

Funeral-related feedback from the public throughout the pandemic has suggested that adhering to the 20 person limit has been extremely difficult, and this would permit greater flexibility for people to pay their respects (capacity of venues with physical distancing permitting). In particular, this would enhance people's opportunities to mourn their loved one at a funeral service with larger numbers of people than previously set at Level 2, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights. We remain mindful, however, that many funeral venues, particularly crematoriums and funeral director premises, will not be able to accommodate this many people with physical distancing.

Options for level 3

1. Maintain protection level 3 position at 20
2. Increase protection level 3 position to 50

Option 2 was selected. Increasing the number of people able to attend a wedding or a funeral to 50 reflects our progress in suppressing transmission of the virus and the vaccination programme. This limit would increase the number permitted to attend bringing it closer to the reported average number of wedding guests at a UK wedding as referenced above and contributes to the protection of human rights (particularly ECHR Article 8 rights).

The offers a combined approach based on venue capacity while retaining a maximum upper limit. This approach helps to ensure that numbers cannot exceed a certain limit and therefore can be more easily managed with physical distancing, while the Scottish Government continues to assess how a capacity based approach with no upper limit would work in the context of the risks associated with such events, and the need to ensure numbers can be safely managed in the wide variety of locations where marriages and civil partnerships can take place.

Consultation with representatives of the wedding industry has suggested that a minimum of 50 attendees was essential to ensure the viability of their businesses. This would have positive impact on the wedding industry and the associated supply chains with couples having more choice over their wedding, allowing them share a significant day with more family and friends. It would also contribute to the protection of the ECHR Article 1, Protocol 1 rights of businesses and suppliers. However, the maximum upper limit would only apply where a venue has the capacity to hold 50 people with physical distancing.

Funeral-related feedback from the public throughout the pandemic has suggested that adhering to the 20 person limit has been extremely difficult, and this would permit greater flexibility for people to pay their respects (capacity of venues with physical distancing permitting). In particular, this would enhance people's opportunities to mourn their loved one at a funeral service with larger numbers of people than previously set at Level 3, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights. We remain mindful, however, that many funeral venues, particularly crematoriums and funeral director premises, will not be able to accommodate this many people with physical distancing.

We had considered whether not permitting alcohol or allowing a modest amount of alcohol only at wedding receptions or post-funeral gatherings at Level 3 would provide another mitigation to reduce the potential risk of transmission in a context where numbers were increasing. Feedback from the wedding industry would suggest that receptions are not viable if alcohol is not permitted. A number of couples in correspondence had also expressed concerns about this approach for weddings. On balance, allowing alcohol gives the venue more control over the alcohol consumption of wedding guests. This reflects the

feedback we have received from some stakeholders about guests likely attempting to circumvent this restriction by consuming alcohol before the event or bringing alcohol to the event. Some stakeholders also suggested that permitting alcohol at receptions was crucial for the viability of their businesses. No feedback was received from the funeral sector on the issue of alcohol, however it was noted that defining and operationalising a modest amount of alcohol (as opposed to simply allowing or banning alcohol) would be very difficult in the context of a post-funeral gathering. Accordingly, it was determined that alcohol will be permitted at wedding receptions and post-funeral gatherings at Level 3. Furthermore, the limit on numbers attending life events at Level 3 intends to mitigate against the additional risks associated with permitting alcohol consumption.

Other mitigating factors such as a curfew as set out in regulations were considered favourable in mitigating the potential for increased risk from alcohol consumption. Advice on the responsible use of alcohol at these events will be set out in guidance.

Options for level 4

1. Marriage/Civil Partnerships: Maintain protection level 4 position at 5/6
2. Marriage/Civil Partnerships: Increase protection level 4 position to 20

Option 2 was selected. Increasing the number of people able to attend a marriage to 20 reflects the position prior to 8 January 2021. Following the imposition of 'stay at home'/enhanced level 4 measures, the numbers permitted were reduced to the legal minimum for a temporary period. This option will, based on our informal consultations minimise impacts on those religious and belief bodies that may require more people to attend than the legal minimum and ensure that the impact is proportionate to the circumstances and risk of transmission associated with level 4. Receptions continue to not be permitted at level 4.

No change to the funerals position was considered for level 4, as the current restrictions for funerals in relation to the assessed risk at level 4 remain proportionate. Further, given Option 2 was selected for weddings, this brings level 4 restrictions for life events into alignment.

Recommendation

Table 2: Summary of Recommendation for Revised Protection Levels

	Proposal	Indicative dates (subject to data)
Level 4	20 (no receptions/post-funeral gatherings)	Now (for funerals) 26 April (for marriage)
Level 3	50	26 April
Level 2	50	17 May
Level 1	100	Likely from early June
Level 0	200	Likely from end June

Ministers determined that increasing the indicated number of people able to attend a marriage, civil partnership, or funeral (subject to physical distancing) at each level was a proportionate and appropriate given the significant progress of the vaccination programme in Scotland and in consideration of the data available.

These numbers will be set out in guidance and will be kept under review to ensure our approach balances proportionality with assessed risk to public health.

On balance, retaining the numerical cap reflects the risks associated with gatherings of family and friends such as in indoor spaces, where ventilation and physical distancing may be less easy to maintain, where people come together to spend prolonged periods of time in close proximity. The cap also provides an articulable upper limit on attendance (because life events are not covered by the general restrictions on gatherings and households, the cap on numbers is the only protection that exists to limit the potential harm of very large numbers gathering at venues where there is very large capacity even with physical distancing). Overall, placing a maximum cap on the number of people able to attend at each protection level provides clarity and consistency and ensures that numbers can be safely managed in all types of venue.

The number of people and households able to gather for the purpose of marriage, civil partnership, funerals (and receptions/post-funeral gatherings) is greater than the number of people who are able to gather to socialise indoors and outdoors more generally, in recognition of the importance of these life events and the human rights engaged. There is a wide range of mitigations in use to reduce the risk of transmission at marriages, civil partnerships⁴⁸ and receptions⁴⁹, funeral services⁵⁰ and post-funeral gatherings⁵¹ such as the use of face coverings and cleaning. These will continue, in addition to the limit on numbers.

In relation to weddings, the recommendation will benefit couples who will have more choice over their wedding and will be able to spend a significant life event with more friends and family. It will benefit the wedding industry who have previously indicated that 50 people at receptions would ensure the viability of their businesses. We also understand the particular importance of consumer confidence to the weddings sector. Importantly, the indicative dates set out in the timetable (subject to data) will also allow the couples and businesses to plan ahead accordingly.

In relation to funerals, with this recommendation larger numbers of people (than were permitted during lockdown and Level 4) would be able to mourn their loved one at a funeral service, potentially allowing for positive health and wellbeing effects, and protection of ECHR Article 8 rights. It also demonstrates a step-wise opening up of funerals, responding to public desires to hold funerals which can accommodate greater numbers of family and friends. However, the retention of maximum limits allows funeral directors to point to ongoing limits on attendance set by the Scottish Government, in order to support families to manage expectations. The cap would also apply to post-funeral gatherings, where non-pharmaceutical interventions (such as physical distancing) may not be followed and other behaviours associated with higher risk of transmission (e.g. alcohol use) are often present.

