



Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a refusal by the Revenue Commissioners (“the Respondent”) to allow the Appellant to avail of the Covid Restrictions Support Scheme (“CRSS”).
2. CRSS was introduced by section 11 of the Finance Act 2020. It amends the Taxes Consolidation Act 1997 (“TCA 1997”) by inserting two sections, section 484 and section 485.
3. Section 484 TCA 1997 sets out the objectives of the CRSS which it states are “*to provide the necessary stimulus to the economy.... so as to mitigate the effects, on the economy, of Covid-19...*”
4. Section 485 TCA 1997 sets out the eligibility criteria and details of the scheme. It permits eligible businesses to make a claim to the Respondent for a payment known as Advance Credit for Trading Expenses (ACTE).
5. Section 485 (24) TCA 1997 provides a right of appeal to the Commission where a Revenue Officer determines an entity does not meet the eligibility criteria for the scheme. In accordance with that section, the Appellant makes its appeal.

## Background

6. The Appellant trades as a distributor of fresh, seasonal produce and [REDACTED] ingredients to the catering industry and general public throughout Ireland. The Appellant’s business premises is situated at [REDACTED] and ordinarily customers visit those premises to choose, inspect and purchase goods.
7. The Appellant registered for CRSS on 11<sup>th</sup> November 2020 and claimed ACTE payments for the periods 21<sup>st</sup> October 2020 to 4<sup>th</sup> December 2020 and 26<sup>th</sup> December 2021 to 12<sup>th</sup> April 2021. During those periods the Appellant received the sum of €58,674 in CRSS payments, which consisted of €19,558 in respect of the year 2020 and €39,116 in respect of the year 2021.
8. On 11<sup>th</sup> November 2020, the Appellant registered for CRSS on a self-assessment basis. Self-assessment means that a taxpayer is responsible for making their own assessment of tax due or in this instance means that the Appellant declared that it fulfilled the criteria necessary for eligibility under the CRSS within its application.

9. On 5<sup>th</sup> June 2021, the Appellant notified the Respondent that it could not file a claim for CRSS payments, as it had done in the past, via the Revenue Online Service (“ROS”). ROS is the Respondent’s electronic system which permits a taxpayer to view its various tax status/payments, communicate and file returns or claims with the Respondent.
10. On 10<sup>th</sup> June 2021, the Respondent advised the Appellant that it did not appear it was eligible to receive CRSS payments. In order to ascertain that position, the Appellant was requested to provide the following information:

*‘1. Is your business carried on in a business premises?’*

*2. Does your business have a Customer facing premises?’*

11. By reply dated 14<sup>th</sup> June 2021, the Appellant responded as follows:

*“1. We do have a permanent place of business at [REDACTED]*

*2. Our business is customer facing.*

*We are already registered for the CRSS and have been in receipt of this. Our turnover has been drastically effected directly as a result of the government restrictions put in place to combat the pandemic and is down more than 75% year on year as a consequence.*

*We firmly believe that we do qualify for assistance under the CRSS guidelines.*

*As restrictions are eased, we also believe that we can return to normal trading levels very soon but we are not there yet while restrictions are still in place.’*

12. On 16<sup>th</sup> June 2021, the Respondent advised the Appellant as follows:

*‘The CRSS provides support for companies, self-employed individuals and partnerships carrying on a trade or trading activities, the profits from which are chargeable to tax under Case 1 of Schedule D, from a business premises located in a region subject to restrictions introduced in line with the Living with Covid-19 Plan, with the result that the business is required to prohibit or considerably restrict customers from accessing their business premises. Can you please confirm:*

*-The exact nature of the business*

*- Do customers (members of the general public) normally attend the premises?*

*- Are customers restricted from accessing the premises during the restriction period?*

*On receipt of this information, your registration will be further reviewed.'*

13. By way of reply dated 22<sup>nd</sup> June 2021, the Appellant responded as follows:

*'1. [REDACTED] is a company that specialises in selling a mix of otherwise hard to find ingredients to chefs, home cooks and individuals interested in sourcing food from [REDACTED] farmers and producers who demonstrate [REDACTED].*

*2. Customers and individuals are welcomed to come to our premises in normal times to select produce and collect or place orders.*

*3. Because of the restrictions imposed by the Government we were not allowed or able to have customers on the premises during levels 3 - 5.*

*4. As a consequence our turnover was down greater than 75% year on year.*

*We firmly believe we meet all of the criteria to qualify for CRSS assistance and have already been registered. We are already starting to build business back up as restrictions ease but we have been severely impacted as a direct consequence of the restrictions required to deal with the pandemic.'*

