

PROTECTIVE MEASURES REGULATIONS – DECEMBER 2021 – BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Legislation: The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021; the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021; and the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021

Purpose and intended effect: The aim of this Business and Regulatory Impact Assessment (BRIA) is to analyse the impact on businesses, both positive and negative, through the requirements introduced on them through the following legislation: The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2021 (“the No. 6 Regulations”); the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 7) Regulations 2021, (“the No. 7 Regulations”); and the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 8) Regulations 2021, (“the No. 8 Regulations”) which amended the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021.

The No. 6 regulations introduced legal requirements for physical distancing of 1m in certain settings; for table service in settings selling alcohol for consumption on the premises; and for limits of numbers at indoor and outdoor events. The No. 7 regulations introduced legal requirements for the closure of nightclubs, dance halls or discotheque premises. The No. 8 regulations allowed for nightclubs etc. to adjust their operations so as to not operate as a nightclub for the purpose of remaining open in line with these regulations, without being in breach of any licensing requirements.

Legislative Background:

The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. Under that Act, the Scottish Government made regulations (in force from 26 March 2020) to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. From 14 September 2020 they were replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. From 9 October 2020 those Regulations were suspended and replaced by the Health Protection (Coronavirus) Restrictions and Requirements (Additional Temporary Measures) (Scotland) Regulations 2020. A new levels-based approach was introduced on 2 November 2020, when the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels Regulations”) came into force and revoked the previous regulations. On 9 August 2021 the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the Principal Regulations”) came into force and revoked the Local Levels Regulations. These Regulations amend the Principal Regulations.

Legislative Amendments – December 2021

The amendments to the Principal Regulations under the new No. 6 Regulations include new requirements for a person who is responsible for carrying on a business or providing a service in certain settings to minimise exposure to and take measures to minimise the incidence and spread of coronavirus through the application of a number of new measures:

Capacity limits (in force from 26 December) will be in place for live events with a maximum of:

- 100 people at indoor standing events
- 200 people at indoor seated events
- 500 people at outdoor events (whether seated or standing)

Physical distancing (in force from 27 December) of 1m is required for people on or waiting to enter hospitality and leisure settings, as specified in the No. 6 Regulations. This includes bars, restaurants, accommodation providers, indoor visitor attractions, museums and galleries, theatres, stadiums, concert

halls, music venues, comedy clubs, cinemas, bowling alleys, snooker/pool halls, indoor funfairs, soft play areas, gyms, nightclubs (subsequently amended by No. 7 regulations), bingo halls, casinos and sexual entertainment venues. It excludes other indoor sports/exercise venues, while events and activities relating to weddings, civil partnership ceremonies and funerals are also exempt. People must be admitted to these premises in sufficiently small numbers at a time to allow the 1m distance to be maintained.

Table service is required (in force from 27 December) where alcohol is served for consumption on premises, and the customer must remain seated whilst consuming food and drink on the premises. These requirements apply whether or not the individual customer has ordered or is ordering alcohol.

The No. 7 Regulations amend the Principal Regulations to close nightclubs, dance halls or discotheque premises, subject to exceptions, from 5.00 a.m. on 27 December 2021. It would remain open to these businesses to operate the premises as e.g. a bar, rather than as a nightclub, dance hall or discotheque. If doing so the premises would obviously need to comply with the requirements for that alternative use (such as physical distancing and table service for a bar).

The No. 8 Regulations amend the Principal Regulations to allow nightclubs to adjust their operations so as to not operate as a nightclub for the purpose of remaining open in line with these regulations, without being in breach of any licensing requirements.

Ministers must review the Requirements Regulations at least every 3 weeks to assess whether any requirement in the regulations is still necessary to prevent, protect against or provide a public health response to the incidence or spread of infection in Scotland. We continue to assess whether these measures are proportionate or if any less intrusive measures could be introduced to achieve the same combination of policy objectives and if so the policy will be immediately adjusted.

Policy Objectives:

The Omicron variant of the SARS-CoV-2 virus first identified in South Africa and designated a Variant of Concern by the WHO on 26 November continues to transmit rapidly within Scotland with strong evidence that community transmission is widespread. This variant is significantly more transmissible, it is therefore necessary to put in place further protective measures to reduce the rates of transmission.

The measures contained within the No. 6 regulations seek to balance each of the four harms, by taking proportionate protective measures which seek to make social interactions safer by increasing distance and reducing crowding. These measures also prohibit large scale events which present a risk of mass exposure due to the increased transmissibility and attack rate of Omicron.

Due to this variant being significantly more transmissible, further protective measures were then introduced within the No. 7 regulations to reduce the rates of transmission. These Regulations require that nightclubs and similar premises should not operate as such. It will remain open to these businesses to operate otherwise than as a nightclub e.g. as a bar. Closure being provided for in regulations, combined with financial support, may reduce losses.

There is an immediate need for these measures to help stem the increase in cases, safeguard and protect the NHS, emergency services and the economy whilst we complete the booster programme and get its full effect.

The No. 8 Regulations were made to ensure that nightclubs which choose to remain open with table service and physical distancing in place as allowed under the No. 7 Regulations will not be in breach of licensing requirements.

Public health rationale for Government intervention:

Physical distancing and limiting the opportunities for physical interaction between different households is a proven and simple way of reducing both transmission of, and infection by, coronavirus especially in crowded and less well ventilated spaces.

On 28 November the World Health Organisation (WHO) published an update on the new Omicron variant which advises countries to continue implementing the effective public health measures to reduce COVID-19 circulation overall, using a risk analysis and science-based approach. It also advises on increasing some public health and medical capacities to manage an increase in cases. WHO advise members of the public to take steps to reduce the spread of the COVID-19 virus by keeping a physical distance from others; wear a well-fitting mask; open windows to improve ventilation; avoid poorly ventilated or crowded spaces; keep hands clean; cough or sneeze into a bent elbow or tissue; and get vaccinated when it's their turn¹. WHO also made a statement on 14 December 2021 which advises that vaccines alone will not protect against Omicron and called for countries to use masks, social distancing, proper ventilation and hand hygiene to prevent contagion.

The SAGE 98 minutes² from 7 December 2021 state *“19. Some international reports of ‘superspreading’ events (some of which include Omicron) also suggest a greater role for airborne transmission than has previously been the case, as it is less likely that Omicron could have spread to as many people as it has at those events by other routes (low confidence). This means that measures to reduce airborne spread such as ventilation, well-fitting masks and distancing or reduced density of people in indoor environments may be even more important.”*

ECDC have advised ³*“Non-pharmaceutical interventions (NPIs) that have proven to be very effective in reducing transmission of infection should continue to be implemented by countries based on an assessment of their epidemiological situation regarding the Delta VOC, and taking into account the uncertainty of the situation regarding the Omicron VOC. Physical distancing measures, ensuring adequate ventilation in closed spaces, the maintenance of hand and respiratory hygiene measures, the appropriate use of face masks, and staying home when ill all remain relevant.”*

The Scientific Pandemic Influenza Group on Modelling, Operational sub-group (SPI-M-O) concluded that ⁴*“If omicron in the UK combines increased transmissibility and immune escape, irrespective of severity, it is highly likely that very stringent measures would be required to control growth and keep R below 1”*.

The 22 December UKHSA risk assessment on Omicron states that⁵ *“Even at the reduced hospitalisation risk observed, the combined growth advantage and immune evasion properties of Omicron have the potential to lead to very high numbers of admissions to hospital”*

In line with the scientific evidence and the advice from the WHO, SAGE and ECDC, the Scottish Government considers it necessary and proportionate to strengthen the mandatory use of face coverings.

¹ Update on Omicron (who.int) <https://www.who.int/news/item/28-11-2021-update-on-omicron#:~:text=On%2026%20November%202021%2C%20WHO%20designated%20the%20variant.spreads%20or%20the%20severity%20of%20illness%20it%20causes.>

² SAGE 98 minutes: Coronavirus (COVID-19) response, 7 December 2021 - GOV.UK (www.gov.uk) <https://www.gov.uk/government/publications/sage-98-minutes-coronavirus-covid-19-response-7-december-2021/sage-98-minutes-coronavirus-covid-19-response-7-december-2021>

³ Threat Assessment Brief: Implications of the further emergence and spread of the SARS CoV 2 B.1.1.529 variant of concern (Omicron) for the EU/EEA first update (europa.eu) <https://www.ecdc.europa.eu/en/publications-data/covid-19-threat-assessment-spread-omicron-first-update>

⁴ SPI-M-O: Consensus Statement on COVID-19, 7 December 2021 - GOV.UK (www.gov.uk) <https://www.gov.uk/government/publications/spi-m-o-consensus-statement-on-covid-19-7-december-2021>

⁵ 22 December 2021 Risk assessment for SARS-CoV-2 variant: Omicron VOC-21NOV-01 (B.1.1.529) (publishing.service.gov.uk) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043840/22-december-2021-risk-assessment-for-SARS-Omicron_VOC-21NOV-01_B.1.1.529.pdf

High risk settings

Higher-risk settings tend to have the following characteristics: close proximity with people from other households; settings where individuals stay for prolonged periods of time; high frequency of contacts; confined shared environments, and poor ventilation^{6 7}. These settings are considered higher risk due to the way COVID-19 spreads. COVID-19 spreads in small liquid particles when an infected individual coughs, sneezes, speaks, or breathes.⁸ These droplets are able to remain suspended in the air. When people are close together or in a confined, unventilated space, it is more likely these droplets will enter another person, either through inhalation, the droplets coming into contact with their eyes, nose or mouth, or by touching an infected surface and then touching their eyes, nose or mouth. When people meet who do not regularly see each other or have a high frequency of contacts, it is more likely one of the individuals is asymptotically infected through their separate social groups as the total number of extended contacts is greater. Examples of settings identified by Scientific Pandemic Insights Group on Behaviours (SPI-B) as high risk include public transport; places of worship, shops, malls and markets; parties; cinemas; theatres; planes; large family gatherings; cultural, sporting and political events; crowds; pubs and clubs; restaurants and cafes; hotels, cruise ships, hospitals and care homes⁹.

The Virus Watch Community Cohort Study found that during a period of no restrictions (September – November 2021), hospitality was associated with an increased risk indoors but not outdoors. Participating in sports indoors or outdoors was also associated with increased risk (although it was noted that this may relate to associated social activities)¹⁰. Studies have shown that intoxication has the potential to increase the risk of transmission of COVID-19 due to a decrease in compliance with increasing levels of intoxication, notably a reduction in physical distancing, lack of face masks when not seated and mixing with groups at other tables¹¹.

State of the pandemic

The COVID-19 epidemic continues to pose considerable challenges. After decreasing in November 2021, new case rates have been rising sharply during December. There were 705 weekly cases per 100,000 population in the week to 18 December, which is a 54% increase from 458 weekly cases per 100,000 on 11 December¹². Test positivity in the 7 days to the 21 December was 12.1%, an increase from 10.2% the 7 days to the 16 December 2021^{13 14}.

⁶ WHO (13 December 2020). Coronavirus disease (COVID-19): How is it transmitted? <https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-how-is-it-transmitted>

⁷ SAGE. [Insights on transmission of COVID-19 with a focus on the hospitality, retail and leisure sector.](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982865/S1194_Transmission_in_hospitality_retail_leisure.pdf)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982865/S1194_Transmission_in_hospitality_retail_leisure.pdf

⁸ WHO (13 December 2020). Coronavirus disease (COVID-19): How is it transmitted?

