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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 209**

**The Health Protection (Coronavirus) (Restrictions  
and Requirements) (Local Levels) (Scotland)  
Amendment (No. 23) Regulations 2021**

**Amendment of schedule 3: Level 2 restrictions**

- 8.**—(1) Schedule 3 (level 2 restrictions) is amended in accordance with this regulation.
- (2) In paragraph 1(2)(1) (closure of premises), omit—
- (a) head (j), and
  - (b) head (k).
- (3) In paragraph 5(2) (restricted opening hours for food and drink businesses in a Level 2 area), omit—
- (a) sub-paragraph (3)(c), and
  - (b) sub-paragraph (4).
- (4) In paragraph 8(2) (requirement to take measures to minimise risk of exposure to coronavirus in Level 2 area), after head (a) insert—
- “(aa) a child under 12 years of age and any other person,”
- (5) In paragraph 12(3) (restriction on public gatherings outdoors in a Level 2 area)—
- (a) in sub-paragraph (1)(d)—
    - (i) in sub-head (xii), omit “which is not a public procession”,
    - (ii) after sub-head (xiv), insert—

“(xv) an organised public procession which meets the conditions specified in sub-paragraph (5),”
  - (b) in sub-paragraph (3), for “sub-paragraph (1)(d)(xii) and (xiii)” substitute “sub-paragraph (1)(d)(xii), (xiii) and (xv)”,
  - (c) after sub-paragraph (4)(4), insert—

“(5) For the purpose of sub-paragraph (1)(d)(xv), the specified conditions are that the organised public procession—

    - (a) consists of not more than 50 persons, and
    - (b) has a duration of not more than 1 hour.”
- (6) In paragraph 13(1)(za)(5) (restrictions on gatherings in private dwellings in a Level 2 area)—
- (a) for “four” substitute “six”, and

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(1) Paragraph 1(2) was relevantly amended by [S.S.I. 2020/347](#), [S.S.I. 2021/193](#) and [S.S.I. 2021/202](#).  
(2) Paragraph 5 was relevantly amended by [S.S.I. 2021/193](#).  
(3) Paragraph 12 was relevantly amended by [S.S.I. 2021/166](#).  
(4) Sub-paragraph 4 was inserted by [S.S.I. 2021/166](#).  
(5) Paragraph 13(1)(za) was inserted by [S.S.I. 2021/193](#).

- (b) for “two” substitute “three”.
- (7) After paragraph 13 (restrictions on gatherings in private dwellings in a Level 2 area) insert—

## “PART 4

### Restrictions on stadia and live events

#### **Capacity limits on stadia and live events in a Level 2 area**

**14.**—(1) A person must not organise a live event which takes place wholly or mainly outdoors at which—

- (a) more than the specified (outdoors seated) number of persons are in attendance at any point in time during the event, where seating capacity is provided for each person attending, or
- (b) more than the specified (outdoors free-standing) number of persons are in attendance, where no seating capacity is provided,

unless sub-paragraph (3) applies.

(2) A person must not organise a live event in a Level 2 area which takes place wholly or mainly indoors at which more than the specified (indoors) number of people are in attendance at any point in time during the event, unless sub-paragraph (3) applies.

(3) This sub-paragraph applies where—

- (a) the event is either—
  - (i) ticketed, or
  - (ii) otherwise subject to an effective capacity control measure,
- (b) the event takes place at a location, premises or other setting whose entrances and exits are controlled for the purpose of crowd and capacity management, and
- (c) a local authority has approved a capacity exemption application (see paragraph 15) in respect of the event.

(4) For the purpose of this paragraph the following types of persons are not to be included when counting the number of persons in attendance at a live event—

- (a) persons who are working or providing voluntary or charitable services at the event, and
- (b) children under 5 years of age.

(5) In this paragraph, “specified (outdoors seated)”, “specified (outdoors free-standing)” and “specified (indoors)” mean as specified for each scenario in Level 2 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

#### **Applications for exemption from capacity limits in a Level 2 area**

**15.**—(1) A person may apply to a local authority for an exemption from a requirement imposed by paragraph 14(1) or (2).

