

Regulations made by the Scottish Ministers and laid before the Scottish Parliament under paragraph 6(2) and (3) of schedule 19 of the Coronavirus Act 2020, for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Regulations were made, not taking into account periods of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2021 No.

PUBLIC HEALTH

**The Health Protection (Coronavirus) (Requirements) (Scotland)
Amendment (No. 5) Regulations 2021**

<i>Made</i>	- - - -	<i>2021</i>
<i>Laid before the Scottish Parliament</i>		<i>2021</i>
<i>Coming into force</i>	- -	<i>17th December 2021</i>

The Scottish Ministers make the following Regulations in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(a) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the requirements imposed by the Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by, a resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 5) Regulations 2021 and come into force on 17 December 2021.

Amendment of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021

2. The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021(b) are amended in accordance with regulations 3 to 8.

(a) 2020 c. 7.

(b) S.S.I. 2021/277, amended by S.S.I. 2021/299, S.S.I. 2021/349, S.S.I. 2021/384 and S.S.I. 2021/453.

3. For regulation 4 (guidance on minimising exposure to coronavirus) substitute—

“Guidance on minimising exposure to and requirement to take measures to minimise incidence and spread of coronavirus

4.—(1) A person who is responsible for a place of worship, carrying on a business or providing a service must—

- (a) have regard to guidance issued by the Scottish Ministers about measures to minimise risk of exposure to coronavirus relating to its premises, business or service, and
- (b) take such of those measures as are reasonably practicable to minimise the incidence and spread of coronavirus on its premises, for example measures which limit close face to face interaction and maintain hygiene such as—
 - (i) changing the layout of premises including the location of furniture and workstations,
 - (ii) controlling the use of entrances, passageways, stairs and lifts,
 - (iii) controlling the use of shared facilities such as toilets and kitchens,
 - (iv) otherwise controlling the use of, or access to, any other part of the premises,
 - (v) installing barriers or screens,
 - (vi) providing, or requiring the use of, personal protective equipment, and
 - (vii) providing information to those entering or working at the premises about how to minimise the risk.

(2) Guidance issued by the Scottish Ministers may—

- (a) make different provision for different cases or descriptions of cases,
- (b) incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, a body representing members of an industry or a trade union).

(3) Part 4 (enforcement) does not apply to a contravention of the requirement in paragraph (1)(a).”.

4. In regulation 5(1) (requirement to wear face covering in certain indoor places)—

- (a) in sub-paragraph (d)(ii) for “one metre” substitute “two metres”,
- (b) in sub-paragraph (f)(ii) for “one metre” substitute “two metres”,
- (c) in sub-paragraph (g)(ii) for “one metre” substitute “two metres”,
- (d) in sub-paragraph (h)(ii) for “one metre” substitute “two metres”,
- (e) in sub-paragraph (j)(ii) for “one metre” substitute “two metres”,
- (f) in sub-paragraph (ja)(ii)(bb) for “one metre” substitute “two metres”.

5. In regulation 6(1)(b)(ii)(bb) (places where face coverings must be worn in accordance with regulation 5) for “one metre” substitute “two metres”.

6. In regulation 7(1)(h)(ii) (requirement to wear face coverings on public transport) for “one metre” substitute “two metres”.

7. In regulation 15(9) (enforcement of requirements)—

- (a) omit “and” following sub-paragraph (a),
- (b) after sub-paragraph (a) insert—
 - “(aa) regulation 4(1)(b), and”.

8. In regulation 16 (offences and penalties) at the end of paragraph (1) insert “, other than the requirement in regulation 4(1)(b)”.

St Andrew’s House,
Edinburgh

2021

A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (which come into force on 17 December 2021) amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the principal Regulations”).

Regulation 3 substitutes a new regulation 4 into the principal Regulations to expand the existing requirement in regulation 4 to have regard to guidance issued by the Scottish Ministers about measures to minimise risk of exposure to coronavirus. The new provision also requires the taking of such of the measures as are reasonably practicable.

Regulation 4 amends provisions in regulation 5 of the principal Regulations which exempt a person from the requirement that a face covering must be worn in certain indoor places where a distance is maintained between people. The amendments increase the required distance from one to two metres.

Regulation 5 amends regulation 6(1)(b) of the principal Regulations. Face coverings must be worn in indoor communal areas in a workplace where there are no measures to separate persons by a partition or by maintaining a distance of at least one metre between people. The amendment increases the required distance from one metre to two metres.

Regulation 6 amends regulation 7(1)(h) of the principal Regulations. A face covering must be worn on a ferry unless a minimum distance is maintained between people. The amendment increases the required distance from one metre to two metres.

Regulation 7 amends regulation 15(9) of the principal Regulations to add the requirement in regulation 4(1)(b) to the requirements for which a local authority may designate a person for enforcement purposes.

Regulation 8 amends regulation 16(1) of the principal Regulations to exclude the requirement in regulation 4(1)(b) from the offence provision.

POLICY NOTE

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No.5) Regulations 2021

SSI 2021/XXX

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 (3) of schedule 19 of the Act.

These Regulations amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the ‘Principal Regulations’) to expand the existing requirement in regulation 4 to have regard to guidance issued by the Scottish Ministers about measures to minimise risk of exposure to coronavirus. The new provision also requires the taking of such of the measures as are reasonably practicable. The Regulations also extend the distance from 1 metre to 2 metres where an exemption from wearing a face covering applies in certain indoor settings. This includes in the workplace; when leading an act of worship; rehearsing or performing or in certain parts of a marriage ceremony.

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.

Policy Objectives

2. The Omicron variant of the SARS-CoV-2 virus first identified in South Africa and designated a Variant of Concern by the WHO on 26th November is transmitting rapidly within Scotland with strong evidence that community transmission is widespread. The policy objective of these regulations is to strengthen both current legislative requirements and current guidance to place an onus on businesses, places of worship and service providers to minimise the risk of exposure to coronavirus and enable social contact to continue in the safest way possible.

3. Guidance will set out measures that businesses, service providers and places of worship can take to minimise the risk of exposure to coronavirus relating to their premises. Guidance will cover matters such as measures to reduce crowding, encourage distancing, promote the use of face coverings, maximise ventilation and working from home where reasonably practicable to do so. The regulations will require the taking of such of the measures in guidance as are reasonably practicable.

4. Extending the distance from 1 metre to 2 metres in certain indoor settings where an exemption from wearing a face coverings applies will support minimising the risk of exposure to coronavirus and enable social contact to continue in the safest way possible. This extension includes exemptions which apply in the workplace; when leading an act of worship; rehearsing or performing or in certain parts of a marriage ceremony. This is essential as COVID-19 spreads through respiratory droplets produced when an infected person coughs, sneezes, talks or sings, and droplets and aerosols from their mouth or nose are released into the air.

Consultation

4. We have continued to consult with stakeholders on the impacts of the pandemic as we seek to balance the 4 harms with the relevant sectors in relation to this instrument.

Impact Assessments

5. Appropriate impact assessments are being prepared for these regulations.

Scottish Government
Directorate for Covid Coordination
XX December 2021