⁹ SPI-B (2 July 2020) [S0582 High connectivity situations outside the occupational or workplace context 1 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933236/S0582_High_connectivity_situations_outside_the_occupational_or_workplace_context_1.pdf)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933236/S0582_High_connectivity_situations_outside_the_occupational_or_workplace_context_1.pdf

¹⁰ [S1470 Non household activities covid risk 1 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045002/S1470_Non_household_activities_covid_risk_1.pdf) (publishing.service.gov.uk)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045002/S1470_Non_household_activities_covid_risk_1.pdf

¹¹ [Managing COVID-19 Transmission Risks in Bars: An Interview and Observation Study: Journal of Studies on Alcohol and Drugs: Vol 82, No 1 \(jsad.com\)](https://www.jsad.com/doi/10.15288/jsad.2021.82.42) <https://www.jsad.com/doi/10.15288/jsad.2021.82.42>

¹² [State of the Epidemic in Scotland – 23 December 2021 \(www.gov.scot\)](https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-23-december-2021/documents/state-epidemic-scotland-23-december-2021/state-epidemic-scotland-23-december-2021/govscot%3Adocument/state-epidemic-scotland-23-december-2021.pdf)
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-23-december-2021/documents/state-epidemic-scotland-23-december-2021/state-epidemic-scotland-23-december-2021/govscot%3Adocument/state-epidemic-scotland-23-december-2021.pdf>

¹³ [State of the Epidemic in Scotland – 17 December 2021 \(www.gov.scot\)](https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-17-december-2021/documents/state-epidemic-scotland-17-december-2021/state-epidemic-scotland-17-december-2021/govscot%3Adocument/state-epidemic-scotland-17-december-2021.pdf)
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-17-december-2021/documents/state-epidemic-scotland-17-december-2021/state-epidemic-scotland-17-december-2021/govscot%3Adocument/state-epidemic-scotland-17-december-2021.pdf>

¹⁴ [State of the Epidemic in Scotland – 23 December 2021 \(www.gov.scot\)](https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-23-december-2021/documents/state-epidemic-scotland-23-december-2021/state-epidemic-scotland-23-december-2021/govscot%3Adocument/state-epidemic-scotland-23-december-2021.pdf)
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/12/coronavirus-covid-19-state-epidemic-23-december-2021/documents/state-epidemic-scotland-23-december-2021/state-epidemic-scotland-23-december-2021/govscot%3Adocument/state-epidemic-scotland-23-december-2021.pdf>

Omicron was first reported in Scotland on 29 November 2021 (from a sample taken 23 November 2021), became the dominant variant on 17 December 2021^{15 16 17}. Data to 18 December indicated a doubling time of between 2.60 and 2.71 days for Omicron in Scotland¹⁸.

As at 19 December, Public Health Scotland had reported a total of 21,975 Omicron cases in Scotland of which 1,111 were confirmed, 20,777 probable, and 87 possible¹⁹.

The emergence of the Omicron variant has altered the epidemiology of COVID-19 in Scotland with a sharp rise in cases observed in December; there is increasing community transmission of Omicron in Scotland as measured by confirmatory testing and identification through S gene target failure (SGTF) present in the Omicron variant, but not in the Delta variant. The percentage of new daily cases positive for SGTF in Scotland stood at 57.9% on 20 December, compared to 22.3% on 13 December and 3.0% on 6 December; confirming that Omicron was now the dominant strain in Scotland²⁰.

The UK Health Security Agency (UKHSA) risk assessment on Omicron updated on 22 December noted that analysis of UK data showed increased household transmission risk, increased secondary attack rates and substantially increased growth rates compared to Delta. The growth advantage of Omicron may be due to immune evasion or transmissibility, or both. Evidence from neutralisation studies, real world vaccine effectiveness against symptomatic disease, and reinfection rate all confirm substantial immune evasion properties from both natural and vaccine derived immunity for Omicron. However, at this time there are insufficient data to make any assessment of immune protection against severe disease. There is as yet no clear evidence of increased transmissibility compared to Delta, though this is biologically plausible²¹.

Current evidence suggest that there is a moderate reduction in the relative risk of hospitalisation for Omicron compared to Delta but inconclusive data on severity in hospital admission or death. Available data suggests that the observed reduction in risk in the UK is likely to be partly a reduction in intrinsic severity of the virus and partly to protection provided by prior infection²².

Vaccine effectiveness against symptomatic disease for Omicron is lower than for Delta with significant waning being seen. Vaccine effectiveness is at between 60-75%, 2-4 weeks after a booster dose, dropping to between 35-45% after 10 weeks. These results should be interpreted with caution due to low numbers and a bias in the age group currently infected with Omicron. There is currently insufficient evidence to determine vaccine effectiveness against hospitalisation and severe disease, however based on experience with previous variants, this is likely to be substantially higher than the estimates against symptomatic disease²³.

Additional information about Omicron in Scotland is to be found in the latest [State of the Epidemic reports](#).²⁴

¹⁵ [Omicron variant - gov.scot \(www.gov.scot\) https://www.gov.scot/news/omicron-variant/](https://www.gov.scot/news/omicron-variant/)

¹⁶ [Public Health Scotland COVID-19 & Winter Statistical Report – 20 December 2021 https://www.publichealthscotland.scot/media/10930/21-12-22-covid19-winter_publication_report.pdf](https://www.publichealthscotland.scot/media/10930/21-12-22-covid19-winter_publication_report.pdf)

¹⁷ Scottish Government (17 December 2021) <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-17-december-2021/>

¹⁸ [Coronavirus \(COVID-19\): modelling the epidemic \(issue no.83\) - gov.scot \(www.gov.scot\) https://www.gov.scot/publications/coronavirus-covid-19-modelling-epidemic-issue-no-83/](https://www.gov.scot/publications/coronavirus-covid-19-modelling-epidemic-issue-no-83/)

¹⁹ [Public Health Scotland COVID-19 & Winter Statistical Report https://publichealthscotland.scot/media/10930/21-12-22-covid19-winter_publication_report.pdf](https://publichealthscotland.scot/media/10930/21-12-22-covid19-winter_publication_report.pdf)

²⁰ [Public Health Scotland COVID-19 & Winter Statistical Report](#)

²¹ [22 December 2021 Risk assessment for SARS-CoV-2 variant: Omicron VOC-21NOV-01 \(B.1.1.529\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043840/22-december-2021-risk-assessment-for-SARS-Omicron_VOC-21NOV-01_B.1.1.529.pdf

²² *ibid*

²³ [COVID-19 vaccine surveillance report - week 51 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043608/Vaccine_surveillance_report_-_week_51.pdf

²⁴ www.gov.scot/collections/coronavirus-covid-19-the-state-of-the-epidemic/

Effect of regulations

Intended outcomes

The main amendments under the new No. 6 Regulations are to introduce limits on the numbers of those attending indoor and outdoor events, including music, leisure and sporting events; 1m physical distancing between people in indoor and outdoor hospitality and leisure settings (identified in the purpose and intended effect section above); and table service within venues where alcohol is sold for consumption on the premises.

The amendments brought by the No. 7 Regulations were to introduce legal requirements for the closure of nightclubs, dance halls or discotheque premises.

The No. 8 regulations subsequently allowed for nightclubs etc to adjust their operations so as to not operate as a nightclub for the purpose of remaining open in line with these regulations, without being in breach of any licensing requirements.

The intention is that by introducing these measures, the incidence and spread of the virus will be reduced.

By making the implementation of requirements a requirement in legislation, we also allow local authority officers to engage with the businesses more and, where controls are not in place, take enforcement action as necessary. This should help increase the implementation of measures where previously they were seen as 'optional' in guidance, and officers had limited power to encourage businesses to implement.

Impact of the measures

The introduction of these measures was determined to be both proportionate and necessary as a means to reduce the impact of the spread of the Omicron variant. However, by limiting numbers at events, both inside and outside, we acknowledge that this will have a significant impact specifically at sporting, music and cultural events, making many commercially unviable. The requirement for 1m physical distancing also impacts on the number of customers that can be present in a leisure or hospitality establishment. The requirement for table service for establishments that would normally operate predominantly bar service means that more staffing resources are potentially required to serve customers than would otherwise be the case. It will also mean lower capacity in these premises.

Specific examples of the impact on stakeholders within the specific sectors is provided below:

Sport - The Scottish Government appreciates that the new protections will have a significant impact on numbers able to attend sporting events with consequences for the finances of sporting organisations relying on income from spectators. It will also impact businesses who provide, support or operate facilities for indoor adult contact sport and other indoors sport activities, such as snooker. These are still recovering from a significant period with restrictions on spectators and participation.

Major Events - The Scottish Government understands the impact the pandemic has had on events and it has been doing all that it can to allow events to take place while continuing to ensure appropriate safeguards are in place. The Scottish Government recognises that the number caps and physical distancing will make many events commercially unviable. Given the long lead in time for events, particularly the larger ones that will be affected by number caps, costs will have been incurred for events that have now had to be cancelled or postponed. It is important that the Scottish Government does everything we can, working with the UK Government and others, to consider the financial implications of these restrictions on the events sector. Financial support of £19.8 million for the events sector was announced in December 2021, in recognition of the impact of these restrictions. Scottish Government

will continue to work closely with industry representatives, including the Events Industry Advisory Group to help mitigate further harm to the events sector and its supply chain.

Culture – The Scottish Government acknowledges that the new protection measures have in effect meant that most cultural venues such as theatres have closed at a time when many could expect high ticket sales during the Christmas period. The Scottish Government also understand that these restrictions will have a lasting impact on confidence, both audience and producers in the cultural sector. The Scottish Government announced funding of £65m for the culture and events sector to support them as a result of these new restrictions, including £31.5m for cultural businesses, organisations, venues and independent cinema support and grassroots venues and £19.8m for the events sector. Museums and galleries, and other heritage attraction, which have also been required to ensure physical distancing is in place, and therefore impacting on visitor numbers, have been allocated £1.7m (although the winter months are traditionally a time of year due to a lack of tourists when some museums and other similar attractions offer either reduced opening hours or are closed).²⁵

Cinemas – The reintroduction of physical distancing has a direct impact on attendance at cinemas. For example, previous 2m physical distancing requirements reduced capacity to around 25%. This has a particular impact on smaller venues who lack the opportunity of the multiplex to play films across more screens or to introduce more showings. Reintroduction of measures such as physical distancing also impact on the confidence of audiences to attend these venues. Cinema stakeholders have said that advance bookings have fallen away significantly, and they forecast reduced audiences over what would normally be a busy period for cinemas.

Bingo Halls are still recovering from a significant period of closure and a period of restrictions on customer numbers. The Scottish Government recognises the direct impact these measures will have as these regulations will mean many Bingo operators will be faced with losses as their sites become financially unviable to operate with lower customer numbers. Scottish Government officials continue to work with the Bingo Association to try and mitigate further harm to the sector.

Tourism and Hospitality – The Scottish Government understands that December's regulations (and separate guidance to which this BRIA does not assess) have had an impact on the tourism and hospitality sector. The advice to minimise socialising at indoor public places, to 'stay home as much as is feasible', and to socialise in groups of no more than three households in this guidance combined with the 1m distancing regulations has negatively impacted tourism and hospitality businesses that are still recovering from the past two challenging years. Given the variable nature of the tourism and hospitality sector there is likely to be a differential impact of the regulations and guidance across business type and sub sector. However, hospitality premises in particular will experience a notable impact on capacity, bookings, ability to operate particular business models such as those that rely on vertical drinking, need for more staffing resources that may not be available and ultimately revenue at a time of year that is important to year-round viability and when businesses are debt heavy.

