

## Final Business and Regulatory Impact Assessment

**Title:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 25) Regulations 2021 – Face covering requirements during close contact services

**Purpose and intended effect:** An addendum to the close contact services Business and Regulatory Impact Assessment, published in April for The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021<sup>1</sup>.

This BRIA focuses on the exemption to face covering regulations that allows close contact clients to remove face coverings for the duration of a treatment in the face covering area.

**Policy Objectives:** To allow close contact services to provide a full range of services, otherwise restricted by face covering regulations which prohibited treatments in the area where a face covering is worn.

**Title of proposal:** Removal of face coverings for specific treatments in a close contact service

**Purpose and intended effect:** To allow close contact treatments to be conducted in the area that is otherwise covered by a face covering.

**Background:** Under schedule 7 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, any person including staff and clients must wear a face covering in places listed in paragraph 3 of schedule 7, such as a premises used for the retail sale of goods or services – including shops and salons. Close contact services, by definition, require close proximity or physical contact between client and practitioner, and as a result clients will often spend prolonged periods in an enclosed space, depending on the treatment. Previously treatments 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) were not offered unless provided from the side of the face or from behind the head where the client is seated. Further guidance states that treatments should not be provided in the area covered by a face covering – even if the client is exempt from wearing a face covering and that area was exposed. These restrictions represent a significant interference on the freedom of businesses to conduct their usual activities and measures require very careful consideration in terms of Article 1, Protocol 1 of the European Convention on Human Rights. These restrictions should only be put in place where we are confident that they are proportionate and necessary to protect public health.

**Objective:** To allow close contact services to provide a full range of treatments, subject to the practitioner taking appropriate mitigation measures to minimise exposure to Coronavirus.

**Rationale for Government intervention:** Many services offered within the close contact sector offer significant health and wellbeing benefits, including supporting clients with chronic health conditions. The considerable social, economic and wider health harms have been weighed against the risk of COVID-19 transmission and the use of mitigations including Type IIR or Fluid Resistant Surgical Face Mask and face shields/goggles. While personal care settings are amongst the highest reported exposure from Test and Protect data, studies into transmission risk considered by SAGE’s EMG Transmission Group<sup>2</sup> found no statistical evidence that personal care settings were associated with increased odds of infection and some evidence that working in close contact services was associated with increased odds of infection. Since face covering legislation was introduced in 2020, many close contact services have been unable to offer treatments in the area where a face covering is worn, significantly impacting on their ability to offer a full set of treatments. Allowing close contact services to offer treatments within the face covering area

<sup>1</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021 - BRIA \(legislation.gov.uk\)](#)

<sup>2</sup> [EMG Transmission Group: Insights on transmission of COVID-19 with a focus on the hospitality, retail and leisure sector, 8 April 2021 - GOV.UK \(www.gov.uk\)](#)

will allow close contact businesses to generate more business/revenue. It may also benefit clients who suffer from chronic health conditions by being able to receive treatments that help manage their condition. But that will of course mean the person receiving the treatment will have to remove their face covering and the person giving the treatment may be very close to their unmasked face.

### **Consultation:**

**Public Consultation:** Officials have received a body of correspondence from individual businesses, clients and close contact staff regarding the delivery of services and the industry at large. Many businesses rely solely on providing treatments that require the removal of a face covering, and therefore, are unable to trade at all, or at full capacity.

**Business:** The Scottish Government conducted a roundtable discussion with industry stakeholders and Government officials to discuss face coverings in close contact services and alternative mitigations. Attendees included the Deputy National Clinical Director and stakeholders including, but not limited to, The National Hair and Beauty Federation, Scottish Massage Therapy Organisation, Scottish Wedding Industry Alliance and the Federation of Small Businesses. Industry data suggests it is negatively impacting 41% of close contact businesses. Data from the National Hair and Beauty Federation shows that the average turnover of hair and beauty businesses in Scotland between 2019 and 2020 was down 57%.

### **Options:**

Three options were considered for the removal of face coverings in a close contact service:

**Option 1:** No change, where regulations will remain that face coverings would continue to be worn at all times within a close contact service. No treatment would be conducted in the area where a face covering is worn, even if the client is exempt and the area is exposed.

