

Business and Regulatory Impact Assessment (BRIA)

Title: Scotland's Strategic Framework - ADDENDUM for

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 11) Regulations 2021

The following is an addendum to the document "Scotland's Strategic Framework: Other Measures BRIA" which can be found at the following [link](#). It is necessary to review this addendum in conjunction with the fuller BRIA to ensure the context of earlier decision making and measures are fully understood.

Purpose and intended effect:

In response to the new variant strain of the virus, the Scottish Government has announced a number of counter measures and restrictions which are necessary to counter the spread of Covid-19, and has made the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 11) Regulations 2020 ("the Regulations"), which amend the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 ("the Levels Regulations").

The objective of these interventions are to ensure that the health risks posed by the new strain of COVID-19 – which emerging evidence indicates is significantly more transmissible – are minimised as much as possible by limiting the occasions and number of people that can physically meet. These measures are therefore aimed at curbing the growth in the pattern of infection, to ultimately protect NHS capacity and save lives. There is an urgency and an impetus given the increased level of transmission which requires that these additional measures are considered and implemented quickly in order to have an impact on case numbers.

These Regulations require places of worship to close for most purposes in Level 4 areas, including services and private prayer. A place of worship may, however, still be used for a funeral; a commemorative event for a person who has died (but is not a wake or a funeral tea); to broadcast an act of worship; for a marriage ceremony or civil partnership registration which consists of 5 people (or 6, if an interpreter is required); or to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions, vaccination centres or support in an emergency).

The Regulations additionally provide that in Level 4 areas it will be reasonable to have a commemorative event in outdoor public places, indoor public places and places of worship for a person who has died. These will not, however, be allowed to occur in private dwellings, and wakes and funeral teas are not permitted.

The Regulations also reduce the number of people allowed at a marriage ceremony or civil partnership registration taking place in Level 4 to the legal minimum, 5 people plus the possibility of an interpreter if one is required. The Regulations also provide that people living in Level 4 areas are not to attend marriage ceremonies or civil partnership registrations unless they are the parties; witnesses; celebrant or registrar; or interpreter if required. The Regulations further provide that it is not a reasonable excuse for travel between Scotland and the rest of the UK, Republic of Ireland and Jersey for the purpose of attending a marriage ceremony or civil partnership registration, other than for the couple, witnesses or celebrant, as well as any necessary interpreter. Provision is also made for attendance at a commemorative event (but not a wake or funeral tea) to be a reasonable excuse for travel between Scotland and the rest of the UK, Republic of Ireland and Jersey.

The Regulations close showroom elements of larger retailers and snow sports centres, and also require the closure of independent clinics, independent hospitals and independent medical agencies, in relation to the provision of cosmetic and aesthetic procedures, but not for other provision of medical or surgical assistance. These premises are no longer permitted to operate in Level 4 areas to align with the previous changes limiting essential retail in a narrower manner.

These Regulations also require 2 metre distancing to be maintained in workplace canteens between individuals from different households, these settings had previously been able to operate with reduced, 1 metre, distancing in place.

COVID-19 and life events

Marriage and civil partnership

There has been a significant reduction in the numbers of marriages taking place in Scotland over the course of the pandemic since the first regulations as a result of the restrictions and guidance in place over that time.

From 27 March 2020, when the first regulations came into effect, until 28 June 2020 inclusive, marriages and civil partnerships were taking place only where there was a pressing need to do so (such as where one of the couple was seriously ill). Subsequently, the restrictions and guidance relating in so far as these affected marriage ceremonies and civil partnership registrations were updated on a number of occasions. Before the Strategic Framework was implemented on 2 November 2020, marriage ceremonies and civil partnership registrations and their associated receptions could take place in public venues with up to 20 people in attendance.

Between 27 May 2020 and 30 November 2020 National Records of Scotland were aware of 7229 marriages having been solemnised and 44 civil partnerships having been registered.¹

Many couples chose to cancel their marriage in 2020 and re-schedule for 2021 or 2022. As a consequence of the significant reduction in marriages taking place in 2020, some businesses have effectively been closed for nearly 7 months and we are aware of increasing concerns about their financial viability. We understand that managing cashflow issues and sustaining these businesses through the next few months will be critical so that the industry can be ready to take advantage of likely pent up/high demand in future. A grant support package for the wedding industry has been announced.²

Funerals

Overall, the COVID-19 pandemic has sadly resulted in an increase in the number of COVID-19 deaths in Scotland. This means that more funerals have taken place than is usual at certain times of 2020, particularly during wave 1 (late spring 2020). The overall excess number of deaths caused by COVID-19 is not yet available.

