

Final Business and Regulatory Impact Assessment (BRIA)

Title: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 32) Regulations 2021 - Hospitality Protections

Purpose and intended effect:

These Regulations moved all of Scotland to Level 0 and made a number of amendments to current restrictions at Level 0 of the existing Strategic Framework Levels Tables, both easing measures and restricting some slightly.

The Regulations amended the physical distancing requirements set out in the primary Regulations (the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, to 1 metre indoors and outdoors, the same distance that has previously applied to the hospitality sector.

The Regulations also removed the requirement for physical distancing between people in a gathering of up to 15 people outdoors, which will also impact on the capacity of outdoor hospitality settings.

The regulations also restricted food and drink business (subject to certain specified exceptions) and casino trading times at Level 0 to between 04:00 and 00:00, a change on current Level 0, when local licensing rules apply. This reflected the level of risk in these environments, particularly later at night when people may be less likely to follow rules.

This BRIA is focused on the impact that these changes may have on the hospitality sector, including casinos, specifically the change to opening hours.

Background:

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 implemented the Strategic Framework and came into effect on 2 November.

The Strategic Framework set out a levels based approach to reducing transmission of the coronavirus. This included five levels – Levels 0-4 which included measures across a wide number of settings and provided a comprehensive approach to reducing infection rates and suppressing the spread of the virus. Each of the levels was designed to reflect the relative severity of the area it is being applied to, with progressively heightened restrictions implemented as necessary.

There has been a statutory requirement to routinely review the legislation setting out these restrictions and the local authority areas to which they apply since coming into effect. Amendments have been made to the legislation that underpins these provisions where this was deemed necessary and proportionate to limit the spread of the virus. Where 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.

As the impact of the virus has diminished through the application of restrictions and roll out of the vaccination programme, Scotland has been able to gradually and cautiously move down the levels.

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 to which this BRIA relates implemented further changes to current level applications, by moving all of Scotland to Level 0 from Level 1 on 19 July 2021. Scotland's three island authorities, Orkney, Shetland, Na h-Eileanan Siar, all islands in Highland (except Skye) and the following islands within Argyll and Bute - Coll, Colonsay, Erraid, Gometra, Iona, Islay, Jura, Mull, Oronsay, Tiree and Ulva – were already within Level 0, and so these changes impacted on then current restrictions from that date, as these islands would remain at that level.

The above regulations are made under enabling powers in the UK Coronavirus Act 2020.

Changes to hospitality under the Strategic Framework Protection Level 0

The First Minister announced in her statement to Parliament on 13 July that in order for parts of Scotland not already at Level 0 to move to that level there would be some slight modifications to the existing Level 0 measures to which these Regulations (above) relate.

These included easing of measures around physical distancing to 1m indoors and outside (which was already the limit in hospitality settings), and the removal of the requirement for physical distancing between people in a gathering of up to 15 people outdoors, which would also apply to outside hospitality settings.

The only restriction was around opening hours (as set out in the levels tables):

Level 0 Hospitality (including casinos) pre 19 July

- Local licensing laws apply

Level 0 Hospitality (including casinos) post 19 July

- Indoors and Outdoors - closed midnight
- Airport airside can open from 04:00

Rationale for restriction

In order to limit opportunities for excess alcohol consumption, with associated adherence impacts, Ministers agreed to limit late night opening in hospitality, including casinos, for the remaining time that Scotland was within the levels system. However in order to maintain some progress between Level 1 and Level 0 for this sector, revised opening hours of 4am (to allow for airside airport hospitality trading hours) to midnight were agreed.

