

Equality Impact Assessment

The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020

Introduction

1. The COVID-19 pandemic has led to unprecedented calls on the health system as well as policy and financial decisions that have made fundamental changes to everyday life for people in Scotland. While it has been necessary to take these extraordinary measures to respond to the pandemic, the protection of equalities for Scotland's population, and the proportionality of the measures taken, have also been at the forefront of consideration of these actions during this emergency situation.
2. The *Coronavirus (COVID-19): Framework for Decision-Making* and *Scotland's route map through and out of the crisis* ("the Route Map") make clear that COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The *Framework for Decision-Making* identified four main categories of harm: direct health impacts, non-COVID-19 health harms, societal impacts and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing. The Route Map sets out the range and phasing of measures proposed for Scotland as it moves out of lockdown. Like the initial response to the crisis, navigating the right course out of lockdown involves taking difficult decisions that seek to balance these inter-related harms and risks.
3. The Framework and the Route Map documents also note that the pandemic, and the measures to respond to it, can have the most negative impacts on people least able to withstand them.
4. Some harms will be felt over different time horizons: short, medium and long-term. Some harm may not be fully understood for many months or even years, such as the long term impacts on mental health and school attainment. However, even in these initial stages, it is clear that impacts have not been felt equally across the population. Consideration of the continued but differential impacts as lockdown is lifted in careful phases is therefore critical to the decision making process.

Legislative background

5. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government immediately used powers conferred by that Act to bring forward the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ("the previous regulations"), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March.

These Regulations revoke and replace the previous regulations; the content of the Regulations remains primarily the same as the original regulations, as amended. They adjust the expiry date in order to align with the proposed extension of Parts 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020, which will both expire on 31 March 2021 subject to the approval by Parliament of the amendment to the expiry date of Part 1 of each Act by virtue of the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020. They make provision for the purpose of enabling a number of emergency public health measures to be taken to reduce the public health risks posed by the spread of covid-19, including: making

changes to rules about gatherings, whether indoor or outdoor, including private dwellings (with a list of reasonable exemptions); and the language used to describe the circumstances in which an individual has responsibility for a child has been drafted in such a way as to remove slightly outdated language such as 'custody' and to reflect more appropriately the terminology used in relation to parental rights and responsibilities in Scots law.

6. Recognising the extraordinary impact of the measures, Scottish Ministers have put in place a statutory requirement to review the restrictions every three weeks to ensure they remain proportionate and necessary. The same conditions are set in these Regulations to ensure only proportionate and necessary measures remain in place at any time.
7. As soon as the Scottish Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must revoke that restriction or requirement.
8. The Framework for Decision Making makes clear that the reviews will be informed by assessments of options for relaxation under their impact on the 'four harms', their viability, and broader considerations including equality impacts and consideration of measures, for example, for specific geographies and sectors.
9. The Scottish Government considered from the outset whether the lockdown provisions were consistent with the Equality Act 2010 and also considered whether the provisions could constitute indirect discrimination. In many cases, the provisions have applied to all persons irrespective of protected characteristic. Equality Impact Assessments (EIAs) have been carried out to consider the impact of the measures contained in the Coronavirus (Scotland) Act 2020 and for the respective legislation thereafter. Where some possible impacts have been identified, the Scottish Government has considered these to be justified as both a necessary and proportionate means of achieving the legitimate aim of protecting the general public from the threats posed by the outbreak of the Coronavirus pandemic and, therefore, the threat to human life in Scotland. However, from the beginning measures were put in place to support people as they complied with lockdown guidance, such as the £350 million of community funding announced on the 18 March.
10. As Scotland emerges from the lockdown, following the Route Map, some changes are delivered through regulations, such as the opportunity to take part in outdoor recreation. Other measures are delivered through changes to guidance, such as driving lessons resuming. However, all measures are given thorough consideration on the basis of their impact, including on equality and human rights.

Policy Objectives

11. On 21 May 2020 the Scottish Government published a route map setting out a phased approach to easing lockdown restrictions while still suppressing coronavirus (COVID-19). The route map recognises that the restrictions and requirements in place have a negative impact on some aspects of people's lives, such as increasing loneliness and social isolation and have potential to deepen inequalities and damage our economy. The route map also stated that, subject to the available data and evidence in support of such proposals, some of the restrictions and requirements may be eased at this time.

12. Since March, several amending instruments have been brought forward to introduce various changes in line with the route map. These Regulations provide a consolidated set of the previous regulations but include a new expiry date to ensure current measures do not automatically expire on 26 September 2020. A new expiry date of 31 March 2021, providing an additional six months, has been selected to align with the proposed extended expiry dates of Parts 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020. The expiry dates for these Acts will be amended by the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 which are currently before the Parliament for approval.
13. As lockdown measures continue to be eased, additional measures may become necessary to limit the spread of Covid 19. The Scottish Government's guidance is regularly updated to reflect these changes and to make other changes for the purpose of implementing proposals in the route map. The revised guidance is available at www.gov.scot/collections/coronavirus-covid-19-guidance.