14. By letter dated the 25<sup>th</sup> June 2021, the Appellant was advised by the Respondent that it appeared that the Appellant had not satisfied the following two eligibility requirements:

*'The trade must be carried on from a business premises that is located in a region subject to restrictions introduced in line with the Government's 'Living with Covid-19 Plan', with the result that the business is required to prohibit or significantly restrict customers from accessing its premises to purchase goods or services;*

*...It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or because customers to whom the business supplies goods or services are currently not purchasing these goods/services due to Covid-19 restrictions. To be eligible for the CRSS, a supplier business must meet the eligibility criteria in its own right; the business must be required by the specific terms of Covid restrictions to prohibit or significantly restrict customers from accessing its own business premises [emphasis added], with the result that the*

*business is either required to temporarily close or to operate at a significantly reduced level.'*

15. On 30<sup>th</sup> June 2021, the Appellant's agents advised that the Appellant is a 'supplier of [REDACTED] food to its entire customer base.' They further contended that the Appellant was required to close that premises under Levels 3, 4 and 5 of the Government restrictions. They went on to advise that:

*'It is important to more that our client's customers visit the premises to inspect and purchase the goods. Their turnover was severely affected.'*

16. By determination dated the 16th August 2021, the Appellant was advised, *inter alia*, as follows:

*'To qualify under the scheme, a business must carry on a trade or trading activities, the profits from which are chargeable to tax under Case I of Schedule D. The trade must be carried on from a business premises that is located in a region subject to restrictions introduced in line with the Government's 'Living with Covid-19 Plan', with the result that the business is required to prohibit or significantly restrict customers from accessing its premises.*

*Section 485 (1) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of the Finance Act 2020) provides that, for the purposes of the CRSS, the business premises is required to prohibit or significantly restrict customers from accessing its premises [emphasis added].*

*It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or that the business supplies goods or services to another business that qualifies for the support because, under the Covid restrictions, that other business is required to temporarily close, or significantly reduce, its business activity.*

*In the case of a business that supplies goods and services to other businesses which, under the terms of Covid restrictions, are required to prohibit or significantly restrict customers from accessing their business premises (for example, a restaurant) – this will not result in the supplier business being eligible to make a claim under the terms of the legislation. To be able to make a claim under the CRSS, the supplier business must meet the eligibility criteria in its own right; the business must be required by the specific terms of Covid restrictions to prohibit or significantly restrict customers from accessing its own business premises, with the result that the business is either*

*required to temporarily close or to operate at a significantly reduced level. This will generally not be the case in relation to a 'supplier' business.'*

17. On 14<sup>th</sup> September 2021, the Appellant lodged its appeal against that determination with the Commission. Prior to the physical hearing which occurred on 1<sup>st</sup> March 2023, the Appellant was offered the opportunity to have its appeal adjudicated in accordance with the provisions of section 949AN TCA 1997.
18. Section 949AN TCA 1997 permits the Commission to have regard to previous Determinations which share "common or related issues" with the Appellant's appeal. As the Commission determined previous CRSS appeals<sup>1</sup> which related to the eligibility of CRSS for essential retail outlets this was deemed to be an efficient manner in which to have the Appellant's appeal adjudicated.
19. The Appellant did not seek to agree to that option but chose instead to have an oral hearing. The Appellant is entitled to exercise its right to a full oral hearing and as such that was arranged as per its request and its submissions in which it stated that it was of the view that the facts in its appeal were distinguished from previous Determinations of the Commission.
20. The Appellant was represented by its agents at the appeal. The Respondent was represented by Counsel, [REDACTED], its solicitor and two members of its staff. In considering this appeal, the Commissioner had the benefit of written and oral submissions made by both parties which are considered below.

### **Witness Evidence**

21. [REDACTED] ("the Appellant Director") gave evidence on the Appellant's behalf. The Appellant Director advised that he acted in the capacity of managing director with the Appellant. The Appellant Director further stated:

21.1. The Appellant's business activities were best described as a food sourcing consultancy business. He explained that the Appellant spent a lot of time trying to get specific foods [REDACTED] and that a lot of its produce was high end expensive foods such as [REDACTED] or [REDACTED].