¹ Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil Partnership <https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/> and Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil partnership <https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/> and Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil Partnership [Coronavirus \(Scotland\) \(No.2\) Act 2020 - marriage and civil partnership: third report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/). Further marriages and civil partnerships may have taken place during the reporting period which have not yet been entered onto the IT system as, in the case of a religious or belief ceremony, there can sometimes be a delay between the ceremony taking place and the return of the marriage or civil partnership schedule to the district registrar.

² [New £185 million package for business - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/new-185-million-package-for-business/)

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

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

Funeral wakes/post-funeral gatherings were not permitted to take place until 14 September, when they were permitted to take place in regulated venues (e.g. hospitality venues) with up to 20 people in attendance.

Marriages, civil partnerships and funerals

Gatherings for weddings and funerals 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 with multiple households. The highest risks of transmission are in crowded spaces over extended periods.³ Weddings and funerals are likely to involve people who know each other and who will want to interact with others at the event (see Transmission below). This has formed the basis for consideration of further measures, including a "lockdown", in response to the recent increases in COVID-19 cases and transmission experienced across Scotland.

Policy Objective

The objective of the restrictions set out within the Regulations is to ensure that the numbers able to attend these life events (marriages, civil partnerships and funerals) is appropriate to the level of COVID-19 risk within the local authority area in which it takes place, also taking into account the other restrictions in place. The Regulations are intended to balance the essential need for the bereaved to hold a funeral service for the deceased and people's right to marry under Article 12 of the European Convention of Human Rights, while mitigating further the risk of transmission associated with people gathering together (for example people attending a funeral and funeral sector staff), in the context of risk presented by the new variant. The restrictions introduced in the Regulations for Level 4 areas are intended to enhance the control and suppression of the spread of the virus, ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Rationale for Government Intervention

Strategic Intent

COVID-19 threatens health and life, but also how we live our lives, and our shared prosperity. The Scottish Government, in common with other UK nations, is committed to suppressing the virus to the lowest possible level, and keeping it there, until we have rolled out the vaccines and/or effective treatments are in place, and the virus is no longer the threat it is now. There is no acceptable number of people we are willing to let become infected.

The evidence base around transmission for this new virus, and its new variants, is still emerging, so we are committed to taking decisive action based on the best evidence available to us, while keeping this under constant review.

³ [Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020](#)

Transmission

We understand that one of the key risks for marriages, civil partnerships and funerals as life events is in relation to ensuring individuals and household groups maintain physical distancing in a context where they are likely to know each other and want to interact. These are emotional or otherwise important life events and individuals will usually want to interact closely with others to comfort or to congratulate. With specific regard to the Regulations, the risk elements such as sharing of food and the consumption of alcohol are particularly relevant to receptions or wakes.

Evidence published by SAGE has highlighted that “family celebrations” typically constitute a very high transmission risk.⁴ SAGE has also published evidence noting that in Japan, China, South Korea, and Indonesia that some super-spreading events originated from wedding venues,⁵ including that “large outbreaks have been occurred in family, friend, work-related and other gatherings including weddings and birthday parties.”

Current position of life events: marriages, civil partnerships and funerals

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

Life Events Measures	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
	Marriages/civil partnerships – 50 person limit Funerals – 50 person limit Wakes and receptions permitted, subject to 50 person limit	Marriages/civil partnerships – 20 person limit Funerals – 20 person limit Wakes and receptions permitted, subject to 20 person limit	As level 1	As level 1	Marriages/civil partnerships – 20 person limit Funerals – 20 person limit Wakes permitted subject to 20 person limit No receptions

Part 1: Funerals

Consultation

Public Consultation: Specific consultation on the regulations was precluded by urgent implementation timescales. However, correspondence received previously from the public has been taken into consideration. Correspondence continues to be received on a daily basis about restrictions on

⁴ [SPI-M-O: Statement on events and gatherings](#): published 19 August 2020.