The closure through the No. 7 regulations of nightclubs prevents these businesses from generating income at what is generally accepted to be the busiest time of trading. The addition of provisions to enable nightclubs to repurpose to remain open other than as nightclubs, with table service, without breaching their licence conditions, allows businesses to modify their business model so can continue to trade, and may lessen the impact for some businesses, however the Scottish Government acknowledges that this may not present a viable option for some businesses.

Many tourism and hospitality businesses also stage events and will be impacted by the reduction in number able to attend these, which may lead to demand for refunds and cancellations. To mitigate the impact on the hospitality and tourism sector of the restrictions, the Scottish Government is providing funding to eligible businesses. This involves financial support of up to £8.9k from top up funds for

²⁵ www.gov.scot/news/targeted-funds-for-culture-and-events/

hospitality businesses; for leisure a maximum of £3.1k; and up to £5k for businesses required to provide table service (but not in addition to other funds). Nightclubs, which were required to close, can apply for support of up to £55k, depending on their size, to support their employees. For the tourism businesses in Scotland that have been the most affected by the Omicron Covid restrictions in place since December 2021, eligible businesses will receive a top-up payment of £6.8k.

Consultation:

There has been no formal consultation with business or the public ahead of the new regulations, given the short timetable for implementation.

There have been discussions between impacted sectors and the relevant policy officials:

Sport – officials have liaised closely with sporting organisations affected through sportscotland as decisions on the regulations have emerged. They have also discussed the impact on the indoor leisure sector with UK Active.

Major Events - The Scottish Government has worked closely with industry representatives, including the Event Industry Advisory Group (EIAG) as Ministers have made decisions and received information on the impact to the events sector and its supply chain.

Culture – the Scottish Government has worked closely with organisations in the culture sector. Officials have engaged with cultural organisations individually and through representative bodies such as the Federation of Scottish Theatres and the UK Cinema Association. Ministers have received daily information on the impact of the restrictions on cultural organisations. The Scottish Government has held discussion with the Bingo Association since the new regulations have come in.

Tourism and hospitality – the Scottish Government continues to work closely with representatives of both the tourism and hospitality sectors, including the Scottish Tourism Alliance and the five main hospitality trade groups. Officials discussed the impact of these restrictions with them, and this led to the addition of the repurpose option for nightclubs. We have worked closely with stakeholders on all aspects of business support.

In addition, the Scottish Government has worked closely with VisitScotland in order to assess the needs of the tourism sector. VisitScotland has conducted consultations at pace with the industry representatives to understand how they have been impacted by the implementation of the regulations in December.

Options:

The following options have been considered as part of this impact assessment.

Option 1 – Continue with baseline restrictions and guidance (the “Do Nothing”)

This option involves continuation of the baseline mitigation measures and public health advice in place prior to 26 December 2021, specifically:

- Encouragement of vaccination uptake among the eligible population, including uptake of a third / ‘booster’ dose when eligible;
- Use of face coverings in most indoor public settings and on public transport (unless exempt) as required by legislation;
- Requirement on hospitality and entertainment venues to collect the contact details of customers to facilitate contact-tracing through Test and Protect, as required by legislation;

- Requirement on businesses, services providers and places of worship to have regard to Scottish Government guidance about measures to minimise risk of exposure to COVID-19 relating to their business, service or premises, as required by legislation;
- Requirement on relevant late night settings and live indoor and outdoor event settings to implement and comply with the Vaccine Certification scheme, as required by legislation;
- Continued observation of measures set out in guidance, including:
 - hand hygiene and surface cleaning;
 - promotion of good ventilation; and
 - compliance with Test and Protect, including self-isolation when necessary.

In addition to these measures, the Scottish Government produced guidance on 14 December in response to the emergence of the Omicron variant, that recommended that household mixing at home or in indoor public settings should be limited to members of three households, with all attendees being encouraged to take a lateral flow test before attending²⁶. As this guidance pre-dated the measures under consideration in this BRIA, it is considered to represent part of the 'Do Nothing' option.

It should be noted that, following guidance by Public Health Scotland²⁷, the Scottish Government advised that people defer work Christmas parties that would normally take place in advance of Christmas, to slow the spread of the Omicron variant²⁸. While this advice refers to social gatherings in advance of Christmas, the effects of this advice, particularly on the hospitality sector, will form part of the context for both Option 1 and Option 2.

Option 2 – Introduce additional protections to limit interactions in social settings

This option involves introduction of additional protective measures, over and above the baseline restrictions and guidance, aimed at reducing social interactions and contact.

These include:

- Introduction of capacity limits for live events with a maximum of:
 - 100 people at indoor standing events
 - 200 people at indoor seated events
 - 500 people at outdoor events (whether seated or standing)
- Re-introduction of a requirement for physical distancing of 1m for people on or waiting to enter specific hospitality and leisure settings, subject to exceptions.
- Re-introduction of a requirement for table service to operate in settings where alcohol is served for consumption on premises, and where the customer must remain seated whilst consuming food and drink on the premises.
- Introduction of a requirement for premises operating as nightclubs, dance halls or discotheque premises, subject to exceptions, to close, or amend their operations to trade as a restaurant or bar (subject to compliance with requirements for table service and physical distancing).

Sectors and Groups Affected

These options affect a range of sectors of the economy and society, including:

Capacity Limits

²⁶ [New measures required to slow the spread of Coronavirus - gov.scot \(www.gov.scot\) https://www.gov.scot/news/new-measures-required-to-slow-the-spread-of-coronavirus/](https://www.gov.scot/news/new-measures-required-to-slow-the-spread-of-coronavirus/)

²⁷ [Public Health Scotland urges public to defer Christmas parties - News - Public Health Scotland https://publichealthscotland.scot/news/2021/december/public-health-scotland-urges-public-to-defer-christmas-parties/](https://publichealthscotland.scot/news/2021/december/public-health-scotland-urges-public-to-defer-christmas-parties/)

²⁸ [Coronavirus \(COVID-19\) update: First Minister's statement – 10 December 2021 - gov.scot \(www.gov.scot\) https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-10-december-2021/](https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-10-december-2021/)

- Businesses and venues involved in the production and staging of indoor events, their workforces, performers and customers. Venues include theatres, concert halls, conference centres, and music venues; events can include theatre productions, concerts, indoor funfairs, conference events.
- Businesses and venues involved in the production and staging of outdoor events, their workforces, performers and customers. Venues include sports stadiums, outdoor arenas and locations.
- Ancillary and supply chain businesses associated with the production and staging of indoor and outdoor events.

Physical Distancing

Businesses and their workforces involved in the following activities:

- amusement arcades, snooker or pool halls,
- bars, including a bar in a hotel or members club,
- betting shops,
- bingo halls,
- bowling alleys,
- cafés and canteens,
- casinos,
- cinemas,
- comedy clubs,
- concert halls,
- conference or exhibition centres and any other place at which an exhibition takes place,
- discotheques, nightclubs and dance halls,
- function halls and event venues,
- accommodation providers, including hotels and hostels,
- indoor fitness studios, sports halls, gyms, swimming pools, and other indoor sport, activity or exercise facilities,
- indoor funfairs,
- indoor snow sports centres,
- indoor skating rinks,
- indoor visitor attractions,
- museums and galleries,
- public houses,
- restaurants, including a restaurant or dining room in a hotel or members club,
- sexual entertainment venues,
- soft play centres,
- sports stadiums, and
- theatres

Other indoor sports/exercise venues are exempt, while events and activities relating to weddings, civil partnership ceremonies and funerals are also exempt

Table Service

Businesses and their workforces involved in the following activities:

- Cafes
- Public houses and bars
- Restaurants
- Social clubs

- Restaurants and bars within accommodation settings e.g. hotels
- Food service settings within larger, non-hospitality settings e.g. visitor attractions, retail units.

Closure / Business Alteration requirements

Businesses and their workforces involved in the following activities:

- Nightclubs
- Sexual entertainment venues

Ancillary or supply chain businesses associated with the activities affected by this option, including transport providers, supply chain businesses.

Assessment of Options

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.

Option 1 – Continue with current baseline measures and guidance (the “Do Nothing”)

This option would represent continuation of current measures in place to control the spread of COVID-19, particularly with regard to the Delta variant, and relatively low case numbers. They are consistent with the approach set out in the Scottish Government’s updated Strategic Framework, and also with guidance published by the Scottish Government on 14 December 2021 in response to the Omicron variant. However, as set out in the sections above, these measures were not viewed as sufficient to control the potential spread of the Omicron variant, based on the available evidence at time of decision-making.

Costs:

This option is not likely to have any immediate financial implications beyond those associated with continuation of baseline mitigation measures and vaccine certification.

COVID-19, and previous restrictions introduced to control the virus, have had a substantial impact on the sectors. Businesses across the hospitality, accommodation, leisure and cultural sectors have been required to operate under restrictions, or been subject to closure, for much or all of the period March 2020 to August 2021. Estimates of direct impacts on GDP are not available from official statistics for a range of activities such as nightclubs, live events venues, theatres, concert halls and cinemas as a standalone part of the economy. Rather, they are contained within broader sections of the economy who have experienced significant impacts.

For instance, during the first lockdown output fell significantly over the month of April 2020, compared with the previous month: by 77.3% in the Accommodation and Food Services sector²⁹ and by 45.7% in the Arts, Entertainment and Recreation sector³⁰. When further restrictions were re-imposed on Accommodation and Food Services in 2021, output fell 33.5% over the month of January 2021³¹. These figures highlight the potential order of magnitude of economic loss that could arise from closure. These sectors have yet to fully recover to pre-pandemic levels of output: in October 2021, GDP was 6.9% below February 2020 in the Accommodation and Food Services sector, and 20.6% below in the Arts, Culture and Recreation sector, compared with 0.4% for the economy overall.

²⁹ This sector includes activities such as hotels and other accommodation providers, licenced and unlicensed restaurants, take-away food providers, event catering, public houses and bars, and other food services.

³⁰ This includes activities such as performing arts, operation of arts facilities, museum activities, library activities, gambling and betting activities, operation of historical sites and buildings, operation of sports facilities and activities of amusement parks

³¹ [GDP Monthly Estimate: October 2021 - gov.scot \(www.gov.scot\) https://www.gov.scot/publications/monthly-gdp-october-2021/](https://www.gov.scot/publications/monthly-gdp-october-2021/)

The relative impacts of the pandemic on sector viability have varied between sectors and business size bands, with sectors more seriously affected by restrictions for longer periods enduring longer periods of lack of viability (e.g. Accommodation & Food Services, Arts, and Entertainment & Recreation). Over the course of the pandemic, businesses in Accommodation & Food and Arts, Entertainment & Recreation sectors have consistently been more likely to report decreased turnover than businesses across all sectors – 40.2% and 65.5% respectively, compared to 28.5% of businesses across all sectors in the period 1 to 14 November 2021³².