**Option 2:** Increased mitigations to allow face coverings to be temporarily removed for treatments in Levels 0-3, where close contact services are permitted to operate. The person giving the service would be required to take appropriate mitigation measures, taking into account Scottish Government guidance. This would bring policy in Scotland into line with the rest of the UK and would allow practitioners to resume working or increase income by expanding the range of treatments they can offer. This option mitigates the economic harm being experienced by businesses in the sector. Face coverings would only be removed by the client/customer for the specific treatment and replaced immediately after, whilst the person giving the service would be required to take appropriate mitigation measures, taking into account Scottish Government guidance. Guidance will state practitioners conducting the treatment must wear a Type IIR or Fluid resistant surgical face mask and a face shield/goggles at all times.

**Option 3:** Increased mitigations to allow face coverings to be temporarily removed for treatments in Levels 0-2 only. This option only slightly mitigates the economic harm being experienced by businesses in the sector, as those in Level 3 will not be able to conduct treatments to the mouth/nose area. In levels 0-2, face coverings would only be removed by the client/customer for the specific treatment and replaced immediately after, whilst the person giving the service would be required to take appropriate mitigation measures, taking into account Scottish Government guidance. Guidance states practitioners conducting the treatment must wear a Type IIR or Fluid resistant surgical face mask and a face shield/goggles at all times.

With the increased roll out of the vaccination programme and the increased mitigation provided through the use of PPE, the decision was taken to proceed with option 2, which allows face coverings to be temporarily removed for treatments.

### **Scottish Firms Impact Test:**

The majority of other personal service activities businesses operating in Scotland are micro and small businesses. It is estimated, based on the Inter-Departmental Business Register 2019 and 2018 Business Register and Employment Survey that there are 5,905 business units in the other personal service activities sector in Scotland, directly employing 30,000 people. Industry data shows that 41% of businesses within the sector operate either a sole beauty or dual services business and are impacted by face covering restrictions. Prolonged restrictions could therefore impact disproportionately on small businesses who may be more susceptible to cash-flow problems.

The National Hair and Beauty Federation Industry Data booklet 2019, reports that the average annual salary of hairdressers and barbers was £17,609. Whilst not representative of all services provided under the broader close contact services categorisation, these salaries fare significantly lower than the Weekly rate of £428.80 which is the Median Gross Weekly Public Sector Earnings for Scotland in 2018<sup>3</sup>, thereby making it likely that workers are in a lower socio-economic stratum.

### **Competition Assessment:**

Close contact services in England, Wales and Northern Ireland are currently able to conduct treatments in the area where a face covering is worn. Anecdotal evidence from the industry is that, following the lifting of travel restrictions, consumers are travelling across the border to access treatments not currently permitted in Scotland.

Within Scotland, independent healthcare facilities registered with and regulated by Healthcare Improvement Scotland (HIS), where aesthetic or cosmetic services such as lip fillers, facial treatments or laser hair removal are provided by healthcare professionals, are not subject to the same regulations as close contact services that prohibit the removal of face coverings. This means that healthcare professionals and any beauticians working within these regulated settings are able to provide treatments in the area worn by a face covering, with the practitioner wearing PPE and following Health Protection Scotland and HIS guidance, in Levels 0-3.

By allowing face coverings to be removed for treatments in a close contact service, the differences both within Scotland and across the UK would be negated.

### **Consumer Assessment:**

Close contact consumers have been unable to access services within the area covered by face coverings since the initial COVID-19 outbreak, unless through independent healthcare facilities regulated by HIS, or by leaving the country. By allowing face coverings to be removed for treatments, consumers will be allowed a greater choice of treatments and will not be negatively impacted in comparison with consumers across the rest of the United Kingdom.

Many services offered within the close contact sector offer significant health and wellbeing benefits. By removing the face covering restrictions for treatments, the services now able to be offered will support clients with chronic health conditions as part of the management of their conditions.

A recent poll of bridal make-up artists (MUA), conducted by My Scotland Wedding, found that 50% of brides would not go ahead with bridal make-up if only eye-make up was permitted with 55% of MUA's having had appointments cancelled as a result of the rules/guidance.

### **Test run of business forms:**

N/A

<sup>3</sup> Scottish Government: Annual survey of hours and earnings: 2018

**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. Associated guidance has also been introduced. 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:**

The implementation of the change is as a result of a post-implementation review to easing of restrictions on 26 April 2021. 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.

