

**The Health Protection (Coronavirus) (Restrictions and Requirements)  
(Miscellaneous Amendment) (Scotland) Regulations 2021**

**ISLAND COMMUNITIES IMPACT ASSESSMENT**

**PURPOSE AND INTENDED EFFECT**

**Background**

This Island Communities Impact Assessment (ICIA) is focused on the policy for amendments made by the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendment) (Scotland) Regulations 2021 (“the Regulations”) to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Principal Regulations”). This ICIA also considers the extension of the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 made by the Regulations.

These Regulations adjust the restrictions on drive-in and drive-through events to make clear that they are not permitted in Levels 3 and 4 areas.

These Regulations make provision which ensures that premises which would require to close or restricted in their use in Level 3 and 4 areas may be capable of use in connection with electoral functions when requested by a Returning Officer or Electoral Registration Officer.

They also adjust the examples of a reasonable excuse to enter a Level 4 area to bring the marriage, civil partnership and funerals excuses into line with the excuses to leave home for those living in a Level 4 area.

These Regulations also extend the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 from 31 January 2021 to 31 March 2021. This changes brings the expiry into line with the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.

**Regulations**

These Regulations enable premises, which are required to remain closed to the public or have restrictions on their use in Levels 3 and 4 areas, to be used for purposes connected to an election if they are suitable premises which a Returning Officer (RO) or Electoral Registration Officer (ERO) has requested the use of in connection with the carrying out of any of their functions. This ensures that any suitable premises which may be required for electoral administration are able to be used as appropriate. The premises must still remain closed, or only operated in accordance with existing restrictions, in Levels 3 and 4 (as applicable) where they are not being used for electoral purposes. The functions of an RO and ERO cover the range of activities associated with the delivery of a poll, including registration, preparation, polling and counting. Any of the processes involved in delivering an election may require additional space to deliver, so it is important to ensure that ROs and EROs have

flexibility to consider use of a range of venues according to the specific circumstances of the locality in question.

These Regulations clarify the existing policy in relation to drive-in events (including drive-in cinemas and drive-through events) in order to explicitly prohibit this type of event from taking place in Level 3 and Level 4 areas. This will ensure that this policy, which has been in place since the introduction of the Strategic Framework, is absolutely clear to members of the public and event organisers. Drive-in events are permitted in Level 0, Level 1 and Level 2 areas only.

These Regulations adjust the list of reasonable excuses to enter a Level 4 area to bring them into line with the reasonable excuses to leave home in a Level 4 area. The change brings the excuses which allow travel to a marriage, civil partnership or funeral into line with the tighter list of excuses under the stay-at-home requirement. This ensures there is consistency across provisions and properly reflects the policy intention on attending marriages, civil partnerships and funerals in Level 4 areas.

These Regulations extend the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 from 31 January 2021 to 31 March 2021. This change brings the expiry into line with the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. We are still in a phase of the pandemic where outbreak management is a principal tool for control and suppression of the virus. The importance of enabling action to be taken swiftly at a local level is still just as essential as it was when The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 were first brought forward. The Directions by Local Authorities Regulations increase confidence that it is safe for sectors to be open and operate. Local action to control or close the premises or businesses at the centre of an outbreak is still, in most cases, one of the most efficient and proportionate responses and can avoid Scottish Ministers having to implement more wide-ranging and restrictive measures for full industries or sectors. While case numbers are still incredibly high, it is essential that any of the tools available to control or suppress the virus are not lost.

These changes will come into effect on 29 January 2021.

## **Objective**

The measures contained in the Regulations are required for a number of purposes, all of which are intended to contribute to controlling the spread of Covid 19.

The Strategic Framework indicates that drive-in events are permitted in levels 0, 1 and 2, but that all events, including drive-in events, are to be prohibited in levels 3 and 4. The Regulations make specific provision about drive-in events in order to clarify the existing policy that drive-in events are prohibited in levels 3 and 4. The amendments remove any uncertainty about the application of the policy as included in the Strategic Framework under the Principal Regulations. This will help support compliance with the measures, which are necessary to prevent household mixing which makes the spread of Covid 19 more likely.

In a similar way, the changes on reasonable excuses is intended to ensure that the regulations are as clear as possible on the reasonable excuses for travel and for leaving home.

The measures on elections are intended to give Returning Officers (ROs) and Electoral Registration Officers (EROs) appropriate flexibility should they need to arrange a poll in a Levels 3 or 4 area. This is achieved by allowing the use of premises which would be closed or restricted in use in Levels 3 and 4 areas that would commonly be used for electoral purposes (such as church halls) as well as ensuring that other types of premises can also be considered. Meaning ROs and EROs will have additional opportunities to put in place measures to limit the spread of Covid e.g. if additional or alternative premises are required to allow for social distancing.

The extension of the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 ensures that local action to control outbreaks can continue. Local action to control or close the premises or businesses at the centre of an outbreak is still, in most cases, one of the most efficient and proportionate responses and can avoid Scottish Ministers having to implement more wide-ranging and restrictive measures for full industries or sectors. On this basis it is important to retain this power.

