

Business and Regulatory Impact Assessment

**COVID-19 Manufacturing Guidance
(published 26 May 2020)**

September 2020

Final

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Title of Proposal: Final BRIA for the introduction of, and subsequent 3 weekly reviews of, the COVID-19 Scottish Government (SG) Manufacturing Guidance (1st published 26 May 2020) eRDM ref A28495464

Purpose and intended effect

Publication of guidance to the manufacturing sector, to enable manufacturers to plan and prepare effectively during Phase 1 of the Scottish Government's Routemap out of lockdown for restart of operations safely under Phase 2 – and guidance for essential manufacturers who continued operating during lockdown.

Context

Manufacturing is vital to Scotland's economy. It is a significant source of employment, employing more than 180,000 people across the country. The industry accounts for over half of Scotland's international exports, and half of our research and development spend. Manufacturers represent 7% of all registered businesses operating in Scotland, and 13% of Scotland's GVA.

The First Minister announced that Scotland would be entering a lockdown on 23rd March 2020. All non-essential businesses were advised to close on a precautionary basis in order to help control the spread of the virus.

However, it should be noted that many manufacturing businesses remained operational, for example producing goods necessary in the efforts against COVID-19 or to the wellbeing of society in Scotland, in particular essential to the food supply chain, medical/health/care supply chain and Critical National Infrastructure sectors.

Under law, the Scottish Government are required to review the progress out of lockdown at least every 3 weeks. The Coronavirus (COVID-19): framework for decision making – Scotland's route map through and out of the crisis, was published on 21 May and sets out the phases by which we will aim to ease lockdown. Progress through the 4 phases of the route map will be gradual and incremental, and will be matched with careful monitoring of the virus.

On 26 May, the Scottish Government published the COVID-19 Manufacturing Guidance, to give employers the time to plan and prepare for the safe reopening of non-essential manufacturing in phase 2 of the Scottish Governments Route Map out of lockdown.

On 29 May, we moved into phase 1 of the Route Map, at which point non-essential manufacturers were able to start undertaking the work necessary to plan and prepare for the safe return of workers to the workplace. On 29 June, non-essential manufacturers were able to restart business, subject to company-specific risk assessments and preparatory work for ensuring physical distancing and enhanced hygiene measures.

The work of Scotland's manufacturers and their workforces that are, and have been, involved in supporting essential sectors throughout this COVID-19 crisis demonstrates the sector's innovation, skills and expertise. Manufacturing's commitment to keeping the country running is hugely appreciated, with particular praise due to companies who have scaled-up or repurposed to manufacture vital supplies for the health sector.

We want a strong manufacturing sector to help drive Scotland's economic recovery and future prosperity.

Version 1 of the COVID-19 Manufacturing Guidance was published on 26 May 2020. This provided non-essential manufacturers and their employees with guidance on how to prepare for the safe restart of non-essential manufacturing in phase 2, and how to continue working safely during further releases of lockdown restrictions. The guidance was also aimed at best practice guidance for essential businesses who have continued to operate during lockdown and phase 1.

In line with 3 weekly reviews of lockdown, the Manufacturing Guidance is reviewed on 3 weekly cycles. The first review cycle resulted in revised COVID-19 Manufacturing Guidance being published on 19 June 2020 (version 2). The second revision cycle saw version 3 of the guidance being published on 7 July 2020, and so forth.

Objective

The objective of publishing guidance for the manufacturing sector is to support them to restart their operations in a safe way, that has been developed in collaboration with employees, their representatives or trade unions, in line with legal obligations under emergency and Health & Safety legislation.

The guidance can also be used by manufacturers who have continued to operate safely and successfully throughout lockdown as a reassurance that they are following the most recent developments in safe working during the pandemic.

The guidance was developed in consultation with business, trades unions and regulators who formed the Manufacturing Guidance Working Group. It provides advice on essential equipment and services needed to create the conditions for safer workplaces, and is a living document, subject to 3 weekly reviews in line with lockdown legislation.

Rationale for Government intervention

The Covid-19 pandemic has been an unprecedented public health crisis, the response to which has resulted in an economic crisis. All non-essential businesses were recommended to close in March 2020, which included many businesses in the manufacturing sector. Some remained operational as essential businesses to respond to the NHS supply chain challenges for PPE and other vital materials.