This recommendation has an impact on the hospitality sector, where weddings, civil partnerships, and receptions/post-funeral gatherings can be hosted. Separate Impact Assessments are being prepared in relation to the restrictions on hospitality

The proportionality of the restrictions on life events will be kept under review including in the wider context of other easing of restrictions.

Scottish Firms Impact Test:

PART 1: FUNERALS

⁴⁸ [Coronavirus \(COVID-19\): wedding ceremonies and civil partnership registrations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-weddings-and-civil-partnerships/pages/1-1-introduction-and-what-to-expect-when-you-attend-a-wedding-or-civil-partnership-when-you-are-attending-a-wedding-or-civil-partnership.aspx)

⁴⁹ [Coronavirus \(COVID-19\): tourism and hospitality sector guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-tourism-and-hospitality/pages/1-1-introduction-and-what-to-expect-when-you-attend-a-wedding-or-civil-partnership-when-you-are-attending-a-wedding-or-civil-partnership.aspx)

⁵⁰ [Coronavirus \(COVID-19\): guidance for funeral services - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-funeral-services/pages/1-1-introduction-and-what-to-expect-when-you-attend-a-wedding-or-civil-partnership-when-you-are-attending-a-wedding-or-civil-partnership.aspx)

⁵¹ [Coronavirus \(COVID-19\): tourism and hospitality sector guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-for-tourism-and-hospitality/pages/1-1-introduction-and-what-to-expect-when-you-attend-a-wedding-or-civil-partnership-when-you-are-attending-a-wedding-or-civil-partnership.aspx)

For funerals, our understanding of the current restrictions in rUK in relation to level 3 equivalents is in the table below. This table should be treated with caution as restrictions in rUK may change at short notice.

	Funeral Services	Commemorative Events	Post- funeral gatherings (e.g. wakes)
England*	30 people can attend	15 people can attend	15 people can attend
Wales	<p>The number who are able to attend a funeral or life events indoors is limited by the capacity of the venue where it is being held, once physical distancing measures have been taken into account.</p> <p>To ensure that the maximum number that can attend is observed attendance must be by invitation only</p>	See funeral services	<p>From 26 April – permitted <i>outdoors</i> with maximum 30 people (no alcohol permitted)</p> <p>From 30 May – permitted <i>indoors</i> with maximum 15 people (no alcohol permitted)</p>
Northern Ireland	Maximum attendees subject to a risk assessment of the particular venue		Not permitted

*We are aware these attendance caps are currently under review

It is not foreseen that the easing of funeral restrictions in Scotland will disadvantage Scottish companies within the UK, or elsewhere in Europe.

We are mindful that the continued existence of COVID-19 restrictions overall may continue to constrain the income that hospitality venues could make from hosting post-funeral gatherings. This impact is difficult to quantify, however is considered necessary and will be kept under review. However, the easing of restrictions to allow higher numbers and the hosting of post-funeral gatherings in Level 3 may benefit these hospitality venues, compared with the banning of post-funeral gatherings during lockdown/Level 4.

PART 2: MARRIAGES AND CIVIL PARTNERSHIPS

For marriage and civil partnership, our understanding of the current restrictions in rUK in relation to their timetable for easing restrictions is set out below. This should be treated with caution as restrictions in rUK may change at short notice.

England

- From 8 March
Marriages and civil partnerships can take place with 5 or 6 people
- From 12 April
Marriages, civil partnerships and receptions can take place with up to 15 people
- From 17 May
Marriages, civil partnerships and receptions can take place with up to 30 people
- From 21 June
All limits on weddings and other life events removed.

Wales

- Marriages and civil partnerships can take place based on venue capacity
- From 26 April
Outdoor receptions can take place with up to 30 people

Northern Ireland

- Step 1
Marriages and civil partnerships can take place with up to 25 people
- Step 2
Increased number of people at indoor and outdoor marriages and civil partnerships with risk assessment
- Step 3
Receptions can take place with limited numbers and mitigations
- Step 4
No upper limit on receptions determined by risk assessment
- Step 5
Live music and dancing at receptions

We do not have data on the proportion of businesses in the wedding industry operating in Scotland that are registered in Scotland.

Couples may try to marry in countries where higher numbers of people can attend, or they may try to marry in Scotland if they can have a higher number here. However, marriages and civil partnerships are usually planned some time in advance. Local authority registrars have reported that a number of people are continuing to travel to Scotland from the Common Travel Area for the purpose of marrying or entering a civil partnership.

Competition Assessment:

PART 1: Funerals

The proposed measures help to ease restrictions and increase the size of funerals allowed under each level (except level 4 where there is no change). These changes reduce constraints on providers, bringing them closer to pre-pandemic and pre-market intervention levels. While there will be a negative impact on smaller venues in terms of their ability to compete with larger venues, this is result of reintroducing competitive pressures and market segmentation that smaller venues faced prior to the pandemic.

In practice, these easings also go some way to bringing consumer choice back to pre-pandemic levels. We acknowledge that only certain venues will be large enough to hold the maximum allowable number (and this may be associated with greater need for travel and/or greater costs to the family). However, if a smaller local venue could not cater for a family's needs prior to the pandemic, the family would have had to travel to a different, or larger, venue then as well.

PART 2: MARRIAGES AND CIVIL PARTNERSHIPS

We do not hold information on how many venues in Scotland will be able to accommodate the increased limit on the number of people permitted at protection levels 0-3 while having to maintain 2 metres physical distancing between households. Registrars have advised that many registration offices cannot accommodate 50 people with physical distancing.

The proposed measures help to ease restrictions and increase the size of marriage ceremonies, civil partnerships and receptions allowed under each level. These changes reduce constraints on providers, bringing them closer to pre-pandemic and pre-market intervention levels. While there will be a negative

impact on smaller venues in terms of their ability to compete with larger venues, this is result of reintroducing competitive pressures and market segmentation that smaller venues faced prior to the pandemic.

In practice, these easings also go some way to bringing consumer choice back to pre-pandemic levels. We acknowledge that only certain venues will be large enough to hold the maximum allowable number (and this may be associated with greater need for travel and/or greater costs to the family). However, if a smaller local venue could not cater for a couple's preferences prior to the pandemic, they and their guests would have had to travel to a different, or larger, venue then as well.

In terms of the immediate impact for couples and venues, marriages, civil partnerships and receptions are usually planned some time in advance. Therefore, should couples wish to rearrange their wedding to a bigger venue that may permit a higher number of people to attend, they may not be able to do so within a short timeframe.

Consumer Assessment:

The restrictions which have been in place and the continuing restrictions under the protection levels have resulted in higher costs to businesses for example venues which must comply with COVID-19 hygiene requirements. These costs may have been passed onto consumers. For example, officials are aware that the costs of live-streaming a funeral so people can watch the service from home have been passed to families.

BRIAs for relevant sectors (such as hospitality sector) should be referred to.

There is no expected impact on markets for essential services such as energy or water. The policy also does not involve storage or increased use of consumer data. Further, the policy is unlikely to increase opportunities for unscrupulous suppliers to target consumers as a consequence of the strategic framework.