While the Scottish Government is of the view that restrictions on businesses and individuals are currently justified and a proportionate means of helping to achieve the legitimate aim of reducing the public health risks posed by coronavirus, thereby safeguarding the right to life, it is also recognised that these measures are only required to respond to the current set of circumstances, and are only necessary as long as the potential public health benefits can justify any negative impacts caused.

## **GATHERING DATA AND IDENTIFYING STAKEHOLDERS**

Due to the need to put measures in place quickly, no specific consultation with island communities has been undertaken. The Island Communities Impact Assessment prepared for COVID-19 Route Map Phase 3 has been a valuable resource in highlighting not just the current situation in the islands but also potential differences between islands.

Electoral stakeholders, including representatives of the Electoral Management Board, have been consulted during the development of these measures.

Environmental Health Officers from each of the island local authorities were, however, consulted during the development of the Scottish Government Events Sectoral Guidance, which covers drive-in events.

## **ASSESSMENT**

## **Overview**

The Principal Regulations, as amended, already make a number of restrictions on business, gatherings and other activities that apply in Levels 3 and 4 areas.

At present, the Principal Regulations, as amended, directly impact those living on islands that are in Levels 3 and 4.

Currently, islands in Level 3 include, Orkney, Shetland and Comhairle nan Eilean Siar (with the exception of the Isles of Barra and Isle of Vatersay) and islands within Highland Council (with the exception of Skye). It also includes the following Argyll and Bute Islands: The Isle of Coll, the Isle of Colonsay, the Isle of Erraid, the Isle of Gometra, the Isle of Iona, the Isle of Islay, the Isle of Jura, the Isle of Mull, the Isle of Oronsay, the Isle of Tiree, and the Isle of Ulva.

All other islands are in Level 4.

## **Analysis**

### Drive in events

The Regulations clarify the existing policy in relation to drive-in events (including drive-in cinemas and drive-through events) in order to explicitly prohibit this type of event from taking place in Level 3 and Level 4 areas. This will affect all island areas, which are currently in Levels 3 or 4.

However, as far as we understand from event organisers, almost all drive-in events last year took place in the central belt. Feedback from Environmental Health Officers based in island local authorities that was received when developing the Scottish Government's Events Sector Guidance did not raise any matters in relation to drive-in events specifically. They did note that large events may put additional strain on public services (including the NHS) in an island area if a coronavirus outbreak occurred. Ensuring that drive-in events cannot take place in areas with the higher rates of transmission that characterise Levels 3 and 4 could help to relieve pressure on the NHS. However, overall we consider that these provisions are unlikely to have a disproportionate effect on island communities.

### Elections

These Regulations enable premises, which would be closed or restricted in use in Levels 3 and 4 areas, to be open in connection with an election where requested by an RO or ERO. This ensures any premises which may be required for the purposes of administering an election are able to be used as appropriate. The Regulations ensure that a range of premises can be considered for use, such as retail and library premises, premises used by food and drink businesses, places of worship and holiday accommodation. The premises must still remain closed, or only operated in accordance with existing restrictions, in Levels 3 and 4 (as applicable) where they are not being used for electoral purposes.

It is not considered that the provisions relating to elections will have an adverse differential impact on the islands and the mainland, or between islands. It is considered that the provision is a positive impact in so far as it will allow more varied venues to be used for electoral purposes. Furthermore, greater flexibility on elections venues could be of benefit to islands, as it could help ensure that elections can be organised in line with necessary precautions to avoid the spread of Covid 19 in more remote areas with a limited range of public buildings.

### Reasonable excuse

The Regulations adjust the list of reasonable excuses to enter a Level 4 area to be consistent with the reasonable excuses to leave home in a Level 4 area. The change brings the excuses which allow travel to a marriage, civil partnership or funeral into line with the tighter list of excuses under the stay-at-home requirement.

This may have an impact in island areas where a Level 3 and Level 4 areas are adjacent and there may be more likelihood that a person may travel into a Level 4 area to attend a marriage or civil partnership ceremony. However, current guidance limits the attendees at a marriage or civil partnership in a Level 4 area to the minimum allowed by law, and the reasonable excuse, even when tightened, still facilitates this. On that basis the practical effect is likely to be limited.

### Extension of the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020

The Regulations change the expiry date of these regulations, allowing the provisions in them to be used for a longer time period. This is unlikely to have a differential effect on or between island communities, as all Local Authorities can use the powers if needed in relation to businesses in their areas. This ensures that island authorities can also take action to prevent the transmission of Covid 19.

## **CONCLUSION**

The following conclusions have been reached in the production of this ICIA:

- The Regulations take a proportionate approach in relation to Scotland's island communities, supporting a geographically variable approach to restrictions that are tailored to the risks of infection in different areas, thus reducing the likelihood of uniform, national restrictions.
- It is not considered that island communities will be differentially impacted by provisions in these Regulations.
- For these reasons, the provisions in these Regulations are not deemed likely to have effects on island communities that are significantly different from their effects on other communities (including other island communities) in Scotland.