Businesses in a number of the activities affected by this option have been able to trade without restrictions since August 2021, with support packages such as the Coronavirus Job Retention Scheme (CJRS) being wound down at the end of September 2021. This will have allowed these businesses to begin to generate revenues, and return to normal trading conditions. However, businesses in these sectors have still continued to experience challenges. In the period 1 to 14 November, 22.8% of businesses in the Accommodation & Food Services sector, and 40.2% of businesses in the Arts, Entertainment & Recreation sectors reported their turnover had decreased by more than 20% compared to what would normally be expected, compared to 12.5% of businesses across all sectors. Consequently, businesses in these sectors could be vulnerable to substantial reductions in trade arising from voluntary social distancing or further restrictions arising as a result of upsurges of the virus, particularly as key support packages such as the CJRS have been withdrawn. These trading conditions, along with the sustained losses incurred by many businesses in the worst affected sectors will likely have a significant impact on their resilience. It follows that borrowing may have increased, and other sources of resilience may have been reduced.

Late night hospitality businesses such as nightclubs, and a number of live event and sporting venues will also have been subject to vaccine certification, though there have been differences in the requirements on late night hospitality venues and venues for live events and sports³³. Discussion of the potential business impacts and emerging evidence around vaccine certification is contained within the relevant BRIAs and the Evidence Paper from November 2021³⁴. However, the emerging evidence in November indicated that there were potential ongoing costs associated with implementation of vaccine certification, and that business organisations representing nightclubs and late night hospitality settings had consistently reported substantial reductions in footfall and turnover associated with certification, alongside potential for increased anti-social behaviour associated with certification³⁵. It would be anticipated that there would be scope for these trends to continue under this option.

Some of the sectors potentially affected by this option are also seasonal businesses, with a substantial portion of annual turnover being generated in December. Pre-pandemic, the Food Services sector, which includes cafes and restaurants, was estimated to generate around 9.1% of its overall annual average turnover in December, compared with around 7.3% and 7.4% in January and February. The Beverage Services sector, which includes bars and pubs, was estimated to generate around 9.8% of its overall annual average turnover in December, compared with 7.2% and 7.1% in January and February³⁶. These estimates are for these sectors overall – individual businesses may generate a more substantial portion of their annual turnover in the lead-up to Christmas.

Following the announcement by Public Health Scotland on 9 December regarding Christmas parties, and subsequent Scottish Government guidance on household socialising, business organisations reported hospitality businesses experiencing substantial cancellations, reductions in bookings and

³² [BICS weighted Scotland estimates: data to wave 44 - gov.scot \(www.gov.scot\) https://www.gov.scot/publications/bics-weighted-scotland-estimates-data-to-wave-44/](https://www.gov.scot/publications/bics-weighted-scotland-estimates-data-to-wave-44/)

³³ [Coronavirus \(COVID-19\): vaccination - gov.scot \(www.gov.scot\) https://www.gov.scot/collections/coronavirus-covid-19-vaccination/](https://www.gov.scot/collections/coronavirus-covid-19-vaccination/)

³⁴ <https://www.legislation.gov.uk/ssi/2021/349/resources>

³⁵ https://www.legislation.gov.uk/ssi/2021/349/pdfs/ssifia_20210349_en.pdf (p7-8); [Coronavirus \(COVID-19\) vaccine certification: evidence paper update - gov.scot \(www.gov.scot\) https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/](https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/)

³⁶ [Coronavirus \(COVID-19\) vaccine certification: evidence paper update - gov.scot \(www.gov.scot\), page 45. https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/](https://www.gov.scot/publications/coronavirus-covid-19-vaccine-certification-evidence-paper-update/)

trade³⁷. There were also reports of cancellations and reduced attendance at Christmas events such as pantomimes in theatres and concert halls. Public attitude survey evidence³⁸ indicates that during December, individuals scaled back aspects of their plans for the Festive period. For instance:

- Respondents indicating they intended to go for any meal, drink, party or celebration with others reduced from 52% on 30 November – 1 December to 42% on 14 – 15 December;
- Those planning meals or drinks out reduced from 41% on 30 November – 1 December to 26% on 14 – 15 December;
- Those planning any celebrations with work colleagues reduced from 18% on 30 November – 1 December to 5% on 14 – 15 December.

In these circumstances, it is anticipated that the affected businesses will have experienced reductions in revenues, along with cost pressures from cancelling orders for food and drink, payment of ongoing bills, and cashflow pressures from requests for refunds.

Concerns about the spread of Omicron may also encourage individuals to limit their social contacts more generally, through reducing their number of visits leisure and hospitality venues, or reducing the duration of their visits. This voluntary social distancing may also impact on footfall and revenue in hospitality and leisure settings³⁹.

It is also anticipated that the reductions in revenue in the time of year traditionally most important for these activities could pose financial and viability pressures into the early months of the New Year.

The characteristics of the Omicron variant also create a potential risk of substantial absence rates within business and public services, creating challenges for delivery of key public and emergency services, and also for the businesses in the affected sectors themselves. It is notable, for example, that covid-related care homes staff absences are estimated to have increased from around 1% in November 2021 to around 2.5% by 21 December 2021⁴⁰ and school staff covid-related absences rose from 2,100 in early November 2021 to reach 3,300 in mid-December 2021 (14th December)⁴¹.

Benefit:

The increased distancing requirement where an exemption from wearing a face covering applies in certain indoor settings will support reduced transmission in these settings and in turn have a marked benefit during a challenging time for public health and NHS capacity.

Venues would be able to continue to trade at the same capacity, without table service or physical distancing, and there wouldn't be any conflict or confusion over the introduction of new measures.

For hospitality venues, there would also be no need for these businesses to increase staff resources to support table service provision where this might be required.

³⁷ ['Cancellations began to arrive within minutes' Hospitality fury at postpone Christmas parties advice | The Scotsman](https://www.scotsman.com/health/coronavirus/cancellations-began-to-arrive-within-minutes-hospitality-fury-at-postpone-christmas-parties-advice-3489729)
<https://www.scotsman.com/health/coronavirus/cancellations-began-to-arrive-within-minutes-hospitality-fury-at-postpone-christmas-parties-advice-3489729>

³⁸ [Public attitudes to coronavirus: tracker - data tables - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/public-attitudes-to-coronavirus-tracker-waves-data-tables/). Weeks 88-91, Data Tables – December 2021, Q160. <https://www.gov.scot/publications/public-attitudes-to-coronavirus-tracker-waves-data-tables/>

³⁹ [Bank of England Staff Working Paper No. 943](https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2021/did-the-covid-19-local-lockdowns-reduce-business-activity-evidence-from-uk-smes.pdf?la=en&hash=E8E116D61061BB71B018643E983FD306D8553C80) <https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2021/did-the-covid-19-local-lockdowns-reduce-business-activity-evidence-from-uk-smes.pdf?la=en&hash=E8E116D61061BB71B018643E983FD306D8553C80>

⁴⁰ [Coronavirus \(COVID-19\): trends in daily data - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-covid-19-trends-in-daily-data/) <https://www.gov.scot/publications/coronavirus-covid-19-trends-in-daily-data/> (subsequently peaking to around 9% in early January 2022, before decreasing to around 3% in late January 2022)

⁴¹ [COVID19 - Schools and Childcare Information August 2021 | Tableau Public](https://public.tableau.com/app/profile/sg.eas.learninganalysis/viz/COVID19-SchoolsandChildcareInformationAugust2021/Introduction)
<https://public.tableau.com/app/profile/sg.eas.learninganalysis/viz/COVID19-SchoolsandChildcareInformationAugust2021/Introduction>

Not having physical distancing requirements and the reduction in capacity that this entails means staff reductions would be less likely where customer numbers make trading viable; this is especially true for events and sporting activities that rely on a large audience/crowd to make their businesses viable.

Keeping nightclubs open would not also benefit the venues themselves, but also nearby facilities and services within the night time economy that rely on their trade ie take-away venues, bars, and transport providers, particularly the taxi sector.

Omicron has a significant growth advantage over Delta, with high levels of immune evasion, community transmission and vaccine waning so is able to rapidly spread, regardless of vaccination or previous infection status. The evidence on the severity of disease is still emerging but, even with suggested lower infection severity, high levels of hospitalisation may still be seen⁴².

Option 2 – Introduce additional protective measures in higher risk settings

This option would see the introduction of additional protective measures, over and above those set out in Option 1, to help reduce the incidence and slow the spread of the virus, and in particular the Omicron variant. The measures considered are related to reducing social contacts in settings of potentially higher risk, over and above those the levels that could result from observation of Scottish Government guidance, continued use of baseline measures, and voluntary social distancing by individuals.

The introduction of these additional measures through regulation is viewed as necessary given the incidence and spread of the virus, in particular the Omicron variant, based on the evidence available at time of decision-making.

Costs

Capacity Limits on Live Events and Gatherings

This measure would impose limits on the number of people who could attend indoor seated events (200 people), indoor standing events (100 people), and outdoor events (500 people, regardless of whether these events were seated or standing). This will affect venues and events that are ticketed, and also where admittance may be 'paid at the door' across a range of activities, but particularly sporting events (such as football games and festive race meetings), theatre performances (such as Christmas pantomimes) and seasonal outdoor events (such as Hogmanay celebrations in Edinburgh).

In instances where initial event capacity was in excess of the constraints imposed, the restrictions would reduce venues' and businesses' ability to generate revenue through sale of unsold tickets.

The capacity restrictions may also restrict the ability of venues to stage events profitably or at breakeven levels, relative to the costs of production (e.g. required energy costs, staffing costs), particularly if combined with restrictions on social distancing between customers. This may result in venues or event organisers deciding to postpone or cancel events to reduce the scope for direct financial losses. This may result in cancellation of contracts for businesses and individuals involved in the production of events or the supply chain. It may also generate shutdown costs for venues, including costs of disposal of perishable stock bought for sale during events. This may also impact on companies touring performances between venues. For example the Scottish Ballet had to cancel their tour of the Nutcracker in Edinburgh, Glasgow and Aberdeen from 26 December until 24 January as a result of the restrictions⁴³.

⁴² [22 December 2021 Risk assessment for SARS-CoV-2 variant: Omicron VOC-21NOV-01 \(B.1.1.529\) \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043840/22-december-2021-risk-assessment-for-SARS-Omicron_VOC-21NOV-01_B.1.1.529.pdf)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043840/22-december-2021-risk-assessment-for-SARS-Omicron_VOC-21NOV-01_B.1.1.529.pdf

⁴³ <https://www.scottishballet.co.uk/articles/update-the-nutcracker-tour-cancellations>

Postponement or cancellation of events may require venues or companies staging events to offer exchanges, credit notes or refunds for existing tickets sold. These could create cashflow pressures from demands for refunds. Postponement may reduce future revenue generation should this limit the opportunities and time available for staging further events later in the year.

Processing of exchanges, credit notes or refunds will also generate additional administrative costs for the businesses affected; reorganisation of events for future dates will also generate additional administrative impacts.

Cancellation or rearrangement of events will also reduce the revenue of ancillary businesses who, while not directly involved in the staging of an event, may generate revenue as part of it, for instance mobile food stalls, transport and accommodation providers.

The scale of the economic harm arising from restrictions will vary across event types. It will be influenced by the scale of the event compared to capacity restrictions (with greater impacts on larger, highly subscribed events); the extent to which affected events can be rearranged to later in the year (which may be impacted by available space in venues' programmes, available fixture slots within sporting calendars) or the availability of performers to return (for example, international band tours), and whether performances are seasonal (e.g. Christmas pantomimes, Hogmanay celebrations). It will also be affected by the duration of measures and the numbers of events that fall within the timeframe of the restriction (for instance, the exposure of Scottish Premiership clubs may be reduced by restrictions coinciding with part of the scheduled winter break), but also by whether the restriction creates uncertainty over whether events scheduled for Q1 2022 will be able to be staged at planned capacities.