Test run of business forms:

N/A

Digital Impact Test:

N/A

Legal Aid Impact Test:

N/A

Enforcement, sanctions and monitoring:

The guidance pertaining to the numbers permitted to attend marriages, civil partnerships and funerals will continue to be reviewed regularly. 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:

As noted above, Ministers took the decision to increase the maximum cap (with physical distancing) on attendance at funerals and marriages, and to permit post-funeral gatherings and wedding receptions.

Following the policy change in the updated Strategic Framework, and associated changes in the Regulations, related guidance has been reviewed and updated to support the implementation of the measures. Stakeholder feedback from the funeral and wedding industries and clinical advice (and for funerals, the view of the Senior Inspector for Burial, Cremation, and Funeral Directors), has informed this review.

The Scottish Government will keep these measures under review, and engage regularly with affected stakeholder groups including registrars, religious and belief bodies, and funeral industry stakeholders.

Summary and recommendations:

Introduction

This BRIA has examined the life event (marriages, civil partnerships and funerals) measures within the updated Strategic Framework, in light of significantly reduced rates of COVID-19 infection (and associated data related to deaths and hospitalisations) and progress on vaccination rollout across the Scottish population.

Background

The Scottish Government's updated Strategic Framework includes a package of measures which collectively are designed to suppress transmission of the virus while remaining proportionate and appropriate.

Whilst this BRIA is focused on life events, measures are also being taken to assist in moving the nation back to a normal way of living, in as safe a way as possible and continuing to minimise opportunities for transmission across a range of settings. It is important to view these measures in the context of this wider package of actions.

Options Appraisal

The updated Strategic Framework includes a range of actions designed to suppress virus transmission while allowing people to safely return to normal ways of living. In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

More detailed discussion of the options for life events under the updated Strategic Framework that were considered by Scottish Ministers (considering the position in Scotland and across a range of activities as a whole) is contained within the main body of this document.

Level 0

For marriage, civil partnerships and funerals, permitting up to 200 people to attend would have a positive economic impact on hospitality and other venues through their revenue generation, employment of staff, and on supply chain businesses, as it would increase the numbers permitted at Level 0 from a maximum of 50 people at the implementation of the original Strategic Framework to a maximum of 200 people. However, this could increase the risk of transmission. This level would apply in the context where COVID-19 no longer poses significant threat to public health with maximum vaccine rollout but some ongoing public health measures likely remain in place.

Ministers have determined that easing to 200 maximum attendees (with physical distancing) is a proportionate and appropriate recommendation given:

- the significant progress of the vaccination programme in Scotland and in consideration of the COVID-19 data available
- the need for people able to mourn their loved one at a funeral service with larger numbers of people, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights
- the need for couples to share a significant day with more family and friends, in recognition of the importance of marriage to couples and society more widely
- the benefits of reopening an important part of Scotland's economy, the wedding industry and associated supply chains.

Level 1

For marriage, civil partnerships and funerals, permitting up to 100 people to attend would have a positive economic impact on hospitality and other venues through their revenue generation, employment of staff, and on associated supply chains, as it would increase the numbers permitted at Level 1 from a maximum of 20 people at the implementation of the original Strategic Framework to a maximum of 100 people. However, this could increase the risk of transmission. This level may apply in the context where there is very low prevalence of the virus and widespread vaccination and other mitigations in use to reduce the risk of transmission.

Ministers have determined that easing to 100 maximum attendees (with physical distancing) is a proportionate and appropriate recommendation given:

- the significant progress of the vaccination programme in Scotland and in consideration of the COVID-19 data available
- the need for people able to mourn their loved one at a funeral service with larger numbers of people, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights
- the need for couples to share a significant day with more family and friends, in recognition of the importance of marriage to couples and society more widely
- the benefits of reopening an important part of Scotland's economy, the wedding industry and associated supply chains.

Levels 2-3

For marriage, civil partnership and funerals permitting up to 50 people to attend would have a positive economic impact on hospitality and other venues through their revenue generation, employment of staff, and on associated supply chains, as it would increase the numbers permitted at Levels 2-3 from a maximum of 20 people at the implementation of the original Strategic Framework to a maximum of 50 people. However, this could increase the risk of transmission. There is a wide range of mitigations in use to reduce the risk of transmission at life events, including the use of face coverings and cleaning, which will continue, in addition to the limit on numbers.

Ministers have determined that easing to allow 50 maximum attendees (with physical distancing) is a proportionate and appropriate recommendation given:

- the significant progress of the vaccination programme in Scotland and in consideration of the COVID-19 data available
- the need for people able to mourn their loved one at a funeral service with larger numbers of people, potentially having positive health and wellbeing effects, and protecting ECHR Article 8 rights
- the need for couples to share a significant day with more family and friends, in recognition of the importance of marriage to couples and society more widely

- the benefits of reopening an important part of Scotland's economy, the wedding industry and associated supply chains.

Level 4

For marriage, civil partnership and funerals permitting up to 20 people to attend would have a positive impact on those religious and belief bodies that have a preference or requirement for more people to attend than the legal minimum. This is also consistent with the approach taken prior to 8 January 2021 and aligns with funerals. Receptions continue not to be permitted in areas affected by Level 4 restrictions.

Ministers have determined that easing to 20 maximum attendees (with physical distancing) at a marriage and civil partnership is a proportionate and appropriate recommendation given:

- the significant progress of the vaccination programme in Scotland and in consideration of the COVID-19 data available
- the need to minimise any discriminatory impact on those religious and belief bodies that may require more people to attend than the legal minimum

Ministers have determined that maintaining 20 maximum attendees (with physical distancing) at a funeral service (and continuing to ban post-funeral gatherings at this level) is proportionate and appropriate given the assessed risk from COVID-19 in level 4.

Title of proposal: Protective Levels Framework – Places of Worship

Purpose and intended effect:

Background:

Places of worship can currently open for communal and individual worship. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”) require a person who is responsible for a place of worship to minimise risk of exposure to coronavirus. This includes taking appropriate mitigation measures to maintain the safety of those attending a place of worship, such as ensuring that social distancing is observed all times, both within the building and its surrounding vicinity, between persons from different households.

The current restrictions within places of worship are a result of the evolving risks posed by the Covid-19 virus, further to the National lockdown in March 2020.

Timetable of background:

27 March 2020: Following Royal Assent of the UK Coronavirus Bill, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the 2020 Regulations”) came into force on 26 March and were laid in the Scottish Parliament on 27 March. Places of worship closed, except for certain uses (for funerals, broadcast an act of worship, or provide essential voluntary services or urgent public support services. Marriages and civil partnerships could take place only where there was a pressing need from 27 March 2020).

May 2020: Move to Phase 1 of Routemap - POW still remain closed except for the limited purposes set out in the 2020 Regulations (see Reg 4).

- **June 2020:** Move to Phase 2 of Routemap – The 2020 Regulations were amended to bring into force changes to restrictions on POW from 22 June by expanding permitted uses of a place of worship to include “for prayer or contemplation by an individual either alone or with members of their household”. Places of worship allowed to reopen for individual prayer under physical distancing rules and hygiene safeguards. Guidance issued on the safe opening of places of worship for individual prayer and contemplation.

July 2020: Places of worship could reopen with maximum cap of 50, taking appropriate mitigations.