⁵ [SARS-COV-2 TRANSMISSION ROUTES AND ENVIRONMENTS SAGE – 22 OCTOBER 2020](#)

attendance at funeral services, indicating that the public find the current level of restrictions on funeral services (up to 20 people) extremely tough.

Overall, however, the public has not shown similar discontent about post-funeral gatherings being disallowed (pre-14 September). Further, since the announcement of the Regulations on 4 January, no public correspondence has been received expressing concern.

Business: Funerals

Discussions with the funeral industry (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) since the announcement of the Regulations have not highlighted any concerns with the prohibition of post-funeral gatherings. Officials will continue to regularly liaise with these stakeholders to receive feedback about these restrictions.

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

Options

This section sets out the range of options that have been considered by Scottish Ministers for tightening funeral restrictions at level 4 of Scotland's Strategic Framework.

Option A: No change to the current level 4 position

Under option A, funeral services, commemorative events and post-funeral gatherings can proceed with up to 20 people in level 4, as currently set out in the strategic framework. Venues in level 4, which are otherwise required to close for business, are permitted to open for the purpose of hosting an event 'in connection with a funeral'.

This option is beneficial to both bereaved families and to the hospitality sector.

It does not, however, address the legitimate concerns around the increased transmissibility of the new variant of the virus. No other UK nation has taken this approach for level 4 equivalent.

Option B: A reduction in the number of people permitted at post-funeral gatherings and commemorative events at level 4

Option B is akin to the position in England (30 for funeral services; 6 for post-funeral gatherings and commemorative events).

Consideration is being given to whether funeral services in Scotland could continue to be permitted with up to 20 people in attendance, but only 5 or 10 permitted for post-funeral gatherings or at commemorative events. These new limits could be set out in guidance without need to amend the law.

Inconsistency in the numbers between funeral services and post-funeral gatherings has the potential to cause confusion for the funeral organiser and guests with only a small number of the people who attended the funeral service being able to attend the post-funeral gathering.

There would likely be an economic impact for the hospitality sector in that venues would be providing for less customers. Hospitality venues are required to close in level 4, but can open for the purpose of hosting an event 'in connection with a funeral'. The smaller the party to host, perhaps the less likely the venue is to open solely for that purpose, but some may be happy for the business.

Option C: No post-funeral gatherings permitted at level 4

Under this option, funeral services and commemorative events can continue to take place with up to 20 people in attendance (or with a reduced number for either the funeral service or commemorative events) in recognition of the vital importance of these events.

However, post-funeral gatherings such as wakes or funeral teas will not be permitted. This aligns with the position prior to 14 September 2020. This change would require legislative change to disallow post-funeral gatherings and sits most comfortably alongside any 'stay at home' instruction.

Both Northern Ireland and Wales have prohibited post-funeral gatherings at level 4 equivalent, and England have reduced the numbers to just 6 people.

Post-funeral gatherings are likely to involve many people who know one another well and alcohol consumption is permitted. Post-funeral gatherings can be delayed to a later date. In addition, Test and Protect data has shown that they have been linked to a small number of COVID-19 outbreaks.

Currently, post-funeral gatherings at level 4, with up to 20 people, can only take place in regulated venues.

Prohibiting post-funeral gatherings at level 4 will have an economic impact on the hospitality sector. However, we consider that this measure is justified by the need to respond to the greater transmissibility of the new variant of the virus. In addition, the ban on post-funeral gatherings at level 4 is only designed to be temporary.

In level 4 hospitality venues are required to be closed more generally, and are (perhaps) unlikely to open solely for the purpose of a hosting a wake, although some may. This position also aligns with that for marriage and civil partnership receptions which are not permitted in level 4.

This option is recommended if the country moves to a 'stay at home' requirement but could also be used to tighten level 4 restrictions generally. If chosen, it is recommended that the cap on attendance for funeral services remains at 20 people.

Option D: Reduce the numbers at funeral service to close family only and no post-funeral gatherings

Option D is the most restrictive. It would reduce attendance at funeral services to 'close family' only and would not permit post-funeral gatherings (e.g. wakes). This reflects the position for funerals during the first phase of the pandemic.