Requirement for physical distancing of 1m in specific hospitality and leisure settings

This measure would create a requirement for businesses to ensure physical distancing of 1 metre for people in or waiting to enter specific hospitality and leisure settings. It would also require limits or controls on admittance to these premises to allow the 1m distance to be maintained. This would in effect restrict the capacity of individual premises by limiting the numbers of customers who could be 'on site' at a given time.

This measure would generate implementation costs for affected business premises, through requirements for reintroduction of signage highlighting the 1m requirement and associated capacity limits. These could include financial costs, should purchases of new signage be required. Business premises may also need to be reorganised, generating additional costs associated with use of staff time, planning, and amendment of business processes (e.g. reintroducing booking systems in pubs or bars).

Should this requirement reduce or constrain the number of customers an individual premises can host at a given time, it would effectively reduce the business's effective capacity and consequently its revenue from customers, particularly for businesses that generate revenue from in-person transactions. The precise impact on this measure on capacity will vary according to business's individual premises: previous advice from hospitality business organisations to the UK Government indicated that outlets in the hospitality sector could make 60% - 75% of pre-COVID-19 revenues with 1m physical distancing⁴⁴; 1m physical distancing would also reduce capacities within seated and standing concert venues, theatres and sports stadiums.

Impacts on revenues would accrue to businesses where decisions on whether or not to visit may be relatively spontaneous, such as hospitality settings. However, they may also impact on events and venues where tickets have been pre-sold before restrictions, potentially generating demands for exchanges, credit notes or refunds, reducing future earnings and potentially generating cashflow pressures.

⁴⁴ [Review of two metre social distancing guidance - GOV.UK \(www.gov.uk\) https://www.gov.uk/government/publications/review-of-two-metre-social-distancing-guidance/review-of-two-metre-social-distancing-guidance](https://www.gov.uk/government/publications/review-of-two-metre-social-distancing-guidance/review-of-two-metre-social-distancing-guidance)

The scale of the economic harm arising from this measure will vary. However, it is reasonable to assume that it would have a more significant impact in the Christmas and New Year period, as it would reduce revenue generating capacity at a key time for many of the businesses affected. These restrictions may also influence businesses' decisions on whether to continue trading under reduced volumes, or pause trading, particularly when considered together with the implications of other measures. These may have impacts on business viability, and impacts on businesses within the wider supply chain for these sectors.

Requirement for table service in settings where alcohol is served for consumption on premises.

This measure would create a requirement for businesses in the hospitality sector, or hospitality settings within wider business premises, to operate table service where alcohol was being served for consumption. This would principally, though not exclusively, affect bars and public houses, where people may stand to consume alcohol as well as sit. The measure would in effect restrict the capacity of individual premises by restricting the numbers of customers who could be 'on site' at a given time to those who would be sat at tables.

This would restrict the revenue that could be generated by affected businesses, as customers would be limited to those who could be seated within table capacity (which could in part be influenced by other measures restricting capacity, such as physical distancing requirements).

The measure would also potentially change individual businesses staff/turnover ratio, as to operate a table service system effectively could require relatively higher staff / customer ratios than a system of 'at the bar' ordering. This would reduce the profit achieved on sales, compared to a situation without the measure. It may also lead to slower service, which could impact on customer throughput.

The scale of the economic harm arising from this measure will vary. However, it is reasonable to assume that it would have a more significant impact in the Christmas and New Year period, as it would reduce revenue generating capacity at a key time for many of the businesses affected.

Requirement for premises operating as nightclubs, dance halls or discotheque premises to close, or amend their operations

This measure would require premises operating as nightclubs, dance halls or discotheque premises to close temporarily for the duration of the measure being in place, or amend their operations to operate as bars or restaurants (and be subject to measures applicable to those settings). It is anticipated that affected businesses' decisions will vary according to their markets; the extent of alterations required and associated costs; whether altering their nightclub operations would be consistent with their wider business model; and their expectations of the duration of the measure.

Should businesses subject to this measure opt to close temporarily, they would likely incur costs associated with temporarily shutting down activities, such as costs of securing and heating the empty premises, and disposal of stock, some of which may require disposal in controlled settings. Businesses opting to change their business models to continue trading would incur implementation costs, such as signage, installation of temporary furniture, and restructuring of staffing arrangements.

Businesses that closed temporarily following this measure would lose footfall and revenue, which may be substantial for individual businesses over the Christmas and New Year period. Businesses that amend their operations to continue trading may continue to generate revenue, though this would be restricted by capacity constraints resulting from measures such as table service requirements or physical distancing requirements. Businesses will also continue to incur fixed costs, and will also incur staff costs. However, these costs may be more challenging to cover over longer durations, which could create challenges for business viability and staff retention.

Overall, it is recognised that these measures could have been recognised that the introduction of these restrictions may impact on a range of hospitality and leisure businesses. These measures, individually and in combination, would reduce trading capacity and opportunities to generate revenues at the traditionally most important time of the year for revenue generation. Measures on events capacities and physical distancing may result in event venues opting to pause trading temporarily, as continuing to trade may result in losses. Cancellation of pre-ticketed events may create cashflow pressures if there are requests for refunds from affected customers. Reduced trading by hospitality and leisure businesses would result in reduced orders from supply chain businesses, particularly in the Food and Drink sector; reduced or cancelled events may also impact on ancillary businesses. The scale of impact and economic harm associated with the measures will be influenced by their duration, which will also impact on business viability challenges and associated business decision-making around closure and staff retention.

The level of financial support available may not fully compensate businesses for the losses and costs incurred, especially as no furlough scheme is now in place, with businesses having to cover staff costs which they did not previously have to do when similar restrictions were in place. Businesses will therefore make commercial decisions now about whether to keep staff on. There is a risk of job losses as well as a risk of closure of businesses in the sectors most affected by restrictions.

The Scottish Government has supported the sector via a specific financial package in early 2021 through the Strategic Framework Business Fund. Most recently the sector is covered by the Hospitality and Leisure top up fund which supports businesses impacted by the public health restrictions introduced in December, including the requirements for physical distancing and capacity limits.

Benefits

The science around physical distancing has not changed over the course of the pandemic. As explained in the public health rationale section previously, close contact for prolonged periods, especially in social settings, particularly indoors with poor ventilation and no face masks is inherently high risk if unvaccinated.

Overall the transmission risk on people mixing indoors with no distancing is inherently high despite vaccination given the increased transmissibility of Omicron. The WHO advise at least 1m but evidence indicates that maintaining 2m distancing is between 10 and 50 times safer than staying 1m apart (again with no vaccination). In the current situation whereby Omicron needs boosters to be effective the WHO guidance is extremely relevant.

Vaccinations, adequate ventilation, face coverings, table service and limiting the amount of time spent indoors will all reduce the risk of transmission but the exact extent of this reduction is dependent on the exact mix of these factors in play. The attack rate of Omicron does suggest that the virus will spread to many more people in a single outbreak compared to previous variants.

Any option concerning physical distancing that decreases close contact between individuals/households will have a dampening impact on transmission as close contact for more than 15 minutes is still the most likely way to transmit.

However, it should be noted, that with a number of public places that would be in scope of these Regulations still voluntarily maintaining some distancing, it has been considered that the re-imposition of distancing may not achieve the same impact expected as if no physical distancing was being undertaken. In addition, the level of vaccination may also impact on people's adherence to these rules, with boosters potentially encouraging a more relaxed approach to physical distancing.

Introducing a regulation that table service will be required in settings where alcohol is served for consumption on the premises should reduce the number of contacts that an individual will encounter and decrease the risk of transmission by ensuring PD is maintained between groups of attendees i.e. this

would avoid different social groups from congregating around the bar area. However, the overall impact on transmission will be determined by the adherence to the rule, especially as alcohol can cloud judgements.

Closing nightclubs etc. will reduce the risk of transmission – not only through preventing activities where physical distance would be harder to introduce, but also remove activities – dancing and socialising over loud music that would normally entail more respiratory activity than seated conversation in a non-music social setting.

Limiting capacity numbers in both indoor and outdoor venues/professional sporting events alleviates the pressure on emergency services and should have a positive impact on reducing community transmission.

Pinch points that increase the risk of transmission associated with events attended by large scale crowds include increased contacts going to and from events on public transport, supporters buses, car sharing etc., crowding in pubs and restaurants prior to the event and increased contact in stadium/venue concourse areas while queuing and socialising after purchasing food and drink.

With capacity limits any reduction from the maximum capacity will bring an element of transmission risk reduction if people can spread out and no significant impact on Harm 2.

The high growth advantage seen by Omicron has already started to cause staff shortages due to either illness or the requirement to self-isolate. Staff absences in the NHS Urgent and Emergency Care departments in England because of COVID increased from 11,375 on 29 November 2021 to 27,716 on 23 December 2021, an increase of over 140%⁴⁵. Staff absences would continue to follow a similar trajectory to case infection rates. By introducing the interventions outlined in Option 2, the spread of Omicron can be slowed and reduce the levels of staff absences seen in essential services.

It is recognised that there will be potentially substantial costs and impacts on those required to meet the regulations, especially reductions in business and limitations on attendance at events. However, the risks to public health, as judged by the evidence available at point of decision-making are viewed as significant enough to warrant the introduction of further requirements. As noted above, the requirements are based on previous legislation and guidance. The Scottish Government has also introduced a package of support to provide funding for businesses affected by measures to control the spread of the Omicron variant, including hospitality, cultural and events businesses, and also support for supply chain and ancillary businesses⁴⁶.

Based on the current scientific evidence and emerging evidence on the increased transmissibility of Omicron this temporary change is deemed necessary and proportionate to protect public health.

Scottish Firms Impact Test:

The requirements impact Scottish firms within the sectors listed previously, but should not impact the operations of Scottish firms in these sectors with operations outside Scotland.

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

The businesses affected include those in sectors such as: Hospitality, Accommodation, Nightclubs, Events, Sport, Leisure, Tourism, Cinema, Theatres and Indoor Attractions.

⁴⁵ [Statistics » Urgent and Emergency Care Daily Situation Reports 2021-22 \(england.nhs.uk\).
https://www.england.nhs.uk/statistics/statistical-work-areas/uec-sitrep/urgent-and-emergency-care-daily-situation-reports-2021-22/](https://www.england.nhs.uk/statistics/statistical-work-areas/uec-sitrep/urgent-and-emergency-care-daily-situation-reports-2021-22/)

⁴⁶ [Coronavirus \(COVID-19\): funding for businesses affected by Omicron control measures - gov.scot \(www.gov.scot\)
https://www.gov.scot/publications/coronavirus-covid-19-business-funding/](https://www.gov.scot/publications/coronavirus-covid-19-business-funding/)

Hospitality

The hospitality sector is a very important part of Scotland's economy and society. The sector directly employs 136,500 people in Scotland across 8,715 businesses⁴⁷. The hospitality sector has some particular features summarised below:

- Some local authorities (such as Argyll & Bute, Perth & Kinross and Highland) are disproportionately dependent on the hospitality sector.
- Women are more likely than men to work in the accommodation and food sector industry. Women constitute 53.7% of the accommodation and food sector workforce⁴⁸.
- A large proportion of the workforce are young people: 33.0% of the accommodation and food services sector workforce is aged 16-24 compared to 11.1% of the workforce as a whole.
- More than half (54%) of employees working within hospitality work part time. This is particularly pronounced in relation to public houses and bars where nearly two thirds of employees work part time⁴⁹.
- The industry sector with the highest proportion of non-UK nationals in the workforce is accommodation and food services – 19.0 per cent of its workforce are non-UK nationals.
- Hospitality is an important sector across Scotland, offering an important share of employment in both rural and urban areas. The sector accounts for 5.4% of total employment in Scotland⁵⁰.
- The sector also supports many jobs indirectly through its diverse supply chain.