August 2020: Face coverings become mandatory in places of worship (apart from those leading worship). Allowed faith-based education for children to resume within places of worship (such as Madrassa). Allowed activity organised by a place of worship and gatherings where the gathering is for the purpose of an act of worship.

September 2020: Restrictions on indoor gatherings, but no changes to places of worship (household prayer groups not permitted)

October 2020: Five Level Strategic Framework issued. From 4 Nov places of worship capacity dependent on location and protection level: For levels 0-3, capacity 50, but cap of 20 at level 4.

December 2020: Proposals were issued to relax restrictions around Christmas, but the detection of the more transmissible variant of the Covid virus resulted with them being withdrawn. All of mainland Scotland put in Level 4 from 26 December. This restricted maximum occupancy to 20 in all POW located on mainland.

January 2021: Places of worship in level 4 closed for communal worship, 8th January 2021 (subject to exemptions, as previously noted, above). (Places of worship located in level 3 areas could remain open, subject to a maximum capacity of 50, social distancing and appropriate mitigation measures in place).

March 2021:

- Judicial Review by a group of church leaders challenging the lawfulness of the closure of places of worship in Scotland, particularly with regard to Article 9 of European Convention on Human Rights (ECHR -right to freedom to manifest your religion) was successful.
- Prior to the outcome of the Judicial Review, revised Regulations were prepared to include the reopening of places of worship in level 4 areas, on 26 March, in time for major religious festivals (including Easter, Passover, Ramadan). However, as a result of the Review findings, this was brought forward to 24 March. The revised Regulations also enabled people to leave a level 4 area to attend their usual place of worship, which previously was not permissible. This had the benefit of permitting travel for a number of people that reside close to their usual place of worship, although it is in a different local authority. In addition, it enables people to attend a place of worship when there is none of their faith or denomination in the local authority they reside.
- Revised guidance at this time also allowed 50 people to attend a place of worship (subject to social distancing) in a level 4 area, compared to 20, previously.

April 2021:

- Changes to guidance were implemented which allowed for the use of each self-contained space/area within a place of worship to each have a maximum capacity of 50, (subject to social distancing), including access to and from. This enables a higher overall number of people to attend a place of worship at any one time.
- The revised Strategic Framework Protective Levels was published on 13 April, with the expected timetable for easing restrictions from 26 April.

Objective:

The revised Strategic Framework Protective Levels was published on 13 April 2020, with the a timetable for easing restrictions from 26 April. From this date, the standardised cap on attendance at places of worship is due to be lifted, with the capacity being based on a physical distancing capacity to building arrangement, which could result in capacities exceeding 50 in each individual self-contained communal space. This can be calculated in accordance with supplementary guidance published by Scottish Government, by dividing the space to be occupied by an occupancy load factor. Other methodologies may be used provided that they are demonstrably effective methods of calculating Covid Occupancy capacity limits. By utilising previously revised guidance, this could result in capacities exceeding 50 in each self-contained communal space in places of worship, subject to social distancing.

Clear signage should be provided when entering the place of worship what the maximum capacity should be.

The aim of allowing the maximum number of people to attend a place of worship in safety, to manifest a religion or belief in worship, teaching, practice and observance (Article 9 ECHR) by using proportional measures, including giving due consideration of the size and layout of each place of worship, whilst implementing and maintaining appropriate safety mitigations measures, by those responsible for individual places of worship.

Rationale for Government intervention:

Following the Judicial Review of the decision to close places of worship, the Scottish Government considered it necessary to adjust its approach to venue capacities so that all similar settings are treated consistently.

As well as the physical distanced capacity of the building there are also wider risks that need to be considered. There are some places of worship that have large capacities (even with physical distancing)

and there are risks associated with large numbers of people entering and leaving the building at the same time, using communal facilities and potentially travelling on public transport. In that regard the risks are the same as events which are not permitted until level 2 and even then require additional approval above a particular cap.

Consultation:

Public Consultation:

Scottish Government officials regularly consult with Faith Group stakeholders during weekly meetings, regarding on-going issues and possible/proposed changes to guidance, including the Strategic Framework protection levels. These meetings have enabled us to develop and agree on practical guidance, that might be suitable for most, in the circumstances. Representatives from the Faith Group had highlighted on numerous occasions that they considered the previous 50 person maximum cap (in levels 0-3 and 20 in level 4) as very restrictive, as many larger places of worship could accommodate many more people, safely, whilst complying with social distancing. It was highlighted that this not only restricted attendance at worship, but resulted in loss of monetary offerings, although no specific amounts are currently available.

The Cabinet Secretary for Communities and Local Government and National Clinical Director, Professor Jason Leitch, have taken part in a number of these engagement sessions. Throughout the lockdown period, the Cabinet Secretary reiterated that we would continue to engage with faith communities and will prioritise the re-opening of places of worship and allowing increased numbers being able to attend as soon as this could be safely achieved.

However, the judicial review on the decision to close places of worship highlighted the vulnerabilities of having discrepancies of capacity levels between different, yet comparable, uses of buildings and settings. To address this, Ministers considered that the most proportionate approach to take, given the current and projected state of the pandemic, was that buildings such as places of worship should follow physical distancing guidance without caps.

Business:

Enabling more people to attend places of worship, is likely to result in more donations collected during services. Data is currently not available as to how much revenue is collected from “open plate” collections and how this was affected as a result of restrictions in attendance during Covid restrictions, however it is understood that some places of worship now encourage the uptake of standing orders for means of providing donations, instead of cash.

A number of places of worship hire out halls and rooms to groups and bodies not affiliated to them, e.g. support groups, exercise classes, etc. The methodology for calculating capacity numbers attending places for worship is unlikely to affect such income, as sector specific legislation/guidance will be relevant to the purpose of the hire. Again, no details of indicative loss of earnings are available at the time of preparing this assessment

However, with the easing of restrictions, hiring of accommodation will be able to recommence for various uses., There may be limitations to the numbers attending depending on the use of the hire, which may have a financial impact on the person/group paying for the hire, but it will be the decision of individual places of worship to determine rental charges, which could be more or less previous rates.

Places of worship do not feed through any of the main channels of direct economic impact but have important social benefits. There will be some economic impact in supporting the wider activities they undertake/enable.

Currently there are two Scottish Government third sector funds that the places of worship may be eligible to apply to; the Community & Third Sector Recovery Programme and the Enabling Neighbourhoods & Communities Fund.

Options:

When considering what the maximum capacity should be within a place of worship, Scottish Government officials have regularly engaged with faith community representatives and have discussed the following options:

- Maintain the previous maximum cap level of 20 for places of worship located in level 4 (subject to being able to maintain 2m social spacing between individuals from different households, and taking suitable mitigation measures) regardless of size and layout.
- Maintain a maximum capacity level of 50 for all places of worship located in levels 0-3, (subject to being able to maintain 2m social spacing between individuals from different households, and taking suitable mitigation measures) regardless of size and layout.
- Introduce revised maximum capacities, depending on protection level (Dependent of being able to maintain 2m safe distancing):
 - Level 0 – no limit
 - Level 1 – 200
 - Level 2 – 100
 - Level 3 – 75
 - Level 4 – 50
- Exclude children under the age of 12 from the capacity numbers
- By allowing any self-contained communal space within a place of worship being used for worship to have its own individual capacity level in line with the level maximum capacity for the specific protection level, on condition that access to and from these areas are completely isolated and ideally times staggered.
- Duplicate capacity levels applicable for live events guidance.
- Remove maximum caps in their entirety and base the maximum capacity solely on being able to provide a 2m spacing between individuals from different households.
- Similar to the above option, reduce the spacing between households to 1m
- the need to allow people travel to their usual place of worship, should it be located in another local authority with a different protection level.

