POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS) (RESTRICTIONS AND REQUIREMENTS) (SCOTLAND) REGULATIONS 2020

SSI 2020/279

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

These Regulations revoke and replace the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ("the previous regulations"). These Regulations 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.

These Regulations replicate the previous restrictions and requirements in full with the exception of a few changes and minor typographical changes throughout. The Regulations introduce a new 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. The Regulations also adjust the restriction on parties in private dwellings to ensure student accommodation is appropriately covered by the existing restrictions. The Regulations introduce new restrictions on public and private gatherings, setting out that gatherings of no more than 6 people from no more than 2 households are restricted, with the exception of some limited circumstances. The Regulations also adjust the previous provisions relating to face coverings to ensure that customers and staff are required to wear face coverings, in certain circumstances, within a hospitality venue. These Regulations also ensure marriage and civil partnership receptions and funeral wakes are no longer restricted by the gathering limit, now 6 people from 2 households.

Legislative background

1. 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, to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. The previous regulations came into force on Thursday 26 March.

2. The restrictions and requirements imposed by the previous regulations had to be reviewed at least once every 21 days. As soon as the Scottish Ministers considered that any restriction or requirement was 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 were required to revoke that restriction or requirement. The same conditions are set in these Regulations to ensure only proportionate and necessary measures remain in place at any time.

3. 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.

Policy Objectives

4. 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 few policy changes as set out below. These include a new expiry date to ensure current measures to 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.

5. 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.

Expiry of the Regulations

6. 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.

7. 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.

8. 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 and requirements. 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.

Restrictions of parties in private dwellings

9. The previous regulations introduced restrictions on parties in private dwellings where 16 or more people from more than one household are present for the purposes of a social

gatherings. The previous regulations set out a number of exemptions to ensure certain activities could still take place such as work or education. At that time, student accomodation was not covered by the restriction to ensure domestic activities were not criminalised. Since introducing those regulations, further work has been undertaken to ensure large high risk social gatherings are covered by the regulations and domestic duties are carefully carved out to avoid students being inadvertantly criminaised for everyday activities such as cooking. These Regulations give effect to those changes to ensure students living in student accomodation are subject to the same restrictions as other members of the public or students living in the private rental sector.

Restrictions on public and private gatherings

10. The regulations state that any public or private gathering must not take place if more than 6 people from more than 2 households are present. There are some exceptions set out to ensure work, childcare and other some activities can still proceed with more than 6 people from 2 households present. These restrictions apply to both indoor and outdoor settings and have been deemed neccesary in order prevent, protect against and control the spread of coronavirus between households. Children under the age of 12 do not count towards the 6 person limit but must be within the 2 household requirement.

Requirement to wear a face covering in hospitality settings

11. The previous regulations set out a number of settings in which it was mandatory for a face covering to be worn. These regulations remove the previous exemption for hospitality venues with the effect that it is mandatory for customers to wear a face covering when in a hospitality venue. A new exemption has also been included with the effect that a face covering does not have to be worn in a restaurant, café, bar or public house, when seated at a table. Staff are now also required by law to wear a face covering unless exempt due to being behind a screen or sufficiently distant from customers. These additional mitigations are being introduced at this stage to increase compliance with the existing guidance and to limit the potential spread of coronavirus in hospitality settings, providing additional protection from potential closure due to an outbreak.

Marriage and civil partnership receptions and funeral wakes

12. These Regulations set out that marriages, civil partnerships and funerals, including the receptions and wakes associated, are no longer restricted by the household gatherings limit, previously 3 households but now 6 people from 2 households. This change reflects the importance of these life cycle events. Guidance will be used to set up an upper attendance limit.

Consultation

13. There has been no public consultation in relation to this instrument. Where possible, the Scottish Government has informally consulted with public bodies and other relevant stakeholders affected by the Regulations.

Impact Assessments

14. An Equality Impact Assessment has been completed and is attached. Other Impact Assessments have not been prepared for this instrument. The provisions of the Regulations are however subject to strict obligations on the Scottish Government to review their necessity.

Scottish Government
Directorate for Constitution and Cabinet
11 September 2020