Assessing the impacts and identifying opportunities to promote equality

14. It is necessary to make and lay this instrument urgently to make necessary adjustments to the current arrangements which facilitate self-isolation and minimise the risks to public health arising from COVID-19. On that basis, there has been a welcome opportunity to gather evidence on the possible impacts of the Regulations. Evidence was also gathered as part of the development of the Scottish Government's COVID-19 route map and the review of the Principal Regulations.
15. Given the importance of assessing the impact of policy change on each of the protected characteristics, the following table sets out an assessment of the impact of the changes made in the Regulations on each of the protected characteristics.

Expiry of the Regulations

16. The previous regulations came into force on 26 March 2020. The previous regulations state that the provisions expire at the end of the period of six months beginning with the day on which they come into force. This means that the previous regulations would have automatically expired on 26 September 2020 if action was not taken.
17. Certain measures within these Regulations are likely to be required for a long time to come, such as the requirement to wear a face covering in certain settings. Given the current data and analysis shows that restrictions are still proportionate and necessary, it is considered essential to extend the requirements and restrictions for a further six months, with a new expiry date of 31 March 2021. As previously stated, this new date is intended to bring the expiry date in line with the proposed new expiry dates of Parts 1 of the Coronavirus (Scotland) Act 2020 and Coronavirus (Scotland) (No.2) Act 2020.
18. The regulations are still required to be reviewed, at least, once every 21 days with the first review being required by 1 October 2020. This date aligns with the next expected review point of the previous regulations to ensure the 21 day cycle is maintained during the revocation and replacement of these restrictions. Ministers are also still required to revoke any restrictions or requirements as soon as they are no longer necessary to ensure measures are only in place for as long as they are needed.
19. An Equalities Impact Assessment has been produced for all of previous Regulations, and can be found at www.legislation.gov.uk under the appropriate instrument.

20. However, given the importance of assessing the impact of policy change on each of the protected characteristics, the following table sets out an assessment of the impact of the changes made in the regulations on each of the protected characteristics.

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	We do not think that there will be any adverse impacts from the policy because of a person's age
Advancing equality of opportunity			X	We do not think that our proposals will have any impact on advancing equality of opportunity because of a person's age.
Promoting good relations among and between different age groups.			X	We do not think that our proposals will have any impact on good relations among and between different age groups.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	There is no evidence to suggest that, overall, the regulations would disproportionately affect people with a disability.

Advancing equality of opportunity			X	We do not think that the adjustments set out in the regulations will have any impact on advancing equality of opportunity for people with a disability.
Promoting good relations among and between disabled and non-disabled people			X	We do not think that our proposals will have any impact on good relations among and between disabled and non-disabled people.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	There is no evidence to suggest that, overall, the changes included in these regulations would disproportionately affect either sex.
Advancing equality of opportunity			X	There is no evidence to suggest that, overall, the changes included in these regulations would advance equality of opportunity for either sex.
Promoting good relations between men and women			X	We do not think that our proposals will have any effect on good relations between men and women.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	There is no evidence to suggest that, overall, the changes included in these regulations would disproportionately affect this group.
Advancing equality of opportunity			X	The strengthening of the position already set out in guidance to enforce social distancing in businesses may help to ensure that pregnant women who continue working are better supported in following social distancing rules.
Promoting good relations			X	We do not think that our proposals will have any impact on good relations due to pregnancy and maternity

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	We do not know of any reason why the proposals set out in the regulations would disproportionately affect transsexual people .
Advancing equality of opportunity			X	There is no evidence to suggest that, overall, the changes included in these regulations would advance equality of opportunity for transgender individuals.

Promoting good relations			X	We do not think that our proposals will have any impact on promoting good relations with transsexual people
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Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	We do not know of any reason why the proposals set out in the regulations would disproportionately affect people due to their sexual orientation.
Advancing equality of opportunity			X	There is no evidence to suggest that, overall, the changes included in these regulations would advance equality of opportunity for transgender individuals.
Promoting good relations			X	We do not think that our proposals will have any impact on promoting good relations because of a person's sexual orientation.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	We do not know of any reason why the proposals set out in the regulations would disproportionately affect people due to their religion and belief.

Advancing equality of opportunity			x	The clarification that burial grounds can remain open may be of specific benefit to individuals from some religious backgrounds.
Promoting good relations			X	We do not think that our proposals will have any impact on promoting good relations among people because of their religious belief.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	We do not know of any reason the proposals set out in the regulations would disproportionately affect people due to their race.
Advancing equality of opportunity			x	There is no evidence to suggest that, overall, the changes included in these regulations would advance racial equality.
Promoting good race relations			X	We do not think that our proposals will have any impact on promoting good race relations.

21. There have been no implications for costs or resources arising from the EQIA analysis.

Monitoring and Review

22. All measures contained in the Principal Regulations are time-limited and will expire at the end of the period of six months beginning with the day on which they come into force. Moreover, the Principal Regulations are subject to a requirement to keep restrictions or requirements under review and for those to be lifted as soon as they are no longer deemed necessary to prevent, protect against or control the incidence or the spread of coronavirus.

23. Future changes to the Principal Regulations would be subject to a new EQIA.