POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (REQUIREMENTS) (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2022

SSI 2022/29

The above instrument was made in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. The instrument is subject to made affirmative procedure by virtue of paragraph 6(2) and 6(3) of schedule 19 of the Act.

These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 ("the Principal Regulations") to:
1) change the requirement for the distance to be maintained between persons who are not wearing face coverings from at least two metres to at least one metre in certain circumstances where they are either separated by a partition or the specificed distance. This changes the distance to be maintained between persons who are not wearing face coverings in paragraphs (d)(ii) (employees and volunteers in certain places), (f)(ii) (person leading an act of worship in a place of worship), (g)(ii) (person leading a funeral, marriage ceremony or civil partnership registration), (h)(ii) (parties to be married or entering into a civil partnership), (j)(ii) (person performing, presenting, addressing a public gathering, making a speech or acting as a panel member) and (ja)(ii)(bb) (person performing or rehearsing for a performance where certain circumstances apply) of regulation 5(1) of the principal Regulations, from at least two metres to at least one metre.
2) Amend the requirement that a face covering must be worn in any indoor communal area in a workplace, where there is no partition, or where people are not otherwise separated by a specified minimum distance, to change the specified minimum distance between persons who are not required to wear a face covering from at least two metres to at least one metre.
3) Exempt a person travelling on a ferry from wearing a face covering where a distance of at least one metre is maintained from other persons, as opposed to at least two metres as previously.

Legislative background

1. 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 Principal Regulations came into force and revoked the Local Levels Regulations. The Principal Regulations have been amended a number of times, including on 17 December 2021, when they were amended by the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 which amended the specified distances for the purpose of the face covering exemptions which are the subject of these regulations.

Policy Objectives

2. In response to the emergence of the Omicron variant of the SARS-CoV-2 virus and its transmission in Scotland in late 2021, the Scottish Government put in place protective measures to reduce the rates of transmission. These included amendments made in the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 which amended certain specific exemptions in the Principal Regulations for persons to wear a face covering unless they are separated either by a partition or by a specified distance. The specified distance for these exemptions was increased from at least one metre to at least two metres. The relevant exemptions relate to employees and volunteers in certain places, a person leading an act of worship in a place of worship, a person leading a funeral, marriage ceremony or civil partnership registration, parties to be married or entering into a civil partnership, a person performing, presenting, addressing a public gathering, making a speech or acting as a panel member and a person performing or rehearsing for a performance where certain circumstances apply; also in any indoor communal area in a workplace. Where a person -who is not in an area which is wholly outdoors- is travelling on a ferry the exemption from wearing a face covering where a distance of at least one metre is maintained from other persons, was also increased to at least two metres.

3. The Scottish Government now considers that the protective measures introduced in December can be lifted in a phased way. The third phase, as set out in this instrument, is the reduction of the distance for the purpose of these exemptions to at least a one metre distance from at least two metres enabling a person who is either separated by a partition or the shorter distance of at least one metre to remove their face covering in specific circumstances as listed in paragraph 2.

4. The first two stages of lifting measures came into effect on 17 January and 24 January 2022 by virtue of The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 and the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No.2) Regulations 2022.

Consultation

5. Regular engagement has taken place with a wide range of stakeholders in relation to the wearing of face coverings but there has been no specific engagement on these Regulations.

Impact Assessments

5. An Equality Impact Assessment, Children's Rights and Wellbeing Impact Assessment and Business and Regulatory Impact Assessment have been prepared for publication for these Regulations.

Scottish Government
Directorate for Covid Coordination
26 January 2022