The drawback here is a lack of clarity for members of the public, funeral directors and funeral organisers around who is considered close family. This leads to inconsistencies across the country in who is able to attend a funeral service as decisions are made locally by burial and cremation authorities. We know from reports during the first phase of the pandemic, that some funerals were attended by far more than 20 people, despite the 'close family only' requirement. This is because the requirement for 'close family' was largely forgotten by the funeral sector and numbers were instead dictated by the size of the venue and physical distancing requirements. In addition, although the requirement for close family was provided for in Regulation, in reality this requirement was not policed by the funeral sector or by Police Scotland and as a result it became largely redundant very quickly.

The same economic impacts and justifications for restricting post-funeral gatherings, outlined at option C apply equally here.

Recommendation

Officials and clinicians noted to Ministers that if the decision were to be taken to restrict level 4 further or to move to a 'stay at home' message, either option B or C would be recommended. Because the funeral service itself is the most important element of a funeral and cannot be delayed it was preferable to consider limiting post-funeral gatherings and possibly also commemorative events in favour of maintaining the cap of 20 people at a funeral service (should physical distancing at the venue allow for 20).

The recommendation for Option C was accepted by Ministers, in the course of deciding to move to a 'lockdown' in mainland Scotland, and the Regulations which include this change come into force on 8 January 2021 to prohibit funeral teas and wakes from taking place in Level 4 areas.

This recommendation had consequences for the hospitality sector, for which post-funeral gatherings are currently one of the very limited exceptions for venues to open in a level 4 area. We consider that this measure is necessary in order to respond to the greater transmissibility of the new variant of the virus. The Regulations come into force on 8 January and prohibit funeral teas and wakes from taking place in Level 4 areas.

The measures will be kept under review and will be in place for no longer than necessary.

Part 2: Marriage and Civil Partnership

Consultation

Specific consultation on the regulations was precluded by urgent implementation timescales. However, we took account of the outcomes of an informal consultation exercise with 17 religious and belief bodies carried out in the summer of 2020 on the key concerns about the first restrictions affecting the marriage and civil partnership. The Scottish Government is aware that religious and belief bodies may have views on how many people should attend a marriage. For example, some bodies have religious requirements or preferences for more people to be present at a ceremony than the legal minimum. The Scottish Government will keep the restrictions under review. The Scottish Government will continue to engage regularly with key stakeholders to consider any impact of the restrictions on marriage and civil partnership.

Wedding receptions

As indicated above, wedding receptions following a marriage or civil partnership cannot take place at level 4 at the moment.

Options

Option A: no marriages or civil partnerships at all

Under this option, there would be no marriages or civil partnerships allowed at all, even in emergency situations (eg where one of the parties is dying or is about to be deployed overseas immediately in the armed forces).

We would not recommend this option. It does not protect ECHR rights to marry. And even at the height of lockdown, a very small number of marriages in emergency situations did take place safely.

Option B: marriages or civil partnerships in emergency situations only

Under this option, marriages or civil partnerships would only take place in emergency situations (eg where one of the parties is dying or is about to be deployed overseas immediately in the armed forces). This is, in effect, the position that applied shortly after the lockdown in March 2020.

We would not recommend this option. Although it protects the rights of couples in certain circumstances, it does not protect ECHR rights to marry generally.

Option C: marriages or civil partnerships in line with the statutory minimum of numbers – 5 or 6.

Under this option, numbers allowed at a marriage or civil partnership would be 5 or 6 in line with the minimum needed to meet statutory requirements:

- A religious or belief celebrant or a local authority registrar
- The couple
- Two witnesses
- If required, an interpreter (eg if the couple do not speak English or require support in relation to a disability).

This protects the ECHR right to marry. It was the number originally proposed for level 4 in the Strategic Framework but the number was increased to 15 (see option D) and then to 20 (see option E).

Option D: marriages or civil partnerships in line with some religious body requirements - 15

A few months ago, the Family Law Policy Unit in the Scottish Government spoke to a number of religious bodies on religious requirements in relation to marriage.

Religious requirements do, of course, vary. However, a few points emerged:

Some religious bodies had requirements for more people to attend than the statutory minimum of 5 or 6. The Scottish Government concluded at the time that 15 would appear to meet all religious requirements.

Some religious bodies required, or had a strong preference for, marriages to take place indoors or in their place of worship.

Some religious bodies, whilst having no particular requirements on numbers, noted that some couples wished both sets of parents to be present (and that, in some families, that could include step-parents too).