Agreed capacities

Our engagement with faith communities in November/December 2020 indicated a rising frustration that existing restricted numbers continued to be applicable, regardless of the size of a venue and whether the place of worship was located within protection levels 0 & 1. Representatives of faith groups with a number of large venues were of the opinion that such buildings could safely accommodate many hundreds of people with ample space for appropriate physical distancing and good ventilation. Increased frustration was also highlighted about no similar capacity restrictions being applied to places of entertainment. Preparations were made to seek Ministerial approval for allowing greater numbers in differing protection level areas and not counting children aged 12 and below, but the emergence of the new more transmissible B1.1.7 variant of the virus meant there was very limited headroom to make any easings within the levels framework, and the proposals were withdrawn.

Following lockdown measures that came into force of 8 January 2021, the Scottish Government was planning to reopen places of worship in level 4 on Friday 26 March, further to encouraging signs of the impact of the vaccination programme, however places of worship re-opened on 24 March 2021, following a legal judgment.

Prior to reopening, there was deliberation as to what the appropriate capacity level should be for places of worship located in level 4. Considering the awareness that the faith communities now had of the threats of the virus and the mitigation measures that were in place, it was considered that a 50 person capacity would be safe at this time. Prior to this, concerns had also been raised that a number of people were

unable to attend their usual places of worship due to restrictions on travel, as they resided in an adjoining local authority. A four harms assessment considered minimal risk if Regulations were revised to allow this to happen, so they were subsequently amended to end prior to the reopening date.

Subsequent to this, two of the mainstream faiths in Scotland provided examples of guidance they had produced to show how by using different, separated, areas within an individual place of worship, it would be possible to consider them in a similar way as different buildings, and the maximum cap of 50 could be applicable to each area, when appropriate mitigation measures were in place. Further sharing of ideas and agreement of mitigation measures resulted with the proposal being incorporated into guidance on 9 April 2021.

With the introduction of the revised Protective Levels Framework on 26 April, the occupancy capacity of places of worship will be based on a calculation of the capacity of each self contained room or building in a place of worship to accommodate physical distancing of 2 metres. This could result in a capacity exceeding 50 in each self-contained communal space. This calculation will now be calculated for each place of worship informed by supplementary guidance published by Scottish Government, by dividing the space to be occupied by an occupancy load factor. Other methodologies may be used provided that they are demonstrably effective methods of calculating Covid Occupancy capacity limits. This alternative approach will be significantly important to many places of worship which traditionally consist of fixed seating arrangements and whose attendees often include household groups, and also those faiths which involve kneeling and movement. By using different methodology, it may be possible to show that additional numbers can attend, compared to solely considering a fixed square meterage per person.

The revised Protection Levels Framework effectively meets the aims of safely enabling increased capacities to attend places of worship, depending on their size and layout, on condition that appropriate safety mitigation measures are in place.

Scottish Firms Impact Test:

N/A

Competition Assessment:

N/A

Consumer Assessment:

N/A

Test run of business forms:

N/A

Digital Impact Test:

N/A

Legal Aid Impact Test:

N/A

Enforcement, sanctions and monitoring:

Persons responsible for places of worship will be responsible for complying with requirements within the Regulations, monitoring attendance numbers and ensuring appropriate Health & Safety mitigation measures are in place, observed and maintained. Certain requirements which apply to those responsible for places of worship under the Regulations can be enforced by Police Scotland if they are not complied with.

Implementation and delivery plan and post-implementation review:

Measures have already been implemented to guidance to allow more people to attend places of worship, as noted above. With the approval of the revised Protective Levels Framework, it is anticipated that the capacity of some larger places of worship should be able to increase safely, from 26 April 2021.

Summary and recommendations:

Incorporate proposed changes to Protective Levels Framework.

Title of proposal: Public libraries

Purpose and intended effect:

This Business and Regulatory Impact Assessment (BRIA) is focused on the set measures in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Regulations”), as last amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 (“the amending Regulations”), which impact on Public Libraries. The Regulations reflect Scotland’s Strategic Framework. This BRIA addresses the impact of all measures in the Regulations that impact on Public Libraries, including changes to the Regulations made by the amending Regulations.

Under the Regulations, Public Libraries are permitted to fully operate in some of the five “Levels” (Level 0 to Level 3) but will be closed, except for specific permitted operations, in Level 4 areas.

As well as the measures in legislation, there is “Safer Workplaces Guidance for Public Libraries⁵²” which sets out recommended measures and operational changes for each Level of the Strategic Framework. The guidance outlines what is permitted across all Levels and emphasises in particular the importance of undertaking a robust and ongoing risk-based assessment with full input from workforce representatives, and to keep all risk mitigation measures under regular review so that public libraries continue to feel, and be, safe. Each public library service will need to translate this into the specific actions they need to take using this guidance document as a guide.

Measures contained within the Regulations which impact on Public Libraries need to be viewed within the broader context of the package of measures within each Level, as a number of measures that are in place in a given Level are not specific to Public Libraries. The Strategic Framework, and therefore the Regulations, 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 relative restrictions implemented as necessary.

The Strategic Framework takes a four harms approach to considering which interventions are introduced at each Level through assessment of:

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

Policy Objectives:

The objective of the Regulations, so far as they concern Public Libraries, is to ensure that the operation of Public Libraries is appropriate to the level of COVID-19 risk within the Local Authority area, also taking into account the other restrictions in place. Any restrictions on operations 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.

Libraries are devolved to local authorities, who will decide when and what services will be offered, subject to safe workplace guidance. We understand that that the reopening of libraries is likely to take the form of a phased approach.

The key measures relating to **Public Libraries** are set out in the table below:

Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
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⁵² <https://www.gov.scot/publications/coronavirus-covid-19-public-libraries-guidance/>

Open	Open	Open	Open	Closed with the exception of: click and collect and limited bookable IT
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Background: The Safer Workplaces Guidance for Public Libraries was originally published on 14 July 2020 for the safe reopening of public library services and has remained under review ever since. The guidance covers the areas public libraries will need to consider as part of their planning for a restart and ongoing service delivery while minimising the transmission of the virus, including: assessing risk; workforce planning; deliveries, distribution and visitors; training and compliance; and an operational guidance and checklist covering recommended physical distancing and enhanced hygiene measures.

On 9 October 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Restrictions) Regulations 2020 (“the additional temporary restrictions regulations”) 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 (“the Regulations”) implement the new Strategic Framework and came into effect on 2 November.

To minimise the risk of spreading the virus, the Scottish Government announced further tightening of restrictions from 5 January 2021. Mainland Scotland moved from Level 4 to a temporary Lockdown (an enhanced version of Level 4 with greater restrictions), with new guidance to stay at home except for essential purposes.

On 5 March 2021, the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021, amended the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, easing the restrictions on libraries to ensure they can open for the purpose of providing free computer and internet access, where an appointment has been booked in areas under Level 4 restrictions.