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<sup>1</sup> See for example 73TACD 2022 which considered the eligibility of CRSS payments for a small convenience store - <https://www.taxappeals.ie/en/determinations/73tacd2022-crss->

- 21.2. That most of the customer's requirements were [REDACTED]. He explained that a customer might be looking for a duck but that duck would be required to a specific weight and cut or presented in a specific way, while the next customer would have different requirements.
- 21.3. Customer's ordinarily attended the business premises by appointment. The purpose of that appointment was that he or one of the staff members would discuss the customer's specific needs, on occasion offer food tastings and following further enquiries, such as whether the food could be sourced, the customer would place an order with the Appellant. He further explained that all such appointments took place in the Appellant's office rather than the separate warehouse which stored "stock food".
- 21.4. Such appointments and face to face meetings were essential to the Appellant's business. Without them, he stated, it would not be possible to get a customer order owing to the [REDACTED] nature of the business.
- 21.5. If a customer wished to view produce in the warehouse, they had to be accompanied by a member of staff at all times. The Appellant Director produced a number of photographs of the Appellant's premises which showed the location of the office and internal shots of the warehouse. From these photographs, it appeared that minimal produce was kept on the Appellant's shelving.
- 21.6. The Appellant engaged an independent food safety advisor and that advisor informed the Appellant it was required to close its business during "Level 5 Covid restrictions"<sup>2</sup>. Acting in accordance with this advice, the Appellant Director stated that the Appellant closed its business during those Level 5 restriction periods and claimed CRSS payments for those periods. The Appellant Director stated that the Appellant only claimed CRSS payments for those periods and when it remained open for business, no such claims were made.

22. Under cross examination:

- 22.1. That the Appellant's business was more of a "consultancy business" rather than that of a food distributor since it opened for business in or around the year [REDACTED]

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<sup>2</sup> For the purpose of comprehension Level 5 Covid restrictions were the highest level of restriction imposed by the Government during Covid-19 lockdowns and required most businesses except "essential services" and "essential retail outlets" to refrain from opening their businesses to the public.



- 22.2. That no separate consultancy fee was charged to the customer but in place a premium was built into the sales price of the food ordered to reflect this service. As such, the Appellant Director confirmed that no Valued Added Taxation (“VAT”) was charged on stand-alone consultancy services but, if applicable<sup>3</sup>, only on the sales price of the products.
- 22.3. In communications with the Respondent that the Appellant had never advised it operated consultancy services but in place stated that it sold food produce to its customers. In addition, he confirmed that the Appellant advised the Respondent “in normal times” customers are welcome to attend the Appellant’s premises to collect their ordered products.
- 22.4. That the Appellant had [REDACTED] delivery vans which were used and were available for use for the delivery of produce to customers.

## Submissions

### *Appellant*

23. The Appellant stated as it submitted its first CRSS claim for the period 13<sup>th</sup> October 2020 to 6<sup>th</sup> December 2020, the applicable legislation governing that claim was, in part, Statutory Instrument 413/2020 - Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No.6) Regulations 2020 (“S.I. 413/2020”) which came into effect on 7<sup>th</sup> October 2020.
24. For the purpose of comprehension, S.I. 413/2020 established temporary travel restrictions on members of the public which prohibited them from leaving their residence unless it was necessitated, *inter alia*, by the need to avail of an “essential service”. As access to food and beverages are considered essential to the maintenance of human and other life, it followed that access to outlets selling food and beverages was considered an “essential service”. As such, despite the imposed restrictions in place, it was therefore permitted during these periods of “lockdown” for members of the public to leave their residences in order to acquire such goods.
25. The Appellant noted that this “exemption” was provided for under Regulation 11 (16) of that S.I. 413/2020 which imposes restrictions on:

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<sup>3</sup> Certain essential foods, which include fruit and vegetables and meat, are exempt from VAT. Hence if the food sold was exempt from VAT, no VAT was charged on the supply by the Appellant.

*“Outlets selling food or beverages whether on a retail or wholesale basis and whether in a non-specialised or specialised outlet, other than –*

*(a) Insofar as they sell food or beverages on a takeaway basis for consumption off the premises.”*