**Summary and recommendations:**

As mentioned above, with the increased roll out of the vaccination programme and the increased mitigation provided through the use of PPE, the decision was taken to proceed with option 2, which allows face coverings to be temporarily removed for treatments.

Prior to these regulations, treatments in the area covered by a face covering were not permitted, impacting on the number of services that could be provided by close contact services. The change in regulations, allowing a face covering to be removed to conduct a treatment with practitioners requiring to take appropriate mitigation measures (such as wearing PPE), benefits businesses and consumers by providing greater choice of treatments and the ability to increase revenue.

**Title of proposal: Proposed legislative adjustment to allow organised adult indoor activities for adults to restart at Level 2**

**Purpose and intended effect:**

**Background:** The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 currently restrict indoor public gatherings for organised adult activities until Level 1. However, the law does allow similar indoor events for sporting activities at Level 2, as well as for those under the age of 18 and their respective adult supporters/leaders (from Level 3). The current provisions for training, work, voluntary, wellbeing or charitable services are also being used to undertake organised adult activities.

**Objective:** To forward easing of these restrictions from Level 1 to Level 2.

**Rationale for Government intervention:** The restrictions currently in place have been brought in by Scottish Government legislation – this proposal is to ease these restrictions at an earlier stage than originally outlined.

**Consultation:**

**Public Consultation:** No (precluded by urgent legislative timetable for making this relaxation of restrictions)

**Business:** No (as above, although there have been discussions with the relevant policy areas within Government)

**Options:**

There are two options that have been considered:

Option 1 - Baseline (Level 1) – Only some islands are currently in Level 1, with the majority of Scotland at Level 2. Retaining the current arrangements prevents older people from participating in groups that bring benefits, not only in terms of wellbeing, but to society as a whole (such as the Roundtable). While there may be some argument in retaining the current arrangements on health grounds, other organised activities can be undertaken, including exercise and for training, work, voluntary, wellbeing or charitable purposes.

Due to the large number of organisations that may come under this restriction, and the fact that many can or are operating under other legal allowances, the cost of retaining this option is not known. Many of these activities will be voluntary, with costs borne by participants.

Option 2 - Level 2 – Allowing these meetings to occur in Level 2 brings parity with other activities allowed inside, such as exercise, which is less likely to be undertaken by older people in indoor organised settings (ie Zumba classes) and which potentially pose a greater risk from aerosol infection (older people were more at risk but most will have had vaccinations by the time of the proposed change). It also allows meetings to go ahead that the variables of the Scottish climate may prevent from happening outside.

As with the baseline, due to the large number of organisations that may come under this restriction, and the fact that many can or are operating under other legal allowances, the cost of retaining this option is not known. Many of these activities will be voluntary, with costs borne by participants.

As outlined below, we consider the impact on businesses would likely be fairly negligible but positive for those businesses who provide hobby classes for instance, subject to PDBC capacity. The intention is that business that operate clubs or services that fall within the organised activities (with guidance to clarify

the type of activities) would be able to operate at Level 2. These might be the sole business, or as a part of their main activity – for example, a craft shop that runs sewing bees. The relaxation is not intended for purely social events such as parties etc. or for one off events, but for those participating in organised activities, e.g. routine, regular meetings of clubs and societies for interest groups rather than social purposes. This is chiefly a measure aimed at participants to allow them to meet others who share their interests inside. There is nothing to preclude them from doing so virtually. We consider the relaxation will impact a relatively small number of businesses such as those that run such activities (who are not already operating under other exemptions) or supply this sector i.e. room and facility hire, and they will be the main beneficiaries from an earlier relaxation.