There are clear arguments for option D – it would meet religious requirements in relation to marriage.

However, given the current position with the pandemic, we think option C (5 or 6 attending) is necessary. As indicated above, we would intend to review the restrictions once introduced and involve religious and belief bodies in that review.

Option E: 20 people allowed at marriages or civil partnerships

This is the current position at level 4 (and at level 3 and at all levels except 0, where 50 people can attend).

The number allowed to attend a marriage or civil partnership at level 4 was increased from 15 to 20 before any authority areas were actually moved to level 4. This ensured that although couples would no longer be allowed to have a wedding reception (not allowed at level 4), they would at least not have to disinvite any guests.

With the current concerns on the increased transmissibility of the new variant of the virus, Ministers may wish to reduce the numbers who can attend a marriage ceremony or civil partnership registration at level 4.

In addition, reducing numbers may increase the safety of local authority registrars and religious and belief celebrants, who solemnise marriage and register civil partnership.

Recommendations

Following Ministers' decision to implement a 'lockdown' in mainland Scotland, the Scottish Ministers consider Option C is necessary and proportionate in order to mitigate further the risk of transmission associated with people gathering together, in the context of the new variant while other public health measures are implemented such as the vaccination program. Therefore, numbers allowed at a marriage or civil partnership will be 5 or 6 (if an interpreter is required) in line with the minimum needed to meet statutory requirements and in recognition of people's right to marry under Article 12 of ECHR. These restrictions will be kept under review.

Scottish Firms Impact Test:

What proportion of businesses are registered in Scotland?

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

For marriages and civil partnerships, our understanding of the current restrictions in rUK in relation to level 4 equivalents is in the table below. This table should be treated with caution as restrictions in rUK may change at short notice.

	Marriage and civil partnership ceremonies
England	Weddings and civil partnership ceremonies must only take place with up to 6 people. Anyone working is not included. These should only take place in exceptional circumstances, for example, an urgent marriage where one of those getting married is seriously ill and not expected to recover, or is to undergo debilitating treatment or life-changing surgery ⁶ .
Wales	The number who are able to attend a wedding, civil partnership, funeral or life events indoors is limited by the capacity of the venue where it is being held, once physical distancing measures have been taken into account. To ensure that the maximum number that can attend is observed attendance must be by invitation only ⁷
Northern Ireland	Marriages and civil partnerships ceremonies are limited to 25 people. This number includes children under 12 and the celebrant. A risk assessment for over 15 people is required. Face masks must be worn by all other than those party to the marriage.

⁶ [Tier 4: Stay at Home - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/tier-4-stay-at-home)

⁷ [Alert level 4: frequently asked questions | GOV.WALES](https://www.gov.wales/alert-level-4-frequently-asked-questions)

Receptions or post ceremony gatherings are not permitted⁸

For funerals, our understanding of the current restrictions in rUK in relation to level 4 equivalents is in the table below. This table should be treated with caution as restrictions in rUK may change at short notice.

	Funeral Services	Commemorative Events	Post- funeral gatherings (e.g. wakes)
England - From discussions with Cabinet Office officials it appears these restrictions may be under review and could be tightened further.	30 people can attend	6 people can attend	6 people can attend
Wales	The number who are able to attend a funeral or life events indoors is limited by the capacity of the venue where it is being held, once physical distancing measures have been taken into account. To ensure that the maximum number that can attend is observed attendance must be by invitation only	See funeral services	Not permitted
Northern Ireland	25 people can attend		Not permitted

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?

Marriages and civil partnerships

The measures to reduce the likelihood of transmission of COVID-19 at marriages and civil partnerships are likely to continue to impact on a wide range of businesses, small or large, but we do not have reliable data on this.

⁸ [Coronavirus \(COVID-19\) regulations guidance: what the restrictions mean for you | nidirect](#)

Funerals

The measures to reduce the likelihood of transmission of COVID-19 at funerals and wakes/post-funeral gatherings are likely to continue to impact cremation authorities, burial authorities and funeral directors businesses.

However, because funerals services can continue to be held across each of the levels, albeit with lower numbers of attendees, the negative impact on the funeral sector is likely to be less than in other sectors.

A move to prohibit post-funeral gatherings during a new period of 'lockdown', or as an enhanced set of restrictions on level 4 areas, will have an impact on hospitality businesses. This impact is difficult to quantify.