Hospitality sector

The hospitality sector is a very important part of Scotland's economy and society. The food and beverages services sector, which comprises much of the hospitality sector directly employs 141,000 people, while Hotels and Similar Accommodation employ a further 62,000¹. There are currently 11 casinos in Scotland, employing 770 people across Glasgow, Edinburgh, Aberdeen and Dundee. The hospitality sector has some particular features, illustrated below using pre-Covid pandemic data:

- Some local authorities (such as Highland and Argyll and Bute – both of which had island communities in Level 0) are disproportionately dependent on the hospitality sector
- Women are more likely than men to work in the accommodation and food sector industry. Women constitute 54.8% of the workforce in Accommodation and Food Services²
- A large proportion of the workforce are young people: 36.8% of the accommodation and food services sector workforce is aged 16-24 compared to 12.3% of the workforce as a whole.
- The majority of people working across the accommodation and food services sector worked part time in 2019. This is particularly pronounced in relation to restaurants and public houses & bars where over 60 per cent of employees worked part time³.
- Hospitality is an important sector across Scotland, offering an important share of employment in both rural and urban areas. It also supports a substantial number of jobs across its diverse supply chains.

The sector is therefore an important contributor to Scotland's economic performance, and to economic opportunities for young people and those entering the labour market.

Table 1, below, sets out the number of occupied premises by local authority broken down by public houses and clubs, restaurants, hotels and cafes.

Table 1: Estimated Number of Occupied Premises by Local Authority

	Public Houses and Clubs*	Restaurants	Hotels	Cafes
Local Authority				
Aberdeen City	205	155	270	100
Aberdeenshire	205	75	155	100
Angus	155	60	35	45
Argyll and Bute	150	110	170	70
City of Edinburgh	615	605	195	400
Clackmannanshire	55	10	10	20
Dumfries and Galloway	230	25	145	100

¹ Business Register and Employment Survey 2019

² Scottish Government (2020), Scotland's Labour Market: People, Places and Regions [Scotland's Labour Market: People, Places, and Regions - Statistics from the Annual Population Survey 2019 - gov.scot](https://www.gov.scot/publications/monthly-gdp-august-2020/)

³ ONS (2021), Business Register and Employment Survey, 2019. [Employees in the UK - Office for National Statistics \(ons.gov.uk\)](https://www.gov.uk/economy-statistics)

Dundee City	205	90	35	60
East Ayrshire	185	40	20	40
East Dunbartonshire	75	35	5	40
East Lothian	115	45	30	45
East Renfrewshire	55	35	5	25
Falkirk	135	45	35	65
Fife	405	125	100	135
Glasgow City	650	520	80	400
Highland	280	175	365	175
Inverclyde	100	30	5	25
Midlothian	85	30	15	25
Moray	115	40	90	50
Na h-Eileanan Siar	20	15	25	20
North Ayrshire	180	65	35	60
North Lanarkshire	260	70	25	100
Orkney Islands	40	10	35	15
Perth and Kinross	190	95	125	85
Renfrewshire	185	105	20	60
Scottish Borders	160	50	75	60
Shetland Islands	35	15	20	15
South Ayrshire	165	65	50	50
South Lanarkshire	255	145	35	115
Stirling	125	75	85	70
West Dunbartonshire	85	40	15	40
West Lothian	140	70	30	60
Scotland	5,860	3,070	2,340	2,670

**Over 3,300 of these premises are classed as public houses on the valuation roll.*

Source: IDBR (2020), NDR roll (April 2021).

COVID-19 and the Hospitality Sector

The hospitality sector, including casinos, has been significantly adversely affected by Covid-19 since March 2020, by the necessary measures implemented to reduce and restrict the prevalence of the virus. This is illustrated via the data below for 2021 for Scotland's Accommodation and Food Services Sector, which includes hospitality activities:

- **January's Monthly GDP statistics** show output in Scotland's Accommodation and Food sector contracted by nearly 49% since the recent high point of October 2020, and remains 66% lower than pre-pandemic levels, compared with 8.4% lower for Scotland overall⁴.
- Under curfew restrictions the Casino sector cited significant losses. Around 46% of its revenue is made after 10 pm.

⁴ Scottish Government (2021) [Monthly GDP Estimate: January 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/monthly-gdp-estimate/pages/1-to-3.aspx)

As well as its important economic contribution, hospitality settings provide important settings for friends and families to socialise, reducing the risk of isolation and loneliness. This is particularly important during the winter months. There are hospitality businesses across the country, providing important services to their communities.