On 23 March 2021, the Minister for Business, Fair Work and Skills, signed off a full review of the Safer Workplaces Guidance for Public Libraries, with input and final sign off from senior colleagues at Public Health Scotland.

The Regulations will be amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021 (“the amending Regulations”), which will come into force on 26 April 2021. The amending Regulations revise certain aspects of the restrictions and measures that apply in the five Levels. Some, but not all, of these will impact on how Public Libraries can operate.

Rationale for Government intervention: Any restrictions introduced by regulations on operations 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.

Consultation:

The guidance considers the vital role that partnership working will play in the delivery of the safe restoration of library services and links to the fair work statement signed by the Institute of Directors, SCDI, STUC,

COSLA and SCVO. The statement underlines the collaborative approach needed between employers, unions and workers to ensure workplaces can operate safely.

Public Consultation: Given the need to respond quickly, there has not been time to undertake a public consultation on the measures covered by the requirements of the amended Regulations.

Business: Public Libraries Sector (including Trade Unions) Consultation: The Scottish Government has facilitated the development of regulations and guidance in an open and collaborative way so that it is in reflect of, and responsive to, the views of public libraries stakeholders and trade union representatives, including: The Scottish Government Library and Information Council, The Association of Public Libraries Scotland, the Chartered Institute of Library and Information Professionals Scotland, VOCAL, SOLACE, COSLA, GMB and Unison.

Within Scottish Government the following government agencies and departments have been consulted in the preparation of the guidance: Safer Workplaces team, Organisational Readiness, Health Protection Scotland Liaison team, Track and Trace team, Scottish Government Legal Directorate, and Communications.

Options:

This section sets the options which have been considered with regards to restrictions on and measures in place to allow the safe operation of Public Libraries. In both options, the restrictions in Levels 0-3 were the same; the only difference between Options 1 and 2 are the restrictions in Level 4.

We will continue to work constructively with the sector to explore and assess what this practically means for libraries in all Levels, on issues such as dwell time, and any suggested changes that are approved will be reflected in the guidance.

Across all Levels there are a number of mitigating actions required or advised, including:

- Wearing of face coverings
- Good hygiene, cleaning and ventilation practices
- Restricting the number of visitors in the libraries
- Click and Collect and Home Delivery services
- Online services

Option 1: Closed at Level 4 only (Open in Level 4 for computer/ internet services only)

Allowing Libraries to reopen in levels 0-3. In areas under Level 4 restrictions, libraries can open for the purpose of providing free computer and internet access, where an appointment has been booked.

Level 0-1

- Enhanced hygiene and physical distancing;
- Face coverings;
- 72 hour book quarantine;
- Access for browsing the library;
- No dwell time;
- Possibility for unregulated children's activities, where the 2 metre physical distancing measures can be adhered to and guidance followed (this does not include regulated childcare settings which are registered with the Care Inspectorate or other registration body);
- Computer access available by prior booking;
- Limited access to study spaces, recommended pre-booked only;
- Click and Collect and Home delivery services;
- Online services.

Level 2-3

- Enhanced hygiene and physical distancing, including stricter limits on numbers of people in building to ensure physical distancing of 2 metres;
- Face coverings;
- 72 hour book quarantine;
- Refreshed risk assessments for staff areas and other high risk public areas;
- Limited access for browsing the library, recommended pre-booked only (emphasis on click and collect where possible for level 3 only);
- No unregulated activities or dwell time;
- Limited access for computer use, recommended pre-booked only;
- Limited access to study spaces, recommended pre-booked only;
- Click and Collect and Home delivery services;
- Online services.

Level 4

- No public access to library building except for limited access for computer use, pre-booked only;
- Monitoring and recording of numbers of individuals using the service;
- Enhanced hygiene and physical distancing;
- Face coverings;
- 72 hour book quarantine;
- Click and Collect and Home delivery services;
- Online services.

Option 2: Closed Level 4 only (Click and Collect and Home delivery services only)

Allowing Libraries to reopen in levels 0-3. In areas under Level 4 restrictions, libraries remain closed to the public and can only offer click and collect services.

Level 0-1

As per Option 1.

Level 2-3

As per Option 1.

Level 4

As per Option 1 but there would be no public access to library buildings for any reason (no access for computer use).

Sectors and groups affected

The above options will affect a wide range of sectors and groups in Scotland but at a high level we expect that they will primarily affect:

- Library users
- Library sector – 543 public libraries in Scotland (including mobile libraries)⁵³
- Library workers – A significant part of the workforce is made up of part-time staff and volunteers.

Assessing Options

⁵³ Scottish Parliamentary Question, available at: [Motions, Questions and Answers Search - Parliamentary Business : Scottish Parliament](#)

Throughout, the options we considered have sought to develop the right package of measures to reduce circulation of the virus whilst limiting wider health, economic and social harms.

The Scottish Government overall objective is to get all parts of the country to level 0 or level 1 and remain there if we can. Within these levels, we would expect to see low incidence of the virus with isolated clusters, and low community transmission. Broadly, these levels are the closest we can get to normality. The measures in place are similar to those during the summer of 2020, including all the existing mitigations in place including mandatory wearing of face coverings, enhanced hygiene, cleaning and ventilation practices and limiting the numbers of visitors on premises at any one time.

We recognise that the closure of Public Libraries in Level 4 and restrictions on their use (Levels 0 to 3) may impact on certain rights of library users, including Articles 8, 9 and 11 and Article 2 of Protocol 1 of the European Convention of Human Rights, depending on the use made of public library spaces by individuals (for example, as a space to congregate for certain purposes or to provide educational services for schools). In all Levels the offer of online and click and collect services (and, in the case of Option 2, bookable computer use) mitigates against this interference to some extent.

We recognise the impact closing libraries has on individuals but this has to be balanced against the greater risk of virus transmission which comes from social interaction. Libraries were only closed in Level 4, which is when infection rates are at their highest. As we are conscious of the social needs that library services provide allowed them to continue with the provision of Click and collect services, plus IT and internet access on an appointment basis in recognition of those without access.

Levels 0- 3

At Levels 0-3, there is no difference between the two options as the benefits of keeping libraries open outweigh the associated health harms. Libraries do not just provide access to reading material. They play a crucial role in providing access to IT, improving attainment, supporting children in the early years, helping engage older people, and empowering our communities. We are aware that libraries can be an important place of informal social contact, and an important community source of wider information including health information. Libraries being open can help children who want to learn, while positively impacting educational opportunities and reducing the attainment gap and can also provide a social setting for older people and help tackle social isolation.

Level 0-1

Levels 0-1 are designed to be sustainable for longer periods. Within these levels, we would expect to see very low incidence of the virus with isolated clusters, and low community transmission.

The low incidence of the virus at this level coupled with the effectiveness of mitigation measures mean that the sector can operate safely and the economic and social harms associated with closure of the sector are avoided.

Level 2-3

Within Levels 2 and 3, we would expect to see increased incidence of the virus, with multiple clusters and increased community transmission. There would be a graduated series of protective measures to tackle the virus, focusing on key areas of risk – broadly, indoor settings where household mixing takes place with less, or less well-observed, physical distancing and mitigations. The measures would be introduced on the basis of evidence and preferably be intended to be in place for relatively short periods, and only for as long as required to get the virus down to a low, sustainable level.