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.

The measures within the regulations may impact disproportionately on small businesses who may experience cash-flow problems as a result of any further tightening of restrictions.

Table 1 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 1: Breakdown of the Scottish hospitality sector by business sector

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Hotels and Similar Accommodation (SIC 551)	41,000	1,655	1,985
Licensed restaurants (SIC 56101)	36,000	2,360	2,760
Unlicensed restaurants and cafes (SIC 56102)	29,000	2,125	2,725

⁴⁷ Inter-Departmental Business Register 2021 and Business Register and Employment Survey 2020

⁴⁸ Annual Population Survey, Jan - Dec 2020 ONS. <https://www.ons.gov.uk/searchdata?q=annual%20population%20survey>

⁴⁹ Business Register Employment Survey 2020.

<https://www.ons.gov.uk/surveys/informationforbusinesses/businesssurveys/businessregisterandemploymentsurvey>

⁵⁰ Ibid

Licensed clubs (SIC 56301)	4,500	490	515
Public houses and bars (SIC 56302)	26,000	2,085	2,600
Total	136,500	8,715	10,585

Source: Business Register and Employment Survey; IDBR.

The hospitality sector has been significantly adversely affected by COVID-19, and the necessary measures implemented to reduce and restrict the prevalence of the virus. For instance:

- The Scottish Government's Monthly GDP statistics for October 2021 show Accommodation and Food as 6.9% lower than in February 2020 prior to the pandemic, compared with 0.4% lower for the economy overall⁵¹.
- The Scottish Government's analysis of ONS's BICS statistics for Scotland includes information on the impact of COVID-19 on the Accommodation and Food Sector⁵². Key points include:
 - In the period 29 November to 12 December 2021, 49% of businesses in the Accommodation & Food Services sector reported experiencing a decrease in turnover compared with what is normally expected for this time of year. The comparable proportions for the economy overall is 25%.
 - 42% of businesses in the Accommodation & Food Services sector reported that they were experiencing a shortage of workers in the period 15 to 28 November 2021, compared with 38% for the economy overall.
 - 15% of businesses in the Accommodation & Food Services sector reported having no or less than 3 months cashflow in the period 29 November to 12 December 2021, compared with 21% for the economy overall.

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 will be particularly important as we enter the winter months. There are hospitality businesses across the country, providing important services to their communities.

The Scottish Government recognises 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.⁵³ 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.

Table 2, below, sets out the number of occupied premises by local authority broken down by public houses and clubs, restaurants, hotels and cafes.

Table 2: Number of Occupied Premises by Local Authority

⁵¹ GDP Monthly Estimate: October 2021 - gov.scot (www.gov.scot) <https://www.gov.scot/publications/monthly-gdp-october-2021/>

⁵² BICS weighted Scotland estimates: data to wave 45 - gov.scot (www.gov.scot) <https://www.gov.scot/publications/bics-weighted-scotland-estimates-data-to-wave-45/>

⁵³ Transmission of SARS-CoV-2 and Mitigating Measures, SAGE EMG June 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892043/S0484_Transmission_of_SARS-CoV-2_and_Mitigating_Measures.pdf

Local Authority	Public Houses and Clubs	Restaurants	Hotels	Cafes
Aberdeen City	194	145	267	110
Aberdeenshire	201	72	144	90
Angus	151	58	36	45
Argyll and Bute	145	106	163	70
City of Edinburgh	596	599	194	410
Clackmannanshire	55	9	9	15
Dumfries and Galloway	229	25	138	100
Dundee City	197	86	32	65
East Ayrshire	177	37	18	45
East Dunbartonshire	73	37	6	40
East Lothian	118	46	28	45
East Renfrewshire	54	36	4	25
Falkirk	126	41	32	55
Fife	392	125	98	130
Glasgow City	638	524	84	425
Highland	276	174	361	175
Inverclyde	95	31	3	25
Midlothian	81	32	13	30
Moray	113	39	91	45
Na h-Eileanan Siar	19	12	26	20
North Ayrshire	175	63	32	55
North Lanarkshire	256	63	24	105
Orkney Islands	43	11	36	10
Perth and Kinross	184	89	123	85

Renfrewshire	180	103	18	65
Scottish Borders	158	50	77	65
Shetland Islands	35	14	19	15
South Ayrshire	161	55	47	55
South Lanarkshire	245	143	36	120
Stirling	117	70	81	70
West Dunbartonshire	82	35	15	40
West Lothian	132	64	28	65
Scotland	5,698	2,994	2,283	2,725

Source: IDBR 2021, NDR valuation roll (October 2021)

Accommodation

The Accommodation sector is a very important part of Scotland's economy and society, forming an important part of the broader tourism industry in both rural and urban areas.

It is estimated that the accommodation sector in Scotland comprises 2,850 registered enterprises and accounts for 48,000 jobs broken down as follows⁵⁴:

- 1,655 Hotel and similar accommodation businesses in Scotland, supporting around 41,000 jobs.
- 145 Holiday centres and villages, around 1,250 jobs.
- 25 Youth hostels, supporting 300 jobs.
- 675 Other holiday and other short-stay accommodation (not including holiday centres and villages or youth hostels) supporting 2,250 jobs.
- 260 Camping grounds, recreational vehicle parks and trailer parks supporting 2,500 jobs.
- 85 Other accommodation supporting 800 jobs.

Within the accommodation sector across Scotland, it is estimated that there are around 2,300 business premises classed as hotels across Scotland; around 1,500 premises classed as B&Bs; and over 18,000 premises classed as self-catering premises.⁵⁵ However, self-catering accommodation is unlikely to fall within scope of these restrictions.

The supply chains will also be negatively affected by restrictions. This includes retailers and wholesalers of food and drink, service providers to accommodation premises (e.g. laundry services, cleaning services) and other related suppliers in the wider supply chain include pet boarding, outside catering. There may also be impacts on businesses and communities that benefit from expenditure by those staying in commercial accommodation (e.g. car hire, hospitality premises, visitor attractions and experience providers, and retailers).

Late night venues with music, alcohol and dancing

⁵⁴ Data on Registered Enterprises is sourced from the IDBR for 2021, while employment data is sourced from BRES and covers 2020.

⁵⁵ Extract from the Non-Domestic Rates valuation roll, October 2021

It is estimated, based on the Inter-Departmental Business Register 2021 and 2020 Business Register and Employment Survey, that there are 130 businesses under the heading non-charity licensed clubs. Nightclubs and sexual entertainment⁵⁶ businesses in Scotland fall under this classification. These businesses operate across 150 sites (as some businesses may have more than one site) and are estimated to employ around 1,500 people. Over half (56%) of employees working in the sector work part time. It is not possible to separate out sexual entertainment venues from this, though it is understood less than 20 operate in Scotland as of 2015. The vast majority of nightclub and sexual entertainment businesses are small (employing less than 50 people). We currently have no specific data on supply chains for these businesses. It is likely that most of these are based in cities and larger towns although it is not possible to obtain detailed data at this time.

- Based on the Inter-Departmental Business Register 2021, it is estimated that there are 130 nightclub Businesses in Scotland. These businesses operate across 150 Sites (as some businesses may have more than one site).
- Based on the Business Register and Employment Survey (BRES) 2020, it is estimated that nightclub businesses provide 1,500 Jobs across Scotland.

Late Night Venues – Hybrid Venues

There are potentially premises that might be classed as pubs or restaurants in official statistics that could fall within scope of the Regulations.

Stakeholder estimates suggest that there may be around 300 - 400 premises across Scotland that operate as 'hybrid' venues (e.g. as pubs or restaurants during the day, and late night venues with music, alcohol and dancing at night). Stakeholders have also suggested there may potentially be up to 1,500 premises that may operate with some of the late night venues with music, alcohol and dancing characteristics (e.g. late opening, dancefloors, loud music).⁵⁷

Event Sector

It is not currently possible to indicate the full range of individual events that would be impacted by the regulations, or the associated number of wider businesses affected. The following data therefore presents a summary of data on businesses associated with staging and supporting of events in Scotland overall.

It is estimated, based on the Inter-Departmental Business Register 2021 and 2020 Business Register and Employment Survey, that there are 3,725 Events Industry businesses in Scotland. Event catering businesses, performing arts, activities of sports clubs and activities of exhibition and fair organisers are such businesses in Scotland that fall under this classification.⁵⁸ These businesses operate across 4,560

⁵⁶ As per previous work for Nightclub related BRIAs (e.g. p54-71: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 ([legislation.gov.uk](https://www.legislation.gov.uk)) <https://www.legislation.gov.uk/ssi/2020/344/resources> Nightclub businesses are defined here as non-charity licensed clubs (within Standard Industrial Classification code 56.301). Nightclubs and sexual entertainment businesses in Scotland fall under this classification. The SIC code definition of nightclubs used here does not align perfectly with the definition of nightclubs used in certification regulations. These statistics therefore represent a best estimate.

⁵⁷ Night Time Industries Association (2021), Covid Status Certification: NTIA Scotland Briefing Paper

⁵⁸ Events Industry defined here using the following SIC2007 codes:

5621 : Event catering activities

9001 : Performing arts

9002 : Support activities to performing arts

9004 : Operation of arts facilities

9311 : Operation of sports facilities

9312 : Activities of sport clubs

68202 : Letting and operating of conference and exhibition centres

74209 : Other photographic activities (not including portrait and other specialist photography and film processing)

79909 : Other reservation service activities (not including activities of tourist guides)

82301 : Activities of exhibition and fair organizers

82302 : Activities of conference organizers

93199 : Other sports activities (not including activities of racehorse owners)

sites (as some businesses may have more than one site) and are estimated to employ around 42,250 people (2% of Scotland's jobs in 2020). It is unclear what proportion of these businesses will be affected by the introduction of these measures as detailed data is unavailable on the scale of services/business revenue generated from the settings within scope. We currently have no specific data on supply chains for these businesses. It is likely that most of these are based in cities and larger towns although it is not possible to obtain detailed data at this time.

Small businesses are the majority of the sector. Figures from the Inter Departmental Business Register indicate that in 2021, 97% of businesses in the Events Sector had fewer than 50 employees, 2% had between 50 and 249 employees and 1% had more than 250 employees.

The Business Register and Employment Survey 2020 indicates that, overall, more than half (54%) of employees in the sector work part-time.

Approximately 15,100 (25.6%) of workers in the events industry were self-employed. This is a higher proportion than for the workforce as a whole (11.6%). The proportion of women working in the events industry is higher than the proportion in the overall workforce – 55.4% and 49.2% respectively. However, for Events Catering Activities, women make up 59.6% of the workforce and for Other Reservation Service and Related Activities they make up 71.8%* of the workforce.^[59]

Sport

For the sports sector, the measures will potentially impact on Scottish Rugby home internationals, Scottish Football home internationals, and Scottish Football teams with regular attendance at home fixtures above 500 people which will cover the majority of teams in the Scottish Premiership, Championship, League 1 and 2.

Measures will also affect Scotland's three professional ice hockey teams and one professional basketball team. Horse Racing will also be affected at the five racecourses in Scotland.