(2) In this schedule, an application under sub-paragraph (1) is referred to as a “capacity exemption application”.

- (3) A capacity exemption application may relate to a single event or a series of events.
- (4) A local authority may not charge any fee in respect of a capacity exemption application.
- (5) A capacity exemption application must be in writing and must include—

- (a) a description of the type of event (or events) proposed,
- (b) a live event plan for the event (or events) proposed, and
- (c) a risk assessment for the event (or events) proposed, including what measures are proposed relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events).

### **Decisions on applications for exemption from capacity limits in a Level 2 area**

16.—(1) A local authority must, in deciding whether to approve a capacity exemption application, have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event, and
- (b) any other relevant circumstances.

(2) A local authority may—

- (a) approve the application without conditions,
- (b) approve the application with conditions relating to the prevention or minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (c) refuse the application.

(3) A local authority must, as soon as reasonably practicable after deciding an application, notify the person who made the application of—

- (a) its decision, and
- (b) the reasons for its decision.

### **Guidance on applications for exemption from capacity limits in a Level 2 area**

17.—(1) A person specified in sub-paragraph (3) must have regard to any guidance issued by the Scottish Ministers about capacity exemption applications.

(2) Guidance issued by the Scottish Ministers may—

- (a) make different provision for different cases or descriptions of case,
- (b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).

(3) The persons specified for the purpose of sub-paragraph (1) are—

- (a) a person applying to a local authority for an exemption from a requirement imposed by paragraph 14(1) or (2), and
- (b) a person determining an application.

### **Revocation and variation of approval of exemption from capacity limits in a Level 2 area**

18.—(1) Where a local authority approves a capacity exemption application, it must keep its approval under review.

(2) Where it has approved a capacity exemption application without conditions (whether under paragraph 16 or this paragraph), a local authority may—

- (a) add conditions relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), or
- (b) revoke its approval of the application.

(3) Where it has approved a capacity exemption application but imposed conditions (whether under paragraph 11 or this paragraph) relating to the minimisation of the risk of the incidence and spread of coronavirus arising from the event (or events), a local authority may—

- (a) vary any such condition,
- (b) add any such condition,
- (c) remove any such condition, or
- (d) revoke its approval of the application.

(4) A local authority must, in deciding whether to make a decision under sub-paragraph (2) or (3), have regard to—

- (a) the risk of the incidence and spread of coronavirus arising from the event (or events), and
- (b) any other relevant circumstances.

(5) A local authority may make a decision under sub-paragraph (2) or (3)—

- (a) of its own accord, or
- (b) on application by the person who made the capacity exemption application.

(6) A local authority must, as soon as reasonably practicable after making a decision under sub-paragraph (2) or (3), notify the applicant of—

- (a) its decision, and
- (b) the reasons for its decision.

### **Scottish Ministers' power to call in applications for exemption from capacity in a Level 2 area**

**19.**—(1) The Scottish Ministers may direct a local authority that a capacity exemption application must be referred by a local authority to the Scottish Ministers for decision.

(2) A local authority must notify the Scottish Ministers when it receives a capacity exemption application where the capacity applied for exceeds the maximum capacity for that category of event specified for Level 0 in the Strategic Framework Protection Levels Table published by the Scottish Ministers.

(3) Where an application is referred to the Scottish Ministers for decision paragraphs 16 and 18 apply, subject to the modification that any reference to a local authority is to be read as a reference to the Scottish Ministers.

### **Offence of breaching conditions of approval to hold larger live event in a Level 2 area**

**20.**—(1) It is an offence for a person to contravene a condition imposed—

- (a) by a local authority under paragraph 16(2)(b), 18(2) or (3), or
- (b) by the Scottish Ministers by virtue of paragraph 19(3).

(2) A person who commits an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding the statutory maximum.”