Allowing libraries to remain open would have economic benefits in terms of individuals who rely on these services. The success to date of the vaccination process limits any associated risks compared to previous periods throughout the pandemic and the economic and social harms of closing libraries are no longer outweighed by the public health risk.

Assessing options for Level 4 restrictions

Within this level we would expect to see very high or rapidly increasing incidence, and widespread community transmission which may pose a threat to the NHS' capacity to cope. It is likely that this level would see the introduction of measures close to a return to full lockdown. Measures would be designed to be in place for a short period, to provide a short, sharp response to quickly suppress the virus. Measures introduced in level 4 would be to control and suppress the spread of the virus, reduce transmission rates, hospital admissions, deaths, allow key services to continue such as education and avoid overwhelming of the NHS.

Option 1

Allowing libraries to offer limited bookable IT, would benefit individuals who rely on these services (for essential personal finance, such as checking and paying bills and to contact family and friends), individuals from lower income backgrounds - especially in areas of high SIMD (Scottish Index of Multiple Deprivation), and older people, as well as children or parents who would need to access relevant material.

This would address issues around access to IT services for those that may not have access to at home and the disadvantage of digital exclusion during the pandemic. A report by the Carnegie Trust indicated that the lack of access to IT services during the first lockdown in 2020 caused stress and anxiety for service users. IT access has been allowed for university and college libraries in Scotland at level 4.

We understand that at level 3 and below, just over half of public libraries had been reopened by October 2020 by local authorities, with reduced services and limited hours to allow for deep cleaning, and not all local authorities may choose to provide this service. We would therefore not expect high numbers of users, but this would have a high positive impact on wellbeing for those able to access these services.

At level 4 there is high or rapidly rising incidence of the virus and widespread community transmission which constitutes a public health risks. However clinicians advised that the measure looks proportionate and clinically appropriate, especially given its role in supporting the most vulnerable.

Option 2

Not allowing libraries to offer limited bookable IT within a level 4 area is likely to impact on general wellbeing, increasing the risks of harm from social isolation, because of the disadvantage of digital exclusion during the pandemic. Individuals from lower income backgrounds - especially in areas of high SIMD (Scottish Index of Multiple Deprivation) and older people, may rely on internet access in public libraries for essential personal finance, such as checking and paying bills and to contact family and friends. Lack of access could also potentially see negative impacts on children and younger people who use IT access in libraries for educational purposes.

As part of a broader package of closures across sectors where transmission is likely to occur, this measure would have positive impact on transmission rates and spread of the virus. However this measure does not involve high numbers of users, so it wouldn't significantly impact on transmission rates

Scottish Firms Impact Test: This measure will only impact the public sector and not private businesses.

Competition Assessment: This measure will not distort private sector competition.

Consumer Assessment: The guidance recognises and supports those who work and those who volunteer in public libraries. There was general support for this focus from stakeholders. Costs of restoring services in relation to employees and volunteers, where appropriate, must be considered.

Test run of business forms: No introduction of any statutory business forms.

Digital Impact Test: N/A.

Legal Aid Impact Test: No legal aid impacts expected for these specific measures.

Enforcement, sanctions and monitoring: Libraries are devolved to Local Authorities who will decide when and what services will be offered, subject to safe workplace guidance. Local Authorities are aware of the Libraries guidance. Any changes are communicated directly to the sector.

Implementation and delivery plan and post-implementation review:

Guidance has been put in place to support the implementation of the measures contained within the Strategic Framework. We are continuing our constructive engagement with the sector and the guidance remains under constant review.

Summary and recommendations:

This BRIA has examined the amended regulations within each Level of the Strategic Framework for the Public Libraries. 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 the Public Libraries sector, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view the amended regulations in the context of this wider package of actions.

Given that across both options, the measures for levels 0-3 were the same, we had to consider the impact of the options outlined at Level 4. Option 1 which allows libraries to reopen at Level 4, offering limited bookable IT access, is seen as the most impactful in terms of the wider socio and economic positive impacts. This was judged as proportionate in terms of risks of transmission, especially given its role in supporting the most vulnerable. As outlined above, we would not expect high numbers of users, but this would have a high positive impact on wellbeing for those able to access these services.

Title of proposal: Requirement to wear a face covering

Purpose and intended effect:

The aim of this Assessment is to analyse the continuing impact of the face covering provisions within the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.

These provisions have not been altered by the amendments in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.21) Regulations 2021.

Amendments to the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into effect on 10 July 2020 that made it mandatory for face coverings to be worn in retail settings, with additional regulations in force from 9 October 2020 that made it mandatory for face coverings to be worn in storage and distribution facilities, and for face coverings to be worn in communal staff areas in both retail and storage and distribution facilities.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 came into force on 2 November 2020 which made the use of face coverings mandatory in a large range of indoor public places, including indoor communal workplaces, and on public transport.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.21) Regulations 2020 will implement the system of levels of protection which are set out in the updated Covid-19 Strategic Framework, published on 22 February 2021. The provisions relating to the wearing of face-coverings will remain unaltered, with face-coverings remaining mandatory in the majority of indoor public places.

This BRIA considers the impact of continuing use of face coverings in indoor communal settings, including workplaces, in order to mitigate transmission and widen usage and compliance. A separate BRIA has been produced for the provisions in the Regulations impacting on public transport, including the mandatory use of face coverings on public transport.

The current exemptions and reasonable excuses for not wearing a face covering will be retained.

Policy Objectives:

Given the progress in suppressing the virus and with the vaccination campaign, the planned of easing restrictions is on track to allow some workplaces to re-open by the end of April, 2021. However, continued adherence to other non-pharmaceutical interventions (including face coverings and physical distancing) are important precautions to ensure we continue to suppress the virus, even if people have been vaccinated.

The policy aim to extend the use of face coverings is because there is evidence that face coverings add some additional value in preventing the spread of COVID-19, especially in crowded and less well ventilated spaces, and where 2-metre distancing is not possible. Additionally, even though vaccination is having a significant impact on reducing the number of deaths, we still do not have conclusive evidence on the vaccines' efficacy in reducing transmission. For this reason, we consider that there is a continuing need to require the wearing of face coverings.

The onus to wear a face covering falls on the individual rather than the employer or business owner. The employer/business owner does not have a legal duty to implement or enforce the use of face coverings in the workplace, and therefore is not liable to a fixed penalty notice should staff or customers not comply with the regulations. The duty to comply remains on the individual.

The Scottish Government guidance on face coverings is available at www.gov.scot/collections/coronavirus-covid-19-guidance.

Rationale for Government intervention:

While it is recognised that face coverings alone cannot protect from COVID-19, the continuous mandatory use of face coverings in certain communal work place settings, in conjunction with physical distancing and hand hygiene measures, is likely to play a role in reducing the risks of transmission of the virus.

Furthermore, as more restrictions are eased, the concept of ‘risk compensation’, or increasing risky behaviour after adopting a protective measure, should not be employed to argue against or delay the increased use of face coverings. Available evidence does not support concerns that wearing face coverings adversely affects compliance with other measures, for example, hand hygiene.