Restrictions on adult indoor contact sport will impact businesses which provide, support or operate facilities for this. In particular, it may affect the welfare of 10,000 paid coaches, who are largely within an age cohort particularly hard hit economically by the pandemic. Coaches are likely to be self-employed and may experience significant loss of earnings as a result of restrictions.

Leisure

In Scotland the majority of leisure provision and facilities are operated and run by local authorities or Leisure Trusts established to deliver on the local authorities behalf. There are 27 local authorities currently operating the Trust model, with the remainder delivering leisure provision in house. Leisure Trusts, for example, operate over 1,200 facilities across Scotland that received over 80 million customer visits last year and they employ over 20,000 members of staff.

Importantly, in addition to running facilities they deliver vital community services designed to support their local community. These include; exercise on prescription, swimming lessons, adult social care support programmes, walking programmes, internet access courses, apprenticeships and training, and sports participation programmes.

The latest data from the Inter-Departmental Business Register 2021 and Business Register and Employment Survey 2020 suggests that total employment in the fitness facilities sector to be around 2,500 and 255 businesses and the vast majority of these are small businesses⁶⁰. The latest data

⁵⁹ Source: Annual Population Survey, Jan-Dec 2020, ONS. * Estimate based on a small sample size. This may result in a less precise estimate which should be used with caution. <https://www.ons.gov.uk/searchdata?q=annual%20population%20survey>

⁶⁰ Source: Inter-Departmental Business Register 2021 and Business Register and Employment Survey 2020

suggests that total employment in the activities of sports clubs is around 10,000 with 1,135 businesses and the vast majority of these are also small businesses. The operation of sports facilities sector employs 11,000 across 445 businesses.

Breakdown of the leisure sector

Sector	Employment (2020)	Number of Registered Businesses (2021)	Number of Registered Business Sites (2021)
Fitness Facilities (SIC 9313)	2,500	255	340
Operation of Sports Facilities (SIC 9311)	11,000	445	815
Activities of Sports Clubs (SIC 9312)	10,000	1,135	1,195

Source: Business Register and Employment Survey; IDBR.

Leisure Services provide an important role in ensuring the mental and physical wellbeing and social connectedness of local communities.

Community Leisure UK (Scotland) and VOCAL, supported by COSLA, have been undertaking detailed analysis relating to the financial impact of COVID-19 and estimate that the deficit for the Local Authority leisure sector will be £127 million at the end of the calendar year. This will put significant strain on Local Authority budgets and potentially put at risk the vital service they provide in local communities. Local Authorities have been supportive of their Trusts as much as possible, however, the financial model, which relies partly on a management fee from the council and partly on income generation from activity is not sustainable while facilities are generating zero income. Although most facilities are largely closed and in many cases staff have either been furloughed or redeployed to other areas, there is an immediate and continuing impact of managing ongoing costs and resources.

Indoor bowling and Snooker/ pool halls

Snooker and pool halls tend to operate either as independent businesses, part of a larger leisure facility, within licensed premises, holiday parks or hotels. Indoor Bowling often forms part of wider retail/shopping centres. Note that the data provided for operations of sports facilities and activities of sports clubs will also include activities other than bowling and snooker/pool.

Breakdown of the operation of sports facilities and activities of sports clubs sectors

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Operation of Sports Facilities (SIC 9311)	11,000	445	815
Activities of Sports Clubs (SIC 9312)	10,000	1,135	1,195

Source: Business Register and Employment Survey; IDBR.

Information provided by the Tenpin Bowling Proprietors Association suggests that the sector employs around 600 people in Scotland and has a total value of around £18 million. There are 26 bowling centres in Scotland including those affiliated to national chains and local independent businesses.

Soft Play

According to the information the Scottish Government has received from the Scottish Indoor Play Centres Owner & Management Group, there could be up to 145 small and medium enterprises in Scotland providing soft play facilities. The Group estimates that the sector provides up to 4,500 jobs and employs proportionately more women than men.

Many soft play centres are likely to be SMEs, some are part of broader chains. Some hospitality settings which incorporate soft play centres will often similarly be small businesses although some may be part of larger network. The other parts of the supply chain possibly affected are the manufacturers of the soft play equipment.

Amusement Arcades

There are 75 amusement arcade businesses registered in Scotland out of which 50 are Adult Gaming Centres (AGCs) and 25 are Family Entertainment Centres (FECs).

The majority of amusement arcades operating in Scotland are micro and small businesses. The figures in the table below for from the Inter Departmental Business Register (2021) and the Business Register and Employment Survey (2020) to amusement and recreational businesses which is a broader level of businesses. The measures may impact disproportionately on small businesses who may experience cash-flow problems as a result of any further tightening of restrictions.

Breakdown of the other amusement and recreation activities sector

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Activities of amusement and recreation activities (SIC 9329)	3,500	395	430

Source: Business Register and Employment Survey; IDBR.

Casinos and Bingo Halls

The information we have for casinos comes from the Betting and Gaming Council who collect such data for the purposes of industry representation and the requirements of gambling licensing. They estimate there are 11 casinos in Scotland, employing 770 people across Glasgow, Edinburgh, Aberdeen and Dundee.

The information we have for bingo halls comes from the Bingo Association who collect such data for the purposes of industry representation and the requirements of gambling licensing. They estimate that there are 45 licensed bingo clubs in Scotland, employing 1,100 people. The clubs are operated by 8 companies in Scotland, of whom 5 operate only in Scotland.

Funfairs

Travelling Funfairs

The Showmen's Guild in Scotland currently has 322 members. Each member will have funfair equipment and is usually a business in their own right. Membership of the Guild is normally held by the head of the household with all the family involved in the day to day operations. Members must declare each piece of funfair equipment that they intend to operate with the Guild and all have test certificates and insurances. A spreadsheet provided by the Showmen's Guild lists 915 separate pieces of equipment, although some are mothballed and others have no operational status given. Travelling funfairs can vary from one or two rides to over twenty and in the case of Kirkcaldy Links Market (the largest fair in Scotland) with over 100 attractions (travelling funfairs tend to operate outwith the winter months).

Static funfairs

It is estimated, based on the Inter-Departmental Business Register 2021 and 2020 Business Register and Employment Survey that there are around 25 static funfairs currently operating which collectively employ around 400 people. The Business Register and Employment Survey 2020 sets out that there were approximately 400 employees worked in activities covered by '93.21 - Activities of Amusement Parks and Theme Parks' in Scotland. The largest concentrations of workers were located in North Lanarkshire (150) and Aberdeen City (100).

Activities of amusement parks and theme parks sector

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Activities of amusement parks and theme parks (SIC 9321)	400	25	25

Source: Business Register and Employment Survey; IDBR.

Cinema

There are 71 fixed sites screening first-run film in Scotland run by 38 organisations (31 multiplex sites and 4 independent chain sites run by 8 operators, 36 independent venues run by 30 operators). Additionally, there are 2 touring cinema operators who screen first-run films. One is Screen Machine which physically tours, the other is INDY Cinema Group which has a number of sites. They are difficult to categorise given their unique set-ups. There are also a number of smaller venues that are screening occasionally, off-date and/or older films, which aren't included here.

There are currently 1,530 employees working in film exhibition in Scotland, based on Office for National Statistics and BFI methodology; however this figure is slightly low as it removes multi-arts venues and misses organisations that aren't registered under the specific tax code for cinemas.

There are 36 independent venues in Scotland, run by 30 operators; these are all registered in Scotland. Other cinemas in Scotland are part of chains. Independent of restrictions, several chains made the decision to close temporarily – this was due to a combination of reduced capacities because of physical distancing and the postponement of several key releases. According to BRES 2020 and IDBR 2021 there are 30 businesses operating across 65 sites in the motion picture projection activities sector in Scotland employing approximately 2,000 people.

Motion Projection activities sector

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Motion picture projection activities (SIC 5914)	2,000	30	65

Source: Business Register and Employment Survey; IDBR.

Theatres and music venues

Based on the data we have available, which is dependent on how businesses are registered, there are 590 registered businesses in the performing arts, support activities for performing arts and operation of arts facilities (IDBR 2021). Around 570 of these are classified as small businesses with 49 employees or less. These 590 businesses employ 4,400 people⁶¹. It should be noted that there is also a high

⁶¹ Source: Business Register and Employment Survey (2020)

proportion of freelancers/self-employed working in the sector that may not be picked up by the Business Register and Employment Survey.

Activities of theatres and music venues sub-sectors

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Performing arts (SIC 9001)	2,500	380	390
Support activities to performing arts (SIC 9002)	400	140	145
Operation of arts facilities (SIC 9004)	1,500	70	85

Source: Business Register and Employment Survey; IDBR.

Indoor visitor attractions and museums

Many visitor attractions, particularly those outwith the main urban areas are either closed or have reduced opening hours over the winter months (tourism in Scotland still experiences significant seasonality, with Easter-October being the main operating period for visitor attractions).

It is not currently possible to indicate the full extent to which individual visitor attractions that would be impacted by the regulations, given that only the indoor parts of the business site would be affected. For example, the majority of zoos and country garden estates will be outside, however there may be some parts of these establishments that are indoors.

Indoor Attractions

Sector	Employment (2020)	Number of Businesses (2021)	Number of Business Sites (2021)
Museums activities	4,000	100	155
Distilleries	8,000	215	320
Operation of historical sites and buildings and similar visitor attractions	2,250	60	135
Botanical and zoological gardens and nature reserve activities	2,000	40	95
Tour operator activities	1,000	195	225
Activities of tourist guides	125	50	55

Source: Business Register and Employment Survey; IDBR.

It is estimated that there are 100 registered businesses operating in the **Museums and galleries** sub-sector, at 155 sites. The sector ranges from large national institutions employing hundreds of staff to small volunteer-run museums.

The operation of **historical sites and buildings** sub-sector includes the operation of 60 businesses across 135 sites and employs in the region of 2,250 people. This sector includes major tourist attractions in the central belt such as Edinburgh Castle, Stirling Castle and the Falkirk Wheel to much smaller sites of historical and cultural significance in more rural areas.

There are 215 registered **distillery businesses** operating in Scotland. The majority of those produce whiskey but some have a focus on gin. Distilleries are particularly popular with tourists and there are a number of tour operators who run specialist trips to distilleries (often visiting multiple distilleries within a single day). Many of Scotland's distilleries also have a visitor centre with gift shops and provide tours and demonstrations for visitors. Some distilleries also have bars and cafes. Given the range of activities undertaken at distilleries we do not have specific data on the number of people employed within visitor

attractions at distilleries. Distilleries are heavily geographically concentrated in the Highlands and Islands and are important to the rural economy.

The sub-sector relating to **botanical and zoological gardens and nature** reserves also includes gardens, estates and country parks. Estimates suggest that there are 40 businesses operating within this sector, employing around 2,000 people. This category includes Edinburgh Zoo, the Highland Wildlife Park and Blair Drummond Safari and Adventure Park. Visit Scotland state there are over 400 gardens, woodlands and plant nurseries to visit in Scotland. Many of these will include both indoor and outdoor spaces. Visitor attractions range in scale from the 4 botanical gardens (at Benmore, Dawyck, Logan and Edinburgh) and National Trust gardens to much smaller gardens and country parks. This sub-sector draws heavily on the skills, experience and enthusiasm of volunteers.

It is estimated that there are around 1,125 people working within the **tour operator and tourist guide sub-sector of visitor attractions**. The majority of these people are employed within tour operator related activities. This sub-sector comprises around 245 separate business operating over a large number of sites. This sub-sector is heavily dependent on international tourism. This sector includes a diverse range of activity from walking and cycling tours to bus tours and boat trips.