#### **Scottish Firms Impact Test:**

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

It is not considered the relaxation of this restriction will have a discernible impact on the above competitiveness. The easing will come into force on 31 May, (potentially only a week before mainland Scotland and some islands may provisionally move to Level 1 as stated by the First Minister, where this restriction ends under current legislation). The measure is aimed at organised activities undertaken largely by non-profit making or voluntary entities, e.g. Roundtable, , but which may also be operated by businesses (either as their main business or as an additional offer). Easing these restrictions now will benefit any companies that offer such services. As face to face activities, and international travel restrictions are in place, there would unlikely be any impact on Scottish competitiveness either within Europe or the rest of the world (i.e. people from other countries are unlikely to travel to attend a weekly slimming club in Edinburgh). The position is similar for the rest of the UK, as the activities this is aimed to enable are likely to be local in nature and would not be aimed at one off events such as organised social activities, business conferences or work related events. Hospitality businesses that sometimes host such meetings as part of their normal business would still be bound by existing hospitality rules unless facilities are entirely utilised by the meeting; other businesses that hire facilities/provide hospitality will be able to do so.

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

We do not have this data. The range of organisations that may be able to now meet indoors is disparate and varied – from national to regional and a wide range of issues. In addition, no information is available on those that are meeting already under other arrangements e.g. as work, voluntary purposes etc. Likewise, the number that rely on other businesses to undertake these activities (the supply chain) is not known, but is likely to be smaller in relation to the overall number of bodies (as some will utilise public places) and short period of this additional easing.

#### **Competition Assessment:**

We do not consider that this change will impact on any additional competition between businesses, other than that that existed prior to the restrictions coming into place. While areas within Level 3 or higher would not be able to host/run such activities, people from these areas would also be unable to travel to physically participate if not a permitted activity. .

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

No. Groups were able to meet virtually eg Zoom; outside; or on basis of work/volunteering etc. Other measures in place – for example, closure of premises, limited travel options, may have an impact in the number of activities restarting during this limited period. Restrictions introduced may have led to the closure/curtailment of some suppliers/activities, but this BRIA is focussed on the relaxation of these constraints.

- **Will the measure limit the ability of suppliers to compete?**

No. The easing of restrictions will allow a greater number of businesses to undertake or support these activities where facilities are required (to note, or the latter, this will only be where they require third party facilities which will not be in all cases as organisations may have their own facilities.

#### **Consumer Assessment:**

The following sets out the Scottish Government's initial view on the impact on standard questions within the consumer assessment:

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

No – the change is minor in scope.

• **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

**Test run of business forms: N/A**

**Digital Impact Test: N/A**

**Legal Aid Impact Test: N/A**

**Enforcement, sanctions and monitoring:**

Monitoring and enforcement on the existing provision is undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

**Implementation and delivery plan and post-implementation review:**

The Regulations will come into force on Monday, 31 May, with the requirement for adult organised activities not to meet indoors being removed from Level 2 areas from that day. It is Ministers intention to move down the levels in a cautious way, and have previously stated that restrictions, including those within the individual levels will continue to be reviewed to ensure that they are and effective.

**Summary and recommendations:**

**Background**

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus. As the risks of the virus are reassessed and we move through the levels, some restrictions may be eased ahead of initial timetables, where it is considered practical to do so.

This is the case for adult indoor activities.

**Recommendation**

Of the two options considered – leave restrictions as current (baseline) and bring them forward by allowing at Level 2, the recommendation is to bring these into line with other allowable activities at Level 2.

The rationale behind this is that from a health perspective indoor sporting activities are currently permitted in Level 2 which arguably has a potentially greater risk of transmission from aerosol dispersal and adherence. While organised activities do not necessarily have the same direct physical health benefits as exercise there are a number of wellbeing, wider society and educational benefits associated with many activities of this kind. This has raised questions about whether allowing sports at Level 2 but restricting other activities until Level 1 is proportionate and equitable.

While it could be surmised that such meetings could continue to happen outdoors, virtually or in smaller numbers, the same could also be said for sports and exercise that are allowed inside. In addition, the variables of the Scottish climate and people's desire to meet physically (and the benefits this brings) are

also a strong argument for parity with other activities allowed inside, especially as many of these activities can be seated.

Organised activities follow the same rules as indoors organised sport and exercise which would require them to have a Covid Safety officer and follow physical distancing capacity rules. If hosted within hospitality settings, as some organisations do, they would still be bound by existing hospitality requirements.

While business considerations are being taken into account, the wider benefits, including societal and wellbeing are the main drivers for this decision.

### **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: John Swinney**

**Date: 27<sup>th</sup> May 2021**

**Minister's name: John Swinney**

**Minister's title: Deputy First Minister and Cabinet Secretary for Covid Recovery**