Shutting down and restarting large parts of an economic sector like manufacturing in Scotland has no precedent and will be a complex and demanding process. Those manufacturers that closed down cannot return to 'business as usual' and

will have to operate in a way that ensures staff safety and minimises the potential spread of coronavirus. It is, therefore, important that manufacturers are given guidance to help them navigate these new requirements.

Consultation

Due to the unusual and unprecedented circumstances of the current health crisis, and the need to provide guidance to the manufacturing sector at pace, it has not been possible to conduct the usual level of consultation that would normally take place.

Within Government

The following directorates and agencies are involved in the Manufacturing Guidance Working Group and we approached them in order to inform the preparation of the final BRIA:

- SG OCEA - for analysis of the economic impacts of restart
- Food Standards Scotland – to understand if there is any feedback from businesses that continued operating during lockdown and the economic impact of restrictions
- Economic development agencies (SE and HIE)
- Health and Safety Executive

Public Consultation

Due to the necessity of the pace of which this guidance has had to be released during this emergency, no public consultation has been carried out.

However, it should be noted that in lieu of a full public consultation, we consulted with the Manufacturing Guidance Working Group, a Ministerial-led Working Group, comprising business representative organisations, individual businesses, trade unions and regulators.

Guidance has been published online with a facility for members of the public to issue comments to a Scottish Government mailbox.

An Equality Impact Assessment consultation is being conducted with members of the working group. The findings may impact this BRIA.

Business

Consultation with business on the development of the Coronavirus (COVID-19) manufacturing sector guidance was conducted via the organisations represented on the Manufacturing Guidance Working Group, led by the Minister for Business, Fair Work and Skills. Members of this group represent businesses, trade unions and regulators interests in the manufacturing sector.

- Sanquhar Tiles
- Diageo
- Fergusons Marine
- ADS Scotland

- Trade Unions: STUC, GMB, Unite, Prospect, Community, USDAW, RMT, BFAWU
- Scottish Engineering
- CED
- Food and Drink Federation

There is a legal requirement to conduct a review of restrictions, every 21 days, in accordance with section 2 of the Health Protection (Coronavirus (Restrictions)(Scotland) Regulations 2020.

Options

Option 1: do nothing

Do nothing is not a realistic or viable option. Without guidance to support a cautious restart of non-essential manufacturing, there is a risk it could potentially lead to bad practice, risk public health, be chaotic and result in anxiety for a sector that will already struggle to adjust to a new working reality.

Option 2: Provide guidance for the sector to successfully and safely plan and restart business

Guidance is required in this unprecedented situation to ensure an orderly restart of business, help increase employer and employee confidence in the safe return to work, protect public health and reduce anxiety.

Sectors and groups affected

Those likely to be affected by the guidance will be as follows: manufacturers (employers), employees, trade unions, health and safety representatives, suppliers, delivery companies, customers.

Benefits

Option 1: benefits

There are no realistic benefits to option 1. Doing nothing could exacerbate an already difficult situation facing the manufacturing sector.

Option 2: benefits

Businesses, trade unions and regulators have been, and will continue to be, involved in the development of the guidance. Provision of the guidance will support safe restart to manufacturing, benefiting from sector specific guidance that has been developed with input from trade unions and industry. It will help deliver a situation where employees can have confidence in their safe return to the workplace.

Costs

Option 1:

- The cost of doing nothing could be significant. A chaotic restart to manufacturing could result in greater risk of spreading the coronavirus, thus risking even more economic harm to the sector. This could put Scottish companies at a greater economic disadvantage to competitors in the other home nations.

- Business unable to restart safely, resulting in:
 - business reclosing with a loss of orders and revenue, with continued overheads such as rent, rates and water;
 - unemployment;
 - loss to Scottish economy with losses cascading down to suppliers, local economy and transport, cost to the taxpayer (unemployment benefits, furlough etc);
 - risk to public health and mental health.

Option 2:

- There will be a saving to the public purse as furlough is reduced
- However, there will be a significant financial cost to manufacturers in making the workplace safe. A limit on staff numbers in the workplace and significant movement restrictions and hygiene and cleaning regimes will impact negatively on productivity.

Scottish Firms Impact Test

The working group comprise representatives from a diverse range of Scottish manufacturing businesses, trade unions, government departments and enforcement agencies, ensuring that differing views and issues have been addressed.