We recognise that the industry has worked exceptionally hard since the start of the pandemic to adapt their businesses, to advise Government on alternative workable restrictions, and to support their communities.

However, hospitality venues fulfil 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.⁵⁶ This has formed the basis for consideration of further measures in recent weeks, including around hospitality settings, in response to the recent increases in Covid-19 cases and transmission experienced across Scotland.

Alcohol consumption, which often takes place in hospitality settings, also alters consumers' thoughts, judgement, decision-making and behaviour. 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', and that 'if you drink, keep your drinking to a minimum and avoid getting intoxicated'⁷. Following the easing of restrictions previously, including the reopening of the hospitality sector and other environments where people gather in enclosed spaces, we have seen an increased transmission of Covid-19⁸.

Policy Objective

In common with the wide range of other countries who have implemented similar measures, the objective of these restrictions was to limit the opportunity for extended late night hours of drinking, also taking into account the other restrictions in place. Any restrictions on operations were 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.

Impact on island communities

The three island authorities and Highland and Argyll and Bute Councils were engaged in advance of these changes being made. Both Shetland and Orkney indicated that they felt their hospitality sectors may have concerns about the change within the then current Level 0 opening hours to midnight and that communities would be concerned about further restrictions being applied when the rest of Scotland was being offered less restrictions from where they are now. They also expressed concern that they felt the change could potentially increase in-house gatherings and would add additional pressure on police services around community noise etc with complaints from residents regarding such gatherings.

Rationale for Government intervention

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892043/S048

⁶ [Transmission of SARS-CoV-2 and Mitigating Measures.pdf](#)

⁷ https://www.euro.who.int/data/assets/pdf_file/0010/437608/Alcohol-and-COVID-19-what-you-need-to-know.pdf

⁸ <https://www.gov.scot/collections/coronavirus-covid-19-modelling-the-epidemic/>

Strategic Intent

As set out in the updated Strategic Framework from June 2021, reflecting the success of the vaccination programme, and with the direct harms caused by the virus decreasing, it was determined that Scotland was now at a stage of the pandemic where the strategic intent was where we could work 'to suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future'.

This moves the focus to recovery and moving beyond Level 0, providing the foundation for sectors, such as hospitality, to work with the Scottish Government on the policies and plans needed to recover from the pandemic.

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.⁹

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 where no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes, choirs and churches. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters^{10,11}.

Understanding settings where multiple risk factors come together, and large outbreaks are likely to occur, is important in controlling the epidemic.

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 continue to be restricted across all of the 5 levels.

However, it is recognised that hospitality venues are characterised by many of the high-risk factors associated with transmission of the virus^{12,13} - including 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

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892043/S048_4_Transmission_of_SARS-CoV-2_and_Mitigating_Measures.pdf

¹⁰ 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

¹¹ 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

¹² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-andguidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19evidence-paper-october-2020/coronavirus-covid-19-evidence-paper-october-2020.pdf>

¹³ [/govscot.gov.scot/binaries/content/documents/govscot/publications/advice-andguidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19evidence-paper-october-2020/coronavirus-covid-19-evidence-paper-october-2020.pdf](https://govscot.gov.scot/binaries/content/documents/govscot/publications/advice-andguidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19evidence-paper-october-2020/coronavirus-covid-19-evidence-paper-october-2020.pdf)

spread easily from person to person. Risks are further compounded by speaking loudly and the effects of alcohol consumption in licensed premises ¹⁴.

Depending on the venue, issues of ventilation (with recirculation of air being particularly problematic), crowding (where it is hard to regulate the distance between people), and pinch points (at areas such as toilets) all contribute to risk. Keeping surfaces clean and regulating movement throughout the setting is a further challenge. Fundamentally, hospitality venues are popular locations and are attended by many people, typically from different households, specifically to meet for long periods of time, all of which amplify the risk of transmission. The risks in hospitality may be exacerbated by some behaviours. As people will generally visit with family or friends they will naturally be less concerned about distancing and this behaviour will also be influenced by the disinhibiting impact of alcohol. ¹⁵¹⁶

Alcohol

It is well established that alcohol is a psychoactive substance which inhibits judgement. The WHO Global Strategy recognises that intoxication with alcohol is associated with high-risk behaviours¹⁷. Alcohol intoxication is associated with a number of well-characterized changes in psychological function, including disinhibition and reduced consciousness¹⁸, as well as changes in mood and feelings of intoxication as well as impairments in psychomotor performance and cognitive processes such as memory, divided attention, and planning¹⁹. It can cause people to lose their inhibitions, increase risk taking and to make decisions they usually would not²⁰.