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

Marriage and civil partnership

It is already the case at level 4 that wedding receptions following a marriage ceremony or civil partnership cannot take place.

However, any further tightening of restrictions on marriage ceremonies and civil partnership registrations at level 4 might impact adversely on the wedding industry (eg hotels; venues; photographers; musicians; chauffeurs; wedding planners etc).

At level 4, hotels and food and drink premises must generally close. However, there are exemptions in place when a marriage ceremony or civil partnership registration is taking place. Therefore, restricting the numbers who can attend a marriage ceremony or civil partnership registration may reduce income for hospitality venues. Some may decide it is not worth opening to host a small marriage ceremony or civil partnership registration.

It is difficult to provide an estimate of the cost to business of these proposed additional restrictions. The average cost of a wedding in Scotland in 2017 was reported to be £19,791⁹. Based on the number of marriages registered in Scotland in 2019¹⁰ if £19,791 remained the average spend, the wedding industry in Scotland might have been worth around £519 million in 2019.¹¹

Funerals

Given funeral services can continue through the 'lockdown' announced for January 2021, we do not consider there to be any negative impact for the funeral industry sector.

The decision to disallow post-funeral gatherings during the 'lockdown' will have a negative impact on the hospitality sector which would otherwise be permitted to host these gatherings. The impact is difficult to quantify. This measure is considered necessary and will be kept under review.

Competition Assessment:

⁹ [The UK Wedding Report 2018 | Wedding Advice | Bridebook](#)

¹⁰ 26,225 marriages were registered in 2019: National Records of Scotland [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](#)

¹¹ Some of spending on marriages and civil partnerships may have benefited businesses outwith Scotland.

Our view is that the proposed measures for marriages, civil partnerships or funerals in 'lockdown' (effectively enhancing protection in level 4) would not impact in themselves on competition between businesses.

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

Marriage and civil partnership

It will remain the case that marriage ceremonies and civil partnership registrations will remain available and that couples will continue to have a choice between having a service conducted by a civil registrar or having a service conducted by a religious or belief celebrant. However, some venues may decide to close as a result of tighter restrictions.

Funerals

Prohibiting post-funeral gatherings in areas at level 4/in 'lockdown' may lead to people arranging post-funeral gatherings in level 3 protection areas, moving business into a different areas and limiting supplier choice. However, existing guidance requests that those arranging a funeral do not arrange it outwith their local area where they would not normally do so, unless there is a specific reason to do so. Further, the expense of travelling to level 3 areas (currently only the islands), may provide a disincentive to planning funerals and post-funeral gatherings in level 3 protection areas to avoid 'lockdown' restrictions. As such, this has not been assessed to be a high risk.

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

Travel guidance exceptions permit travel between different areas for attending a marriage, civil partnership or funeral which means that a venue in a lower transmission area can attract business from elsewhere but also allows for continuing competitiveness between all venues.

People are allowed to travel between areas to a funeral as mourners may come from different areas to where the funeral is taking place.

On marriages and civil partnerships, the intention is that the 5 or 6 people allowed to attend at level 4 will be allowed to travel. This reflects that the 5 or 6 are playing key roles at the event and may not live in the area where the event is taking place.

Prohibiting post-funeral gatherings at level 4/in 'lockdown' may lead to people arranging post-funeral gatherings in level 3 protection areas, moving business into a different areas (i.e. level 4 businesses cannot compete). For the reasons outlined above, this is not assessed to be a high risk.

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

Funeral service providers and marriage/civil partnership venues can attract business at all levels and travel exemptions complement this.

Restricting post-funeral gatherings at level 4 (same as wedding receptions) may lead to people arranging post-funeral gatherings in level 3 protection areas, moving business into a different areas. For the reasons outlined above, this is not assessed to be a high risk.

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

The measures do not limit the choices available to consumers- exceptions to travel guidance permit travel between different areas for attending a marriage or funeral.

As indicated above, it will remain the case that marriage ceremonies and civil partnership registrations will remain available and that couples will continue to have a choice between having a service conducted by a civil registrar or having a service conducted by a religious or belief celebrant. However, some venues may decide to close as a result of tighter restrictions.

Prohibiting post-funeral gatherings at level 4/in 'lockdown' removes this option for customers.