Tourism

The tourism sector is a key part of Scotland's economy. Tourism activity in 2019 (the last full year pre pandemic) was a major driver of the national economy, recording record high levels of overnight visitors which in turn supported record high levels of tourism related employment and tourism business operators. Scottish tourism in 2019 was worth an estimated £11.6 billion to the Scottish economy which represented a notable annual increase of 9%⁶². Scottish Government figures for the sustainable tourism sector shows tourism related employment in 2019 increased from 218,000 people to 229,000 (5% increase). The tourism business base increased to 15,215 businesses in 2020, the highest on record⁶³. Overnight trips and bed-nights increased markedly 2019 (by 11% and 12% respectively). Spending (in 2019 prices) also increased by 12%⁶⁴.

The tourism stakeholders represent in businesses who have a large proportion of employees with one or more of the protected characteristics. Indeed, evidence tells us that the workforce in the tourism sector is comprised of people who are predominately, but not exclusively, from of people who have one or more of the protected characteristics: women⁶⁵, young people (16-24 years old)⁶⁶, non-UK nationals⁶⁷ and people experiencing socio-economic disadvantage⁶⁸.

As for the hospitality sector, the tourism sector is an important contributor to Scotland's economic performance, and to economic opportunities for young people and other groups who have one or more of the protected characteristics.

The measures within the regulations may impact disproportionately on small businesses who may experience cash-flow problems as a result of any further tightening of restrictions/guidance.

⁶² VisitScotland Key Facts on Tourism 2019; Growth sector statistics, "Sustainable Tourism", 2021, www.gov.scot/publications/growth-sector-statistics/.

⁶³ As defined by the Scottish Government's "Sustainable tourism" growth sector, 2021, www.gov.scot/publications/growth-sector-statistics/.

⁶⁴ VisitScotland Key Facts on Tourism 2019; Growth sector statistics, "Sustainable Tourism", 2021, www.gov.scot/publications/growth-sector-statistics/.

⁶⁵ 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 \(www.gov.scot\)](https://www.gov.scot/publications/scotlands-labour-market-people-places-regions-statistics-annual-population-survey-2019/). <https://www.gov.scot/publications/scotlands-labour-market-people-places-regions-statistics-annual-population-survey-2019/>

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Annual Survey of Hours and Earnings (2020) <https://www.gov.scot/publications/annual-survey-of-hours-and-earnings-2020/>. Business Register and Employment Survey (2020).

Following consultations with the industry representatives, circa 1000 businesses across 6 sub-sectors (day tour operators, inbound tour operators, coach operators, visitor attractions, hostels and marine/outdoor) have been impacted by December's restrictions/guidance. We continue to look at other sectors that may need support in collaboration with VisitScotland.

Costs and Benefits to Business

There may be costs associated from these measures in terms of reduced revenues from restricted trading conditions, through restrictions on physical capacity across a range of hospitality, leisure and event businesses, and through requirements to close temporarily for nightclubs. Capacity restrictions may result in businesses closing temporarily, should combinations of these result in businesses or premises being unable to trade profitably. Closures and cancellations may generate requests for customer refunds, creating cashflow pressures, and restrict opportunities for generating revenue later in the year.

Introduction of new measures may also result in adaptation and implementation costs for businesses affected (e.g. costs associated with reintroducing signage, and reorganising business premises). Affected businesses may also continue to incur fixed costs and staffing costs despite reduced revenues, which may create pressures for business viability and staff retention. Reduced trade in hospitality, events and leisure settings may result in reduced revenues for supply chain and ancillary businesses.

The scale and importance of these lost revenue opportunities will be influenced by the duration of measures, and may be more important owing to their implementation over the Christmas and New Year period, which is traditionally significant for revenue generation in the affected sectors. These may pose challenges for business viability and staff retention, particularly in the absence of previous business support mechanisms such as the CJRS. However, the scale of costs attributable to these measures will also be influenced by those associated with measures introduced earlier in the pandemic, including baseline measures, on guidance issued by Public Health Scotland and the Scottish Government during December, and on the general public response to the spread of the Omicron variant through voluntary social distancing. The Scottish Government has also introduced a package of support to provide funding for businesses affected by measures to control the spread of the Omicron variant, including hospitality, cultural and events businesses, and also support for supply chain and ancillary businesses⁶⁹.

The measures considered in this analysis are focused primarily on reducing transmission opportunities and risks among social contacts within public places, to slow spread of the virus. As well as providing more time to complete the booster vaccination programme and to further assess the severity of Omicron, this is intended to enable businesses and public services to continue to operate safely in this context, wherever possible.

Competition Assessment:

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

Yes. Measures requiring the closure of nightclubs will restrict the number of suppliers in this market across Scotland for the period in which these regulations are in force. Should the measures result in businesses leaving this market as a result of viability challenges, they may also restrict the range of suppliers in individual local markets.

Should direct capacity restrictions and social distancing requirements result in effective capacity limits that render trading unviable for businesses (particularly, but not limited to, music venues, theatres, concert halls) during the period in which restrictions are in force, these businesses may require to close temporarily to ensure their longer term survival. If so, this may restrict the number of suppliers in the

⁶⁹ [Coronavirus \(COVID-19\): funding for businesses affected by Omicron control measures - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-covid-19-business-funding/)
<https://www.gov.scot/publications/coronavirus-covid-19-business-funding/>

markets they serve. Should the impact of the regulations on businesses in these markets lead to business exit over the longer term, there may be reductions in the number of suppliers in the market they serve.

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

Unclear. The measures will place potentially substantial restrictions on capacity across a range of leisure and hospitality activities, in addition to existing guidance on household mixing. However, these measures will apply across these activities as a whole, which may mitigate competition effects on businesses within these activities.

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

No. It is not anticipated that the regulations will change affected businesses' incentives to compete vigorously; reduced scope for trading and viability pressures resulting from regulations may make protection and increasing market share more important.

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

Yes. Restrictions on business activities, through capacity limits, reductions in capacity through social distancing and table service requirements, and requirements for premises to close, will restrict the ability of consumers to access a range of leisure and hospitality settings, and therefore the choices available to them, for the period in which regulations remain in force.

Consumer Assessment:

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

Yes. Restrictions on business activities, through capacity limits, reductions in capacity through social distancing and table service requirements, and requirements for premises to close, will restrict the ability of consumers to access a range of leisure and hospitality settings, and therefore the availability of these services to them, for the period in which regulations remain in force.

- *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. The regulations do not change arrangements regarding storage or use of consumer data, over and above those arising from the baseline measures (e.g. Test and Protect, Vaccine Certification)

- *Does the policy increase opportunities for unscrupulous suppliers to target consumers?*

No.

- *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:
No statutory forms will be created.

Digital Impact Test:

All guidance documents created will be word based documents created by the Scottish Government teams and uploaded to the SG website by the SG’s web editors, which are readable across a range of digital devices. Online versions of the guidance will also be available.

Legal Aid Impact Test:
There is no identified Legal Aid impact

Enforcement, sanctions and monitoring:
The same enforcement, sanctions and monitoring regime will apply in this measure as per the wider BRIA for COVID-19 legislation.

Implementation and delivery plan and post-implementation review:
The requirements will be implemented through an amendment to the Principal Regulations. As with other public health measures in place, we will keep these measures under review in the context of transmission of the virus (Harm 1) and the impact on wider society (Harms 2, 3 and 4).– or a less intrusive measure is found to achieve the same aim – then the legal requirement will be removed.

Summary and recommendations:

This BRIA has set out the relative costs and benefits of Certification options with the intended effect of reducing the risk of transmission, reducing the risk of serious illness and death, allowing higher risk settings to stay open and increasing vaccine uptake. Our assessment of the options has been informed as much as possible by engagement with the sectors in scope. A summary of costs and benefits associated with the options is presented below:

Measure	Benefits	Costs
Option 1 – Continue with current baseline measures and guidance (the “Do Nothing”)		
	<p>Venues would be able to continue to trade at the same capacity, without table service or physical distancing, and there wouldn’t be any conflict or confusion over the introduction of new measures.</p> <p>For hospitality venues, there would also be no need for these businesses to increase staff resources to support table service provision where this might be required.</p>	<p>This option is not likely to have any immediate financial implications beyond those associated with continuation of baseline mitigation measures and vaccine certification</p>

	<p>Not having physical distancing requirements and the reduction in capacity that this entails means staff reductions would be less likely where customer numbers make trading viable; this is especially true for events and sporting activities that rely on a large audience/crowd to make their businesses viable.</p> <p>Keeping nightclubs open would not also benefit the venues themselves, but also nearby facilities and services within the night time economy that rely on their trade ie take-away venues, bars, and transport providers, particularly the taxi sector.</p>	
Option 2 – Introduce additional protective measures in higher risk settings		
<p>Introduction of capacity limits for live events with a maximum of:</p> <ul style="list-style-type: none"> • 100 people at indoor standing events • 200 people at indoor seated events • 500 people at outdoor events (whether seated or standing) 	<ul style="list-style-type: none"> • Reduction in transmission opportunities and risks among social contacts in higher risk settings, to slow spread of the virus. • Intended to enable businesses and public services to continue to operate safely, wherever possible. • Businesses able to operate on a level playing field with their sector/competitors within Scotland; cost is likely to be less than the cost of closure if an outbreak occurs. 	<ul style="list-style-type: none"> • Loss of revenues through restrictions on capacity, at significant time of year • Cashflow pressures from potential refunds • Loss of revenue opportunities from rescheduling events • Shutdown costs arising from temporary pauses in trading • Potential viability and staff retention challenges depending on duration of restrictions and existing viability positions
<p>Requirement for physical distancing of 1m for people on or waiting to enter specific hospitality and leisure settings</p>	<ul style="list-style-type: none"> • Provide consumers assurance that sectors are operating in line with appropriate restrictions to slow the spread and encourage confidence to use these services/facilities. • Measures should exert some further downward pressure on transmission, and gaining further time in which to complete boosters and assess the severity of the Omicron variant. 	<ul style="list-style-type: none"> • Implementation costs associated with signage, premises reorganisation • Loss of revenues through restrictions on capacity, at significant time of year • Potential viability and staff retention challenges depending on duration of restrictions and existing viability positions • Impacts on suppliers from reduced trade in affected venues
<p>Requirement for table service in settings where alcohol is served for consumption on premises</p>		<ul style="list-style-type: none"> • Loss of revenues through restrictions on capacity, at significant time of year

	<ul style="list-style-type: none"> • Additional financial support to affected sectors applied to mitigate these impacts. 	<ul style="list-style-type: none"> • Potential viability and staff retention challenges depending on duration of restrictions and existing viability positions • Impacts on suppliers from reduced trade in affected venues
Requirement for premises operating as nightclubs, dance halls or discotheque premises to close or amend operations		<ul style="list-style-type: none"> • Shutdown and disposal costs for businesses opting to pause trading; • Adaptation costs associated with measures to continue trading • Impacts on suppliers from reduced trade in affected venues • Potential viability and staff retention

In summary, we recommend that the regulations is updated to introduce the requirement to take measures to reduce the incidence and spread of the virus.

We conclude that these measures are a necessary and proportionate response based on the evidence available to decision-makers at the point of decision, alongside an effective baseline of public health measures, which will best meet our policy objectives.

Monitoring and evaluation will inform implementation as well as regular review (at least once every 21 days) of the Regulations to determine whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: John Swinney

Date: 31st January 2022

Minister's name: John Swinney MSP

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