26. Thus, the Appellant submitted in order to be eligible for the exemption, it was required that the food or beverages being sold by the Appellant were required to have been available *“on a takeaway basis for consumption off the premises”*.
27. The Appellant submitted as it does not operate a normal retail or wholesale business where a customer can walk through the premises, select the products required and leave with them, then it was not included in above definition and hence the exemption was not available to the Appellant, as was confirmed to the Appellant by its independent food safety advisor.
28. The Appellant submitted owing to the [REDACTED] nature of its business which requires detailed interaction with its customers in order to ascertain his or her specific requirements then it was evident that the produce offered by it was not available *“on a takeaway basis”* and hence it fell foul of the exemption.
29. The Appellant further submitted that its business was differentiated from an “ordinary supermarket”, which it accepted was included in the exemption, as it was located in an Industrial Estate rather than an urban street and given the required level of interaction with customers to establish their needs, customers ordinarily attended the Appellant’s premises on an “appointment only” basis.
30. In conclusion, the Appellant submitted that S.I. 413/2020 only permitted retail outlets which provided food and beverages sold on a takeaway basis to remain open for business during the periods of Level 5 lockdown. As the Appellant’s business did not provide such a service, and as it had only claimed CRSS payments for the periods it was required to close, the Appellant submitted that its appeal should be allowed.

#### *Respondent*

31. The Respondent submitted that the Appellant was considered at all relevant times an “essential retail outlet”. As such, and as travelling to and from an essential retail outlet was permitted, then the Appellant was not required as a result of Covid restrictions to prohibit or significantly restrict members of the public from accessing its business premises.

32. The Respondent submitted that the legislation was very specific in what constituted a “Covid restriction” for the purpose of section 485 TCA 1997. The Respondent stated that the provisions of section 485 (1) TCA 1997 specifically relates to restrictions made under section 5 and 31A of the Health Act 1947 (as amended).
33. The Respondent acknowledged while, owing to the nature of the Appellant’s business model, it may have suffered a decrease in demand in the first instance it was not required to suspend its business activities but had taken an ill-advised or voluntary position to so do.
34. Secondly, the Respondent submitted that the exemption afforded to “essential retail outlets” under Regulation 11 (16) of S.I. 413/2020 was available to the Appellant as it offered the service of a type defined within that Regulation.
35. Thus, the Respondent submitted as the Appellant did not satisfy the legislative requirements to satisfy the Commission that “Covid restrictions” required the Appellant to have prohibited or significantly restricted members of the public from accessing its business premises, its appeal could not succeed.
36. The Respondent distinguished between the requirement under the relevant legislation to prohibit or significantly restrict customers from accessing business premises to a business owner taking measures not required under the legislation which resulted in customers being prohibited or restricted from entering the business premises. The Respondent submitted that as the Appellant had taken the voluntary decision to close its premises for the outlined period and as it was not mandated to so do, then this made it ineligible for inclusion on the CRSS.
37. The Respondent further distinguished between the loss of trade owing to the effects of Covid-19, such as those brought about from reduced footfall to turnover having reduced owing to specific restrictions being placed on the operation of the business as a result of “Covid legislation”.
38. The Respondent submitted that while it had empathy for the position the Appellant now found themselves in as stated by Mr. Justice Charleton in *Menolly Homes Limited v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, “*taxation law has no equity*” and the function of the Commission was to implement the laws as passed by the Oireachtas without deviation or expansion. In so doing, the Respondent submitted that the Appellant’s appeal could not succeed.

## Material Facts

39. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent, and are required eligibility conditions for inclusion on the CRSS:
- 39.1. The Appellant's turnover was less than 25% of the average weekly turnover level of that in 2019.
  - 39.2. The Appellant intended to (and subsequently did) carry on business activities after the "Covid-19 restrictions" were lifted.
  - 39.3. The Appellant had complied with all their VAT registration and return obligations.
  - 39.4. The Appellant held a tax clearance certificate at all material times.
  - 39.5. The Appellant operated from a "business premises" (as defined).
40. In addition, the Commissioner found the following material facts from the evidence presented at the hearing:
- 40.1. The Appellant's business activity is that of a [REDACTED] retail and wholesale food and beverage store.
  - 40.2. The Appellant's customers ordinarily attend the Appellant's business premises in order to facilitate a consultation prior to the purchase of food and beverages.
  - 40.3. The purpose of this consultation is to enquire into the customers' [REDACTED] or other requirements.
  - 40.4. No third-party or documentary evidence was provided to the Commission from the Appellant's Independent Food Safety Advisor to support its claims that it was required to close for business during the period of "Level 5 lockdowns".
  - 40.5. The Appellant closed its business premises and ceased trading for the periods 21<sup>st</sup> October 2020 to 4<sup>th</sup> December 2020 and 26<sup>th</sup> December 2021 to 12<sup>th</sup> April 2021.
  - 40.6. The Appellant claimed and received the sum of €58,674 under the CRSS from the Respondent for those periods.
  - 40.7. A determination notice issued to the Appellant from the Respondent on the 16