

Business and Regulatory Impact Assessment (BRIA)

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 29) Regulations 2021

Title: COVID-19 Limited Easing of Physical Distancing Requirements at Funeral Services

1. Purpose and intended effect:

Objectives

To ease physical distancing requirements at funeral services to facilitate family and close friend involvement in the carrying and/or lowering of a coffin (“taking a cord”).

Background

The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March 2020) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity.

From 14 September 2020 they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020.

A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 came into force and revoked the previous regulations.

Scotland’s Strategic Framework was updated and published on 22 June 2021 and sets out how we plan to restore, in a phased way, greater normality to our everyday lives. It updates the original Strategic Framework to take account of important developments, including:

- new and highly infectious strains of the virus
- progress with the vaccination roll-out

The Scottish Government’s adjusted strategic intent is to: suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future.

The levels system is reviewed regularly 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.

COVID-19 and funerals

Overall, the COVID-19 pandemic has sadly resulted in an increase in the number of COVID-19 deaths in Scotland.

Funerals have been permitted to continue throughout the pandemic due to their immovable nature and the importance of these life events for bereaved families. However, varying levels of restrictions have been in place at different times. Some of those restrictions have been implemented through the Health Protection Regulations and some through guidance. We know that that these restrictions have been difficult for bereaved families, as evidenced by the public correspondence we have received throughout the pandemic.

The Health Protection Regulations require a person who is responsible for a place of worship, carrying on a business or providing a service (e.g. a funeral service) to take reasonable measures to ensure the required distance is maintained between any persons on its premises (except between members of the same household or a carer and the person being cared for). The required distance for funeral services is 2 metres.¹

Policy on carrying and lowering the coffin at funerals

Prior to the pandemic, family members could participate in the carrying or lowering of the coffin (“taking a cord”) as part of the funeral service. They were routinely assisted and directed by funeral directors and/or their staff, or when at burial grounds, burial ground staff, in doing so.

Carrying the coffin usually entails people moving either into or out of the place of commemoration/hearse and may take place both indoors or outdoors. People then face the same direction in two rows separated either side by the coffin, while walking forward.

Each funeral director is able to carry out a risk assessment and there may be circumstances where the family can have a role in carrying the coffin, such as carrying it as a single household, and the options should be discussed with the relatives. In most cases, however, the 2 metre physical distancing requirement prevents this.

Taking a cord at the graveside typically entails people standing together around the grave and lowering the coffin into the grave. This practice takes place outdoors only. In addition to families, funeral director or burial ground staff must be involved in the process as they take the weight of the coffin; the family involvement is more ceremonial in nature.

Because of the current physical distancing requirement to remain 2 metres apart from one another, in most cases staff will only be able to ensure a coffin is carried correctly and safely by undertaking this without family involvement.

The policy change recommended in this BRIA is intended to ease physical distancing requirements at funeral services to facilitate family and close friend involvement in the carrying and/or lowering of a coffin.

Rationale for Government Intervention

On 22 June 2021, The Scottish Government published the [COVID-19: Review of Physical Distancing in Scotland](#). It sets out the outcome of a review of physical distancing in public places, taking account of the science, and the current and projected state of the epidemic in Scotland in light of our vaccine roll-out

¹ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020:
Schedule 1, paragraph 3
Schedule 2, paragraph 4
Schedule 3, paragraph 8
Schedule 4, paragraph 7
Schedule 5, paragraph 8

and the 'four harms' of the virus. In summary, this review concluded that from 19 July (conditional on a review of the epidemic) all areas will move to Level 0 and physical distancing will reduce outdoors to 0 metres and indoors to 1 metre. Further, from 9 August (conditional on over 40s being fully vaccinated and a review of the epidemic) all areas will move beyond Level 0 and all physical distancing regulations will be lifted.

On the same date, the First Minister [announced](#) the Scottish Government's intention to lift some restrictions on marriage and civil partnership and funerals in advance of the indicative dates set out in the physical distancing review. For funerals, this includes carrying the coffin and taking a cord.

The requirement for funeral attendees and funeral sector staff to physically distance by 2 metres from one another at funeral services and the implication this has for family involvement in carrying the coffin or taking a cord at funeral services, was considered as part of a 4 harms assessment, which assesses:

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

Transmission

It is recognised that any reduction in physical distancing between members of different households and staff at funeral services may lead to an increased risk of transmission.