In relation to the specific risk of transmission of Covid-19, the direct effects of alcohol impair consumers' ability to comply with transmission control measures in hospitality settings. 'Drinking even small amounts of alcohol affects people's decision-making and lowers inhibitions. It can change the way people think and feel, and influence how they act. It impairs hearing, meaning people have to lean in closer to hear or shout, which increases aerosolization of the virus. It impairs vision, affecting the ability to judge distances. It lowers the immunity to infection. It is a diuretic, resulting in people needing to urinate more frequently. Separately and together, these effects will reduce the ability (and potentially willingness) of people to physically distance and comply with safety measures, creating an increased risk of virus transmission.' All of these risks are thought to increase proportionally, the greater the amount of alcohol sold and consumed²¹.

The role of hospitality

¹⁴ <https://www.stir.ac.uk/media/stirling/services/faculties/sport-and-health-sciences/research/documents/reopening-hospitality-alcohol-afs-stirling-briefing-26-june-2020.pdf>

¹⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19-evidence-paper-october-2020/coronavirus-covid-19-evidence-paper-october-2020.pdf>

¹⁶ [/govscot.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19-evidence-paper-october-2020.pdf](https://govscot.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19-evidence-paper-october-2020.pdf)

¹⁷ <https://apps.who.int/iris/handle/10665/44395>

¹⁸ https://www.shaap.org.uk/images/shaap_developing_adolescents_brain_press.pdf

¹⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2999764/>

²⁰ <https://www.nhsinform.scot/healthy-living/alcohol/the-risks-of-drinking-too-much>

²¹ Collins A and Fitzgerald N (2020): <https://www.stir.ac.uk/media/stirling/services/faculties/sport-and-healthsciences/research/documents/re-opening-hospitality-alcohol-afs-stirling-briefing-26-june-2020.pdf>

Hospitality reopened following entry into Phase Three of the Route Map. Scottish Government modelling of R at that time^{22,23} shows that around three weeks after the opening of hospitality, R rose to 1 and above. While this cannot be entirely attributed to hospitality, it is likely to have played a role.

We have direct experience of using restrictions to hospitality to manage local outbreaks linked to such settings, and have used this experience to develop our wider approach. At the beginning of August 2020 there was a significant outbreak of cases in Aberdeen city, with tracing linking the outbreak back to several city-centre hospitality venues. Local restrictions²⁴ were quickly implemented in Aberdeen, including a ban on visiting houses, a ban on travelling more than five miles for leisure and, the closure of all pubs, cafes and restaurants within specified geographical boundaries.

The restrictions were implemented within a very short time frame, but compliance was seen to be very high and when they were lifted after approximately three weeks infections in the area had fallen from a peak of 32 a day, to 0²⁵. This demonstrated the significant impact that restrictions on the hospitality sector (as part of a broader package of measures) can potentially have in bringing outbreaks under control and rapidly reducing transmissions of the virus.

Understanding where transmission takes place and the modes of transmission is a very challenging task. Data from contact tracing provides initial clues as to the environments where people spend time, but does not give definitive information on where, when and how transmission occurred.

