

Mitigating actions and proportionality of restrictions

Being outdoors and staying local

Given the low risks identified above the restrictions on movement and gatherings (outdoors) are no longer a proportionate response. Current restrictions only allow for exercise and do not permit wider activity, such as picnics or sunbathing. There is also confusion about what constitutes exercise and what is permissible (e.g. angling or metal detecting). There are high social and wellbeing costs associated with these restrictions that affect health more generally. Evidence on wellbeing is provided later in this paper, demonstrating negative impacts on mental health stemming from isolation, which are affecting some groups more than others.

In terms of meeting outdoors the main risks to the impact on containing coronavirus are that the underlying assumptions underpinning the scientific advice are not met. These include:

- A. Continued physical distancing at 2m is maintained between any people from different households.
- B. That public do not congregate in large numbers
- C. That common facilities are not used (e.g. public toilets, vending machines) where there may be an increased risk of exposure through contaminated surfaces.
- D. That wider compliance to the restrictions is maintained.

A. Maintaining physical distancing - mitigations

Maintaining physical distancing is essential to enable more activity outdoors, especially when combined with the recommendations in Doc 5 (Seeing friends and family) to allow two households to meet outdoors. **A clear public message, supported by guidance, should make clear the relaxations are conditional on people sticking to the physical distancing requirements.** This can be supported in managed sites through adaptations such as one-way flows or signage.

The 2m physical distancing requirement is well understood and has been communicated extensively for activity already allowable outside the home. Therefore, it is not considered proportionate at this time to require this to be mandated in the Regulations. It should, however, be reinforced in public messaging and in guidance. This should be kept under review if there are signs compliance with this requirement begins to fall. It appears that most people believe this requirement to be in law in any case, which helps with compliance. The option to legislate for this should not therefore be raised publically as this might highlight it is not currently in the Regulations and risk it being seen as optional. Legislating for this remains an option in the future, though doing so may serve mostly as a signal about the seriousness of the issue rather than as being practically enforceable.

B. Avoiding people congregating in large numbers

Limiting the number of people allowed to meet (as recommended under **Doc 5 – Seeing Friends and Family**) will help prevent large gatherings where the risk of

transmission will rise. Allowing for all outdoor activity not otherwise restricted would have the effect of more people being outside in particular places and not necessarily moving around (as implied by exercise). This has the potential for large numbers of people to congregate, particularly at popular sites. To prevent this taking place in relation to exercise following the 7 May review exercise was limited to within an area local to the place where the person is living. This provision could be applied more widely as a means of preventing people travelling large distances to tourist sites and as a proportionate step in allowing more activity in a local area, which could help contain any increase in transmission within smaller clusters. 'Local' was not defined by a distance when introduced for exercise following the 7 May review in recognition that 'local' is very different in a city and a rural area. This has caused some confusion.

When allowing more outdoor activity on 13 May, England adopted an approach of including 'open-air recreation' as a reasonable excuse to leave the place a person is living. This approach risks undermining the coherence of the reasonable excuse set out in the restrictions on movement and gatherings (Regulation 8). The current provisions are based on need and essential activity. Including recreation as a reasonable excuse could undermine this, as people would be able to leave their house for any reason, making enforcement very difficult. This is not considered to be a sustainable solution as it is open to legal challenge and it undermines the coherence of Regulation 8 which is still required to restrict movement and gatherings.

Alternative options include fundamentally redrafting Regulation 8 to provide a negative list of reasons it is not acceptable to be outside, or to remove the restrictions and rely on guidance and messaging for compliance. It is considered too early to adopt either of these, which would be difficult to reverse and carry a higher risk of non-compliance and of being misunderstood.

The preferred option is to **redefine the area in which a person may not leave without a reasonable excuse to their local area, as opposed to the place they are living**. This effectively amends the 'stay at home' provision to a 'stay local' provision. It shifts the emphasis from restrictions on the place a person is living incrementally and gradually to their local area. This would allow for all activity to take place outdoors and mitigates against the need to define specific activities allowable in that area. Restrictions would remain for reasonable excuses to leave that local area only in specific circumstances as already (though not exhaustively) set out. **This is considered the most sustainable and proportionate solution, whilst maintaining the coherence of the restriction on movement and gatherings.**

The shift to including 'local' more substantively within the reasonable excuse provisions (i.e. a person needs a reasonable excuse to be outside their local area) opens up the need for this to be defined. This would also mitigate the risks of people travelling longer distances to sites for the purposes of recreation (e.g. a picnic or to go angling) and the related potential for large congregations of people. Setting a specific distance in regulations would be feasible, but any distance may be difficult to determine and justify given there is no scientific evidence to suggest any particular limits. The scientific advice is not based on how far a person travels to undertake activity, but what happens once they are there. It may also be possible to include an illustrative distance in supporting guidance that allows for reasonable interpretation

and flexibility. Scotland intends to include 5 miles as a guide for people, but recognise different situations (e.g. rurality, or visiting a close relative) may require flexibility. The intention in the Scottish approach is to discourage travel to tourist sites and limit the risk of large congregations (as seen recently in England). While defining this in guidance is perhaps the most proportionate response at this time, this should be kept under review if non-compliance makes it necessary to define this in legislation. There is no specific evidence to suggest what distance should be adopted, but aligning with the Scottish approach of 5 miles as a rule-of-thumb seems reasonable (subject to suitable flexibility in the guidance for different circumstances such as rurality).

C. That common facilities are not used (e.g. public toilets, vending machines) where there may be an increased risk of exposure through contaminated surfaces

This is a particular risk for the opening up of outdoor spaces containing such facilities. This can be mitigated by keeping restrictions on outdoor areas in place (see below) until appropriate protocols are in place and adaptations made (e.g. signage, or managing flows or numbers of people). The associated protocols for those places should focus on ensuring these risks are mitigated, including by keeping common facilities closed where they are high risk.

D. That wider compliance to the restrictions is maintained

Ensuring wider compliance is also considered above: clarity of message is essential to avoid confusion about these specific changes and their interaction with the wider package of remaining restrictions. The proposed guidance on what 'local' means, and emphasising the need to maintain 2m distance at all times, will help provide this clarity and reinforce existing restrictions. These changes would also be conditional on compliance being maintained, with the option to reverse changes or consider legislation if compliance is not maintained

Related restrictions on outdoor facilities

The restrictions that remain on outdoor sports and recreation activities may no longer be proportionate responses to contain coronavirus given the evidence of low risk outdoors and wider changes proposed.

The main risk to removing restrictions is that facilities and sites encourage behaviour that does not maintain physical distancing, encourage congregations in large numbers, or is accompanied by the opening of shared and common facilities. This can be mitigated by initially only allowing for *managed* outdoor sports courts to be opened where adherence to physical distancing and the numbers of people accessing those sites and services can be controlled and shared facilities remain closed.

The Regulations also include restrictions on museums that could prevent the reopening of any museums outdoors (such as St Fagan's). This may be disproportionate if other sites suitable for recreation and not explicitly excluded in the Regulations choose to open (e.g. zoos, botanical gardens, etc.). The Regulations might therefore be amended to allow for outdoor museums whilst ensuring indoor