One of the key risks for funerals throughout the pandemic has been 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 and console.

The Environmental and Modelling Group (EMG) says with high confidence that coronavirus transmission is strongly associated with proximity, duration and frequency of contact and community prevalence. The highest risks of transmission are associated with poorly ventilated and crowded indoor settings. In shared indoor spaces, there is no guaranteed safe distance to maintain from others, but maintaining a distance around 2 metres as far as possible and reducing the time of exposure is likely to reduce the risk of infection. **Very short duration closer exposures are unlikely to pose a significant risk, especially outdoors.**²

Broader health and social harms

Relaxing physical distancing restrictions at funeral services for the purpose of carrying/ lowering the coffin, will have societal benefit since these are important life events with long-term significance for people as well as mental wellbeing benefits for those involved. It is clear from correspondence received from members of the public that current restrictions are causing additional distress to mourners at an already very difficult time.

Bereaved families report being distressed at seeing people sitting in pubs and restaurants, attending sporting events and fan zones (with reduced distancing) and sitting in one another's homes without the need to physically distance. Families find it difficult to comprehend why they cannot carry their loved one's coffin or take a cord, given their observations of these other lifted restrictions. Officials are also mindful of potential comparisons which could be made between funerals and marriages (as 'life events'), where certain physical distancing restrictions have been lifted, for example for a person to accompany the bride down the aisle at a wedding.

² Coronavirus (COVID-19): review of physical distancing in Scotland - June 2021

Risk to staff

The relaxation of physical distancing for the purpose of carrying/ lowering the coffin will necessarily require close contact not only between households but also with staff. This introduces a business element for public and private sector (e.g. staff safety).

Individual businesses/authorities will undertake a risk assessment before confirming whether the family can have a role in carrying or lowering the coffin based on local circumstances and, if so, what is needed in order to maintain health and safety and public health measures.

Mitigations

Mindful of the need to ensure restrictions are eased safely, a range of important mitigations will remain in place to limit the risk of transmission when carrying or lowering the coffin:

- Only a small group of people will be involved in carrying or lowering the coffin at each funeral service, for a short duration of time. At all other times during the funeral service, the required distance of 2 metres should be maintained.
- The number of people permitted around the coffin, and whether burial staff and/or funeral director staff will be involved, will be determined by the venue.
- Other vital non-pharmaceutical interventions (NPIs) will continue:
 - Use of face coverings amongst those carrying the coffin indoors will be mandatory. For those lowering the coffin at the graveside outdoors, face coverings will be strongly advised.
 - Good hand and cough hygiene measures

The above mitigations will help ensure that funeral director staff, and the bereaved, are able to engage in the carrying or lowering of the coffin safely, while allowing the removal of restrictions which have been assessed as no longer being proportionate.

Conclusion

Funerals are important events and following funeral restrictions at a time of grief is extremely difficult. Additionally, unlike other events, funerals cannot be delayed.

Whilst recognising the transmission risks for these type of gatherings, the important role a funeral plays in the grieving process, including the significance of ceremonial roles such as carrying/ lowering the coffin, cannot be underestimated. In consideration of the broader health and social harms reported by bereaved families about the specific issue of carrying or lowering the coffin, and the necessity for ensuring restrictions are only kept in place for as long as necessary, the intention will be for the limited easing of physical distancing for the purpose of carrying/ lowering of the coffin to commence from Monday 28th June.

Many of the other existing funeral restrictions, which have not been assessed to cause the same distress and health/social harms to bereaved families, will be eased alongside the indicative timetable in the review of physical distancing.

The ultimate decision about how to proceed with carrying or lowering the coffin will lie with the burial or cremation authority or funeral director, based on their individual risk assessments and local arrangements and mitigations may be put in place.

2. Consultation

Public consultation: Due to short implementation timescales, no public consultation was undertaken. However, correspondence received from the public has been taken into consideration. Public communication continues to demonstrate unhappiness and distress at the current level of restrictions, and people are finding it very tough to accept.

Business consultation: Business consultation has been ongoing throughout all stages of policy change and development in relation to funerals.

The Death Management Advisory Group – A UK industry led group with representation from the funeral sector UK trade associations and the Scottish Government’s Funeral Industry Core Stakeholders Group were consulted briefly within the short timescales available.

Funeral director trade associations are supportive of the policy change.

Burial and cremation authorities are less supportive due to concerns around health and safety duties to staff. Feedback has highlighted the importance of risk assessments and decisions based on local circumstances.

Officials will continue to liaise regularly with these stakeholders to receive feedback about the easing of these restrictions as well as the wider easing of physical distancing over the summer.

3. Options

Option A: No change to current policy

Under this option, physical distancing remains strictly at 2m between households and staff, which, in the majority of cases, prevents family and friends being able to participate in carrying or lowering of the coffin.

The easing of physical distancing will only take place in line with the wider easing set out indicatively in the review of physical distancing.

This option does not address the negative societal and wellbeing impacts experienced by families now.

Option B: limited easing of physical distancing requirements for the purpose of carrying/lowering a coffin at a funeral service

Under this option, an amendment would be made to the Health Protection Regulations, to introduce an exception to the requirement for 2m physical distancing between households and staff, for the sole purpose of carrying/ lowering the coffin. At all other times during the funeral service, the required distance of 2 metres should be maintained.

Individual businesses/ authorities would undertake a risk assessment and could take decisions based on local circumstances.

This option would help address the societal and wellbeing impacts currently being experienced by bereaved families.

Recommendation

Option B was agreed by Cabinet on 22nd June 2021.

Scottish Firms Impact Test:

What proportion of businesses are registered in Scotland?

We do not hold this data.

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

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

The easing of physical distancing for the purpose of carrying/ lowering the coffin may involve close contact between the public and funeral sector staff, which at times will be less than 1 metre. This is because funeral directors or burial ground staff generally take the weight of the coffin as it is being lowered; family involvement is ceremonial.

The main impact on business is the potential for increased risk of staff contracting the virus from members of the public and having to self-isolate. There is a particular risk for staff who have received only one dose or no doses of the vaccine.

Businesses will undertake a risk assessment prior to permitting family and friend involvement and will ultimately be responsible for deciding what options are available. They will also set the conditions for participation, e.g. PPE/face coverings, limited family involvement, hand sanitiser.

What is the likely cost or benefit to business?

There is no economic cost to allowing family or friends to carry or lower the coffin. The benefit is a better experience for families.

Competition Assessment:

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

Businesses will undertake a risk assessment to determine whether family and friends of the deceased can be involved in the carrying/ lowering of the coffin.

If one business in the area permits this, but another does not, it may lead to people arranging their funeral service at the venue which does.

Will the measure limit the ability of suppliers to compete?

No.

Will the measure limit suppliers' incentives to compete vigorously?

No

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

No.

Consumer Assessment:

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

Yes. The measure will provide greater availability of goods related to funeral services. Specifically, burial authorities, cremation authorities and funeral directors may, after completing a risk assessment, be able to offer families the option of participate in the carrying/lowering of the coffin.

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

No

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.

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test: N/A

Enforcement, sanctions and monitoring: Regulations will be amended to support the implementation of the measures.

Implementation and delivery plan and post-implementation review:

Regulations and guidance will be reviewed and updated to support the implementation of the measures. Learning and experiences from local burial authorities and cremation authorities will be shared by the Scottish Government with other burial and cremation authorities.

Summary and recommendations:

Introduction

This BRIA has examined physical distancing measures at funeral services in relation to the carrying/lowering of the coffin by different household groups and staff.

Background

The Scottish Government's strategic framework includes a package of measures which collectively are designed to suppress transmission of the virus. Measures to prevent transmission at funerals have been in place since the start of the pandemic, but are regularly reviewed to ensure they remain proportionate for bereaved families.

Whilst this BRIA is focused on funerals, measures are also being taken to ease restrictions across a range of settings. It is important to view these measures in the context of this wider package of actions, including the intended upcoming physical distancing changes (pending review of the epidemic).

Options Appraisal

Discussion of the options is contained within the main body of this document.

Main recommendation

Implement option B to remove the physical distancing requirement in a very limited way at funeral services, to permit family, friends and staff from different households to carry or lower a coffin at funeral services.

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: 31 August 2021

Minister's name: John Swinney

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