Test and Protect data in Scotland is examined on a weekly basis to analyse attendance of a range of settings, including hospitality when the sector has been open. 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. From the details of interviews that have been completed as part of Test and Protect, the percentage of individuals who have tested positive for Covid-19 and who have reported hospitality exposure (classified as eating out within the data compiled by Public Health Scotland and including (pubs, restaurants, cafes etc.) was consistently over 23% in the period 13 June-11 July 2021 (up to 32.3% at times (week ending 11 July)), and an average of 26% over this five week period)²⁶ and was consistently the largest setting during this period. And of the 5,181 cases that were reported in the 7 days to 11 July, 1,674 cases reported eating out. Whilst these figures do not demonstrate that the infection was acquired at a hospitality setting, they do demonstrate the types of settings a significant proportion of individuals, compared to others, have been in while potentially infectious themselves.

²² <https://www.gov.scot/collections/coronavirus-covid-19-modelling-the-epidemic/>
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/10/coronavirus-covid-19-evidence-paper---october-2020/documents/coronavirus-covid-19-evidence-paper-october-2020/coronavirus-covid-19-evidence-paper-october-2020/govscot%3Adocument/Coronavirus%2BCOVID-19%2529%2B-%2Bevidence%2Bpaper%2B%2B7October%2B2020.pdf>

²³ <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-5-august-2020/>

²⁴ https://public.tableau.com/profile/phs.covid.19#!/vizhome/COVID19DailyDashboard_15960160643010/Overview

²⁵ https://public.tableau.com/profile/phs.covid.19#!/vizhome/COVID19DailyDashboard_15960160643010/Overview

²⁶ [Dashboard - COVID-19 Statistical Report - 1 September 2021 - COVID-19 statistical report - Publications - Public Health Scotland](#)

It is important to note, too, that people who are asymptomatic can test positive (10.3% of asymptomatic cases in the week ending 29 August 2021²⁷) and that asymptomatic and pre-symptomatic transmission of Covid-19 can occur. This means that people who have no symptoms can still be infectious to others. There are several studies indicating that many infected individuals have a common setting of exposure such as indoor dining. A recent systematic review showed that the majority of pre-symptomatic transmission events involved dining in close proximity²⁸.

Reduced opening times

Reduced opening times (or curfews) can be used as a tool to suppress the spread of the virus by decreasing the time people spend in hospitality settings mixing socially and consuming alcohol. Clinical advice recommends that restricting opening periods will reduce the amount of alcohol consumed, thereby increasing the likelihood of compliance with COVID-19 mitigations (e.g. social distancing and mask wearing) both whilst in the venue and after leaving the venue.

A significant number of other countries across Europe and beyond have introduced curfews intended to reduce the time people spend in hospitality settings. In line with these international examples, Scottish Government has determined that curfews are an effective tool for limiting social interaction and alcohol consumption, and therefore the spread of the virus. They will however be contained largely to indoor settings in the initial stages of reopening and then gradually removed when the data allows.

Conclusion

Limiting social mixing as much of possible in all settings is the most effective measure against transmission of the virus.

However, it is widely recognised that wider health and wellbeing is impacted by our ability to mix with other people. The effects of loneliness are profound and increased markedly during lock down, alongside big increases in mental health problems, including for staff not able to work as normal. The limitations on hospitality 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 assessing these against the wider health, social and economic harms. When the risk of Covid rises, so too will the restrictions on the hospitality sector. Similarly as the risk falls, restrictions will ease.

While the move to Level 0 sees some reduction in restrictions, the risk that excess alcohol consumption can have with adherence influenced the decision to reduce opening hours for the modified Level 0. This also brings equity with other parts of the night time economy that are not allowed to open at Level 0, namely nightclubs. On the basis of reducing the risk from excess alcohol to compliance, it was also recognised that this brought a tightening of hospitality rules on the islands.

While the possibility of separating the islands from these changes was considered, it was recognised that this would lead to additional complexity, and it may be considered proportionate to make these

²⁷ [COVID-19 Statistics \(publichealthscotland.scot\)](https://publichealthscotland.scot)

²⁸ Qiu X, Nergiz AI, Maraolo AE, Bogoch II, Low N, Cevik M. Defining the role of asymptomatic SARS-CoV-2 transmission: a living systematic review. medRxiv 2020: 2020.09.01.20135194.

small adjustments in island communities to reflect higher levels of prevalence at the time the restrictions were introduced.