The guidance provides a consistent approach in taking steps for a safe workplace, regardless of type of manufacturing, whilst allowing employers to assess their own risk and put in place the safety measures appropriate for their specific needs.

Competition Assessment

We do not foresee significant competition issues within the Scottish manufacturing sector, as all non-essential manufacturing will restart at the same time. Essential manufacturers who have continued to operate throughout lockdown will have been able to continue to maintain and obtain business orders throughout this period.

However, as manufacturing in England has already restarted for some time, concerns have been raised that orders that would have been placed with Scottish manufacturers are now being placed with English manufacturers. There is a danger this could not only result in the short term loss of customers, but the longer term loss of customers who may decide to use an English manufacturer as their preferred supplier.

Allowing Scottish manufacturers to restart in an orderly and safe way should help to ease these competition concerns.

Consumer Assessment

As with competition assessment. Consumers are turning to English manufacturers for supplies as Scottish manufacturers are not manufacturing the goods needed. This could result in a loss of consumers to companies that are based in England or elsewhere.

Test run of business forms

No statutory forms will be created. All forms created will be word based forms created by the Manufacturing team and incorporated into the manufacturing guidance. These are recommended templates and there is no legal obligation to use them.

All forms will be scrutinised by the members of the working group to ensure they are comprehensive and user friendly.

Digital Impact Test

All documents created will be word based documents created by the Manufacturing team and uploaded to the SG website by the SG's web editors. A PDF version of the documents will be available on the website for consumers who prefer to use that format. In the unlikely event that a consumer cannot access the website, or print off a PDF, a printed copy can be provided on request.

Currently, the guidance is not available in any language other than English. If a request is received requiring guidance in another language or braille, the request will be dealt with appropriately .

Legal Aid Impact Test

This guidance does not in itself create any new legal rights. There will be no impact on legal aid as businesses are not eligible.

There is the potential that it may be used by employees as supporting evidence to uphold employment rights, human rights, equality or health and safety laws in the workplace. Should an employee decide to exercise any of these legal rights in the workplace, legal aid in the form of Advice and Assistance may be available to those who qualify.

However, the introduction of the guidance may actually reduce the potential for any legal challenges, as it encourages a collaborative approach by employers, employees and trade unions to ensure a safe working environment, and a fair work policy inclusive of all equality groups.

Enforcement, sanctions and monitoring

The manufacturing guidance is a mixture of regulation and guidance. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into force on 26 March. They impose the two metre rule on all businesses and service providers that remain open, so they must take reasonable steps to ensure employees are able to maintain that distance from each other. Businesses and service providers must also take all reasonable measures to ensure that they

admit people into their premises in sufficiently small numbers to maintain a two metre distance.

The regulator for health and safety at work, the Health and Safety Executive (HSE) is constantly applying their expertise to ensure people at work are protected. HSE is treating COVID-19 as a workplace health issue. Where HSE identifies employers who are not taking action to comply with the relevant public health guidance to control COVID-19 health risks to workers, HSE will consider a range of actions under existing health and safety law.

Implementation and delivery plan and post-implementation review

SG Manufacturing team created Scottish sector specific guidance in consultation with the Manufacturing Guidance Working Group and version 1 of the guidance was released on 26 May.

The Working Group will continue to engage with SG Manufacturing team to continually review the guidance on a 3 weekly basis. It is anticipated that the 1st revised guidance will be released 19 June 2020, and every 3 weeks thereafter.

Each revision of the guidance will reflect the most up to date information and best practice at the various stages of the routemap phased release of restrictions.

When revising the guidance, we will refer to the UK Government, and other devolved administrations, publications to reduce divergence in the guidance.

Reviews will continue until instruction is received that they are no longer required.

Summary and recommendation

It is essential that the SG provides full consideration to this measure to re-open the manufacturing sector with the provisions noted. The SG COVID-19 Manufacturing Guidance has been created by a working group of experts from various business, government and enforcement agency backgrounds, who will continue to provide feedback on their practical experience of the guidance. The guidance which contains clarifications of the route map will evolve as we progress through the routemap out of lockdown and ensure a consistent, informed and safe approach is taken by all manufacturers and employees.

We therefore recommend that the guidance is reviewed at regular 3 weekly intervals.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Dermit Hulfin



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This publication is available at www.gov.scot

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ISBN: 978-1-83960-948-0 (web only)

Published by The Scottish Government, September 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS751747 (09/20)