Consumer Assessment:

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

Refer to BRIA (November 2020) for general increased costs to businesses.

The potential options outlined above are unlikely to have additional impact; although some marriage venues may decide not to open for small marriage services

- **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: The guidance pertaining to the numbers permitted to attend marriages, civil partnerships and funerals will continue to be reviewed regularly. Regulations have been put in place to support the implementation of the measures. Monitoring and enforcement will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

Implementation and delivery plan and post-implementation review:

As noted above Ministers have chosen Option C in relation to funerals (prohibiting post-funeral gatherings), and Option C in relation to marriage ceremonies and civil partnership registrations.

Following the Regulations, related guidance has been reviewed and updated to support the implementation of the measures.

The Scottish Government will keep these measures under review, involving religious and belief bodies, and funeral industry stakeholders.

Summary and recommendations:

Introduction

This BRIA has examined the life event (marriages, civil partnerships and funerals) measures within level 4 of the Strategic Framework (i.e. in 'lockdown') in light of increased transmission of COVID-19 and the emergence of a new variant.

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 life events (marriages, civil partnerships and funerals), measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view these measures in the context of this wider package of actions.

Options Appraisal

The 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.

More detailed discussion of the options for life events in level 4 that were considered by Scottish Ministers (considering the position in Scotland and across a range of activities as a whole) is contained within the main body of this document.

Main recommendations for Level 4

Marriage ceremonies and civil partnership registrations

Reduce numbers allowed at a marriage or civil partnership to 5 or 6 (with interpreter) in line with the minimum needed to meet statutory requirements.

- A religious or belief celebrant or a local authority registrar
- The couple
- Two witnesses
- If required, an interpreter (eg if the couple do not speak English or require support in relation to a disability).

Funerals

The funeral service itself is the most important element of a funeral and cannot be delayed. It is therefore preferable to consider limiting post-funeral gatherings and possibly also commemorative events in favour of maintaining the cap of 20 people at a funeral service (should physical distancing at the venue allow for 20).

Title of proposal: Closure of independent clinics etc in Level 4 in relation to the provision of cosmetic and aesthetic procedures.

Purpose and intended effect:

These Regulations require the closure of independent clinics, independent hospitals and independent medical agencies, in relation to the provision of cosmetic and aesthetic procedures, but not for other provision of medical or surgical assistance. These premises are no longer permitted to operate in Level 4 areas for the purpose of those procedures, to align with the previous changes limiting essential retail in a narrower manner. Given the new variant of coronavirus is thought to be up to 70% more transmissible, it is essential that opportunities for leaving the home, travelling or interacting with others are limited to only the most essential activities. In addition these kind of services fulfil many of the high-risk criteria for COVID-19 transmission, as transmission is most strongly associated with close and prolonged contact in indoor environments.

This brings the parts of independent healthcare sector regulated by Healthcare Improvement Scotland (HIS) and which provide cosmetic and aesthetic procedures into line with close contact services, such as beauty therapists and unregulated complementary and alternative medicines services and addresses the concerns raised by the Cabinet Secretary for Health that independent providers of cosmetic procedures had continued to operate in Level 4 areas despite guidance from the National Clinical Director and the Chief Dental Officer.

Other close contact services such as those listed above are classed as business and have therefore been required to close, whereas those services included in these Regulations are classed as healthcare and so far have not been legally required to close.

Consultation:

These provisions will apply to independent healthcare providers regulated by Healthcare Improvement Scotland (HIS): independent hospitals; independent clinics where services are provided by a medical practitioner, dental practitioner, registered nurse, registered midwife or dental care professional; and independent medical agencies where services are provided by a medical practitioner.

The National Clinical Director and the Chief Dental Officer have issued guidance to the independent healthcare sector regulated by HIS via letter on a number of occasions, setting out which activities should be being carried out at the different levels of initially the Route Map and Strategic Framework. The most recent joint letter was on 10 November 2020 and set out clearly that 'no aesthetic and elective procedures should be carried out in Level 4 areas.' The reasons behind this guidance were also set out in the letter, which was issued to all clinics etc regulated by HIS:

- the resurgence of coronavirus cases.
- the need to protect public health and prevent the NHS from becoming overwhelmed
- the need to adhere to physical distancing guidelines and
- the guidance on the non-removal of face coverings.