Consultation:

Public Consultation: No (precluded by urgent implementation timescales).

Island local authorities were engaged with on 13 July.

Business: Business consultation has been ongoing throughout every stage on changes to hospitality guidance and regulations, building on our regular engagement with the sector since the start of the pandemic. Officials have also had weekly meetings with the hospitality industry and business organisations. This engagement has contributed to the formulation of aspects of the Strategic Framework, and the levels tables. There was no separate business consultation in relation to level 0 changes (licensing hours changed to 24:00 closing).

Among others, we have worked in partnership with the Scottish Licensed Trade Association, the Scottish Beer and Pub Association, UK Hospitality, the Scottish Hospitality Group, their industry legal advisers and the STUC, Unite the Union and Prospect. We also established the Scottish Tourism Emergency Response Group (STERG).

Our engagement with the industry has covered a variety of issues, and has previously contributed to a number of positive outcomes for the industry, including: the easing of restrictions affecting hospitality following the initial lockdown; exemption from two-metre to one metre distancing rule for the industry; implementation of additional mitigating measures; detailed sectoral guidance; and a comprehensive support package.

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.

Since the publication of our first draft Strategic Framework on 23 October we have received written submissions from the Scottish Beer and Pub Association, the Scottish Licensed Trade Association, UK Hospitality, the Scottish Hospitality Group and the Night Time Industries Association. These representations acknowledge our efforts to simplify the measures currently in place for the sector, while also highlighting issues of continued concern for their members.

The key asks from the sector for the levels system at various stages of development have included: allowing the consumption of alcohol outdoors and indoors with a main meal (when meal requirement was still in place); introducing different time restrictions for different levels to increase trading hours and changing the previous 22.00 curfew to a cut off for last entry; allowing business meetings in hospitality settings; enabling flexibility around the definition of outdoor space; and recommending night-time events in Levels 0 and 1.

We are continuing to work constructively with the hospitality sector to address all their requests for further clarity and certainty as we reopen. 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 any need for additional mitigations, and keep the current measures under review.

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

Options:

This section sets out the options that have been considered relating to restrictions at Level 0.

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

- eating and drinking while seated at tables is required at all levels
- takeaways permitted for alcohol and food at all levels, as per existing arrangements
- wearing of facemasks when not seated
- collection of customer contact details to support Test and Protect

A range of exceptions also apply at all levels, for example, for hospitals, schools, student accommodation and hotel room service.

Social gathering rules in place across Scotland also apply across all levels.

Sectors and groups affected

These Regulations will affect:

- Licensed premises (public houses, pubs, cafés, restaurants, hotels and casinos)
- Non-licensed premises (cafes, restaurants)
- Businesses that provide goods and services to the hospitality services, including but not limited to manufacturers and wholesalers of food and drink, personal services companies
- Local Authorities
- Customers of hospitality sector

- Businesses providing services to customers for the hospitality industry (e.g. transport providers, fast food providers)

Our approach to assessing options

Within this BRIA we have compared the baseline approach of Level 0 (original pre 19 July 2021) where local licensing hours apply, with the minor change to restricted midnight opening proposed under the modified Level 0.

This has allowed us to present the clinical evidence for the slight reduction in opening hours at this level setting out the health benefits, whilst acknowledging the potential impacts on the hospitality industry. As with the existing 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.

In assessing the relevant options for this level, as with previous considerations, 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 Level 0

Option 1 – maintain baseline

The Baseline (original Level 0) was 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, while the vaccine programme is rolled out. The Baseline is near to what was in place before the 25 September, when licensing hours applied, table service, face coverings for customers and staff (when not eating and drinking) and collection of customer contact details were mandatory and physical distancing rules applied.

Beyond the risk-reduction benefits achieved from the mitigating actions in place since March, such as physical distancing screens, one-way systems, ventilation, use of contactless payments, and increased hygiene, the only additional public health benefits would be compliance with the rule on compulsory table service and face coverings when not seated.

The opportunity for virus transmission would be relatively high, even taking into account the existing mitigations as businesses have already invested a lot of time, money, and effort in implementing these and the evidence demonstrates that hospitality venues, like all other venues where people congregate in enclosed spaces, continue to be high-risk settings.