Consultation:

We have engaged with stakeholders on face coverings through the regular meetings of the Scottish Government Safer Workplaces Team and the Local Authority Environmental Health Officers.

Additionally, we have carried out engagement with different stakeholders, such as Food Standards Scotland, the Health and Safety Executive, and Unions, and with wider stakeholders through Scottish Government officials, to assess how to best promote the use of face coverings in the workplace (in addition to the rest of non-pharmaceutical interventions) and mitigate the risks posed by the highly transmissible B.1.1.7 variant.

Through these discussions, and internal consultation, the Scottish Government ruled out the possibility of expanding the mandatory use to all workplace settings, regardless of whether employees are able to maintain a physical distance of 2 metres, on that basis that (i) employers already have a responsibility to ensure employee safety in line the Health and Safety Regulations; (ii) it would represent disproportionate interference in workplace dynamics; and (iii) implications on enforcement. As a result of this, the Scottish Government assessed that higher adherence to face coverings within the workplaces could be addressed through the general workplaces guidance to advise that, where relevant, the use of face covering in all indoor workplaces should be used in addition to a partition or if a distance of 2-metre can be maintained, if individuals desire.

We continue to engage with internal Scottish Government policy and communication teams for their advice and expertise on how this will effect different sectors.

Options:

Option 1 – Continue the mandatory usage of face coverings in certain indoor spaces (including indoor communal workplace area).

Costs – We have received no information about the direct impact of the mandatory wearing of face coverings on footfall in indoor public spaces. However, concerns have been raised by close contact service providers on the limits to the services that can be delivered as a consequence of mandatory face coverings in retail and they have commented on the issue of interacting with customers who are exempt from wearing face coverings

There is no legal duty on the employer to supply face coverings so there are no additional costs to business or organisations, although it is accepted that some businesses may purchase face coverings on behalf of their customers or employees.

Benefits – Reduced risk of infection and transmission of the virus in conjunction with physical distancing and hygiene measures. Reduced anxiety for employers, employees and wider population as result. The benefits would also be experienced even by those who are exempt from the mandatory requirement.

Retaining the range of indoor settings in which face coverings are mandatory would therefore benefit all people, including those described above, by making them feel safer and reducing their risk of infection. Moreover, increased mandating of face coverings will assist the wider acceptance within society of face coverings as one of a combination of measures which, together, will help suppress transmission of COVID-19.

Option 2 – Stop face coverings from being mandatory in certain indoor spaces (including indoor workplace areas)

Costs – Potential increase in risk of infection and transmission of the virus, which could in turn increase the need to strengthening restrictions and closing some sectors and businesses for a period of time. Employees, customers and citizens may feel anxious about working or attending increasingly busier environments without everyone being required to wear a face covering.

A Scotland poll from August 2020 shows that the majority of people who took part in the poll agreed they feel more comfortable going into a shop, café or restaurant if there are visible signs that it is following the guidance. Likewise, data from March 2021 showed that the vast majority of respondents perceive protective behaviours in supermarkets as important. Therefore, stopping face coverings from being mandatory in indoor public spaces could, potentially, slow the recovery of the sector.

The cost of people becoming ill and not being able to go to work and having to self-isolate. The cost on other public services.

Benefits – Some members of the public and employees may perceive there to be benefits from not having the added inconvenience of having to wear a face covering in communal spaces in their workplace.

Option 3 – Amending the regulations to make it mandatory for employees to wear a face-covering in an indoor setting when there is a partition or 2-metre distancing is in place

Costs – May elevate the importance of face-coverings above the other mitigations, such as physical distancing.

Face-coverings are most effective at reducing transmission when people are closer together. The regulations currently recognise this through inclusion of the exemption. Removing it may be viewed as an excessive interference.

Stakeholders flagged issues around enforcement, and could have a negative impact on some workplace dynamics. An alternative of updating sectoral guidance to recommend that workers who wish to wear face-coverings even if other mitigations are in place are supported in doing so.

Benefits – may help further reduce the risk of infection or transmission in indoor workplace settings, particularly in respect of the more transmissible B.1.1.7 variant. It could provide clarity to employees and employers when they are required to wear face-coverings at work, by reducing the exemptions. Guidance could also help provide clarity, without a need to change the regulations.

Option selected – Option 1

Scottish Firms Impact Test:

No such test has been undertaken for the purposes of these amendments. However, in respect of the Retail Guidance, the Retail Guidance Sub-group comprise representatives from a diverse range of

Scottish retail trade unions and leadership bodies, ensuring that differing views and issues have been addressed.

Competition Assessment:

The expansion of mandatory face coverings to indoor communal areas in workplace settings will have no effect on Scottish companies as it applies to all employers.

Consumer Assessment:

The quality of goods and services available is unlikely to be impacted as a result of this change in the regulation. That said, some services may differ from those received before the COVID-19 crisis as result of wider public health protection measures.

Continuing the mandatory use of face coverings to indoor communal areas in work place settings could impact employees with health conditions or disabilities. Learning disabled or autistic adults may also struggle to understand and/or comply with new measures. There is a reasonable excuse not to wear a face covering where the person cannot put on, wear or remove a face covering because of any physical or mental illness or impairment or disability or wear one without severe distress.

People with breathing difficulties or physical conditions making face covering usage difficult may find the mandatory usage of face coverings in indoor communal areas challenging. However, under such circumstances, they may be exempt from these regulations.

People suffering from mental health conditions such as anxiety or panic disorders may also find the mandatory use of face coverings in indoor communal areas a challenge. However, there is a reasonable excuse not to wear a face covering where it would cause difficulty, pain or sever distress or anxiety.

Individual discretion should be applied in considering the use of face coverings where the wearing of a face covering is difficult on grounds of any physical or mental illness or impairment or disability. Similarly, discretion is allowed for people who have a health condition, disabled people and those who need to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise) where wearing a face covering would be inappropriate because it would cause difficulty, pain or severe distress or anxiety or because it cannot be worn in the proper manner safely.

Communications around the policy will be considered to ensure that the Regulation meets the tests of advancing equality and fostering good relations. The media campaign will, for example, remind people that there are some important exemptions and that we should avoid judging people who appear not to be complying and treat one another with kindness.

Test run of business forms:

No statutory forms will be created.

Digital Impact Test:

All documents created will be word based documents created by the SG officials and uploaded to the SG website by the SG's web editors.

Legal Aid Impact Test:

This measure itself does not in itself create any new legal rights.

Enforcement, sanctions and monitoring:

The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider BRIA for COVID-19 legislation.

Implementation and delivery plan and post-implementation review:

As with other public health measures that are in place, we will keep face covering legal requirements under review in the context of transmission of the virus in Scotland and in the light of the any emerging evidence on face coverings and any other options that may be available in the future to limit the spread of COVID-19.

Summary and recommendations:

The risk of COVID-19 infection and transmission in the community has been increasing as wider sectors of the economy re-open. The use of mandatory face coverings to indoor communal settings in workplaces, in conjunction with physical distancing and hand hygiene measures, is likely to significantly reduce the risks of transmission of the virus protecting employers, employees and wider society.

It is therefore recommended that this measure continues to aid safer workplaces and existing public health efforts.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Michael Russell

Date: 26 April 2021

Minister's name: Michael Russell

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