Recipients of the letter were asked to exercise professionalism and clinical judgement to ensure the range of treatments, procedures and care provided was appropriate and delivered in a way that did not have an adverse impact on the national effort to keep COVID-19 under control. In level 4, the focus of

care was to be restricted to essential or urgent treatment of clinically diagnosed conditions where no treatment would have a significant adverse impact on the wellbeing of the patient and, as set out above, no aesthetic and elective procedures was to be carried out.

Additional consultation on the specific provisions in the Regulations has been with HIS in their capacity as regulator of independent healthcare in Scotland, who will be expected to provide advice to those enforcing the Regulations.

Options:

The non-statutory approach taken so far has meant that no powers have been available to ensure that independent healthcare providers adhere to the guidance set out by the National Clinical Director and the Chief Dental Officer that care was to be restricted to essential or urgent treatment of clinically diagnosed conditions.

Despite the provision of that guidance, we are aware that some clinics, despite being in the previous level 4, did not close and are continuing to operate, for example justifying this on the fact that their patients' self-esteem would suffer. This has been a cause of concern to the Cabinet Secretary for Health. We therefore need to place the restrictions into Regulations.

To note that HIS have welcomed the statutory approach in terms of clarifying the situation for them with regard to the provision of cosmetic and aesthetic procedures and for the clinics involved.

- **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?**

No

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

As set out above, the providers impacted are classed as healthcare providers rather than businesses. They will only be prevented from providing cosmetic and aesthetic procedures and will be able to continue to provide other necessary healthcare services, such as cataract surgery.

- Of a total of 423 clinics currently registered, approximately 322 clinics would be aesthetic/cosmetic, although a number of these may be dual purpose (ie primarily aesthetic but may remain open for GP services).
- Based on a 10% sample, the average number of staff is 2.5 meaning around 805 staff working in these clinics in total. The range for this is from 1-15 staff.
- Based on a 10% sample, the average number of patients is 389 meaning around 125,258 patients. The range on this is much broader from 24-3120.
- **What is the likely cost or benefit to business?**
- It is very difficult to obtain financial information about this sector due to the competitive nature of the business, where revealing this information would give your competitors an advantage.

However the Laing-Buisson cosmetic surgery report estimated a UK national worth of 286 Million in 2018 but predicted a rise within 5 years to in excess of 3 billion nationally.

- **Competition Assessment:**

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

Yes for provision of cosmetic and aesthetic procedures

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

This measure brings the providers of cosmetic and aesthetic procedures regulated by HIS into line with others in Scotland providing similar close contact services.

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

As above

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

Yes, only for the provision of non-essential services such as cosmetic and aesthetic procedures

- **Consumer Assessment:**

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

It is possible that unregulated businesses may try to step into the gap and thereby affect the above with regard to cosmetic and aesthetic procedures. Legitimate alternative providers such as beauty therapists are already obliged to shut at level 4, but there may be less scrupulous providers who see an opportunity.

- **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?**

See above.

- **Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?**

No

- **Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?**

No

Test run of business forms: n/a

Digital Impact Test: n/a

Legal Aid Impact Test: n/a

Enforcement, sanctions and monitoring:

Enforcement, sanctions and monitoring of compliance will be carried out by Local Authorities and Police Scotland as is the case for other Health Protection (Coronavirus) Regulations. HIS will provide appropriate input and advice to Local Authorities and Police Scotland.

Implementation and delivery plan and post-implementation review:

A letter setting out the provisions in the Regulations will be issued to the relevant businesses as soon as possible after the Regulations are published. That letter will commit to maintaining communication with the sector.

In previous correspondence with the sector we have pointed them to the following links for information as to support that might be available to them from both the Scottish and UK Governments:

[UK Government](#) and [Scottish Government](#) support.

Summary and recommendations:

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 cosmetic and aesthetic procedures in the independent healthcare setting, measures are also being taken to reduce opportunities for transmission across a range of settings. It is important to view these measures in the context of this wider package of actions.

It is also important to note that providers will be able to continue to offer healthcare as clinically appropriate as set out in the Regulations and, in some cases, will continue to supplement and support NHS Scotland 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.

Signed: Aileen Campbell

Date: 8th January 2021

Minister's name: Aileen Campbell

Minister's title: Cabinet Secretary for Communities and Local Government.