Options 2 – reduce licensing hours

This option would mean that hospitality settings, whilst applying the mitigating actions that are required at all levels, could now only operate until midnight (an earlier opening of 04:00 would cater for airside premises in airports, albeit recognising that airport usage remained impacted by ongoing international travel restrictions at the time of these restrictions).

The reduction in operating hours for businesses that have licenses later than midnight would see a lowering of transmission by reducing the amount of time that people can stay within the premises and consume alcohol. This would also only impact establishments that have licensing hours after midnight; and brings some parity with nightclubs, whose main purpose (including socialising) is for dancing, as opposed to pubs, where the focus is generally on alcohol consumption.

At Level 0, physical distancing measures, and restrictions on social gatherings will still be in place, but reduced to 1 m as already the case for hospitality settings, and these are considered sufficient to support suppression of the virus.

Conclusion

In considering the evidence around options for the existing and modified Level 0, Scottish Ministers weighed up the need to reduce social interaction in order to reduce transmission, clinical evidence regarding the spread of infection, and the social and economic harms of intervention. It was concluded that the selection of the modified Level 0 (reduced opening hours) could both reduce interactions and have the desired impact on the R rate.

It was therefore determined that, in line with clinical advice, that Level 0 would have a closing time of 00:00, but that this would only be in place for a relatively short period of time until Scotland moved beyond Level 0, proposed, if the data allowed, for 9 August.

Scottish Firms Impact Test:

There has been engagement with Scottish hospitality businesses in developing some of the hospitality provisions within the Strategic Framework. This engagement is set out within the consultation section of this BRIA. The vast majority of Scottish hospitality businesses are registered in Scotland.

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

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, though there is no firm comparison. While the limiting of opening hours to midnight may encourage some cross border movement, this is dependent on both licensing hours in Cumbria and Northumberland and ease of access (generally rural areas with reliance on cars, rather than public transport). Nightclubs are outwith scope of this BRIA as they have not been considered for reopening until post Level 0, so people travelling for nights out in clubs in English cities, such as Manchester and Newcastle might still have continued.

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

The majority of hospitality business operating in Scotland are micro and small businesses. It is estimated, based on the 2020 IDBR and 2019 Business Register and Employment Survey that there are 11,485 businesses in the Food and Beverages Services sector in Scotland, employing directly 141,000 people, and 1,690 Hotels, employing 62,000. Within Food Services, there are 4,395 Restaurants and Café businesses, and 2,215 Pubs and Bars. There are also 11 casinos in Scotland, employing 770. The measures may have some slight impact disproportionately on those businesses that open post-midnight – both those in Level 1 areas and those on island communities already trading, and which may now experience cash-flow problems as a result of this slight further tightening of restrictions.

Table 2 below shows a Scotland-level disaggregation of characteristics of areas of the Accommodation and Food Services 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 hospitality sector by business sector

Sector	Employment (BRES, 2019)	Number of Businesses (March 2020)	Number of Business Sites (March 2020)	Number of Occupied Business Premises (NDR Roll), 2020
Hotels and Similar Accommodation (SIC 55.1)	62,000	1,690	2,020	2,340

Total food and beverages services (SIC 56)	141,000	11,485	14,260	11,600*
<i>of which</i>				
Restaurants and cafes (56.101 + 56.102)	69,000	4,395	5,415	5,740**
Pubs and bars (56.302)	27,000	2,215	2,735	3,380

* Includes estimated numbers of licensed clubs; does not include takeaway premises or events catering facilities.

For premises that are cafes, IDBR data is used as these are not consistently recorded on the valuation roll.

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Source: Business Register and Employment Survey; IDBR, NDR roll.

The hospitality measures outlined within this BRIA are likely to affect a large number of businesses and employees. Moving back from local licensing laws will continue to have an impact on those establishments that would normally trade past those hours.

In addition to the direct jobs in hospitality, the sector also supports a large number of jobs across its diverse supply chains. These supply chains may be slightly negatively affected by continued opening restrictions in Levels 0.

• What is the likely cost or benefit to business?

Any further restrictions to trading will have an impacts on the economy. Many of these businesses will be operating well below pre-Covid capacity. Hospitality, currently has limited opportunities for revenue generation and the viability of many businesses in this sector, and associated jobs, are under threat, especially those whose main customer base is the late night market and are struggling in the absence of nightclubs being closed.

The costs to hospitality businesses will however, be partially off-set by the business support schemes in place by the Scottish Government and the UK Government Job Support Scheme.

Competition Assessment:

Closing sections of the hospitality industry will likely impact on competition between businesses, especially those that trade on the basis of later opening hours.

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

Whilst the hospitality sector, has shown gradual signs of recovery when allowed to open, activity levels have remain significantly below pre-Covid levels. With further restrictions there is the potential that some hospitality businesses could cease trading as a result of restrictions around opening times,. This could limit the number and range of suppliers.

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

Although all establishments will be required to close at midnight, this may impact on competition among businesses whose clientele focus is the late night market, as they are now competing with other businesses for an overall share of the market

Restricted opening hours are also likely to increase costs for hospitality potentially making it harder for new businesses to compete.

- **Will the measure limit suppliers' incentives to compete vigorously?**

It is not anticipated that the hospitality measures will impact on suppliers incentives to compete vigorously. On the contrary, restricting trading hours may lead to increased competition between businesses as there will be less hours during which food and drink can be served indoors at Level 0.

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

The hospitality measures in the strategic framework will limit the choices and information available to consumers through limited availability and lack of alternatives.

Consumer Assessment:

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

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

Additional hospitality restrictions are likely to impact upon consumers in terms of restricting their ability to visit restaurants, cafes, bars and public houses in a modified Levels 0. More specifically it will restrict choice by limiting when and if consumers can visit hospitality establishments.

Restricted opening hours may lead hospitality businesses to increase prices to recoup losses from times when they are unable to trade / lost sales of alcohol.

- **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

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:

Regulations and guidance have been put in place to support the implementation of the measures contained within this proposed update to the Strategic Framework's Protection Levels Level 0. These regulations would come into effect from 19 July 2021.

Summary and recommendations:

Introduction

This BRIA has examined the proposed change to Level 0 hospitality measures and compared these with the option of 'doing nothing', the equivalent of the existing 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 hospitality, it is important to view hospitality measures in the context of the wider changes being proposed..

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 the two options considered for the introduction of additional hospitality restrictions as set out in this BRIA.

It compares these measures against the revised baseline / Level 0 option.

Option 1: Baseline

The baseline option (effectively Level 0 of the Strategic Framework) would have a positive economic impact on hospitality venues through their revenue generation, employment of staff, and on supply chain businesses. However this would be off-set by the health risks associated with increased opportunities for virus transmission in hospitality settings.

Hospitality venues are characterised by many of the high-risk factors associated with transmission of the virus. The health risks posed by hospitality 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 hospitality industry 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.

Option 2: Level 0 modified opening hours

Measure	Benefits	Costs
Restrictions on opening times (in Level 0)	<p>Hospitality venues are characterised by many of the high risk factors associated with transmission of the virus, in the same way as other settings where people congregate in enclosed spaces. Restricting opening times reduces opportunities for virus transmission.</p> <p>Clinical advice is that restricting opening periods</p>	<p>Restricting opening times will lower demand, reduce revenue and turnover for the hospitality businesses.</p> <p>As restrictions are tightened moving to higher levels will increase the negative economic impact on businesses.</p>

	indoors will reduce the amount of alcohol consumed thereby increasing the chances of compliance with Covid mitigations (social distancing and mask wearing) whilst both in the venue and after leaving the venue.	
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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.

The changes proposed are in recognition of the health risks from late night alcohol consumption, but are limited in both scope and proposed period of time that they cover.

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: Humza Yousaf

Date: 15/09/2021

Minister's name: Humza Yousaf

Minister's title: Cabinet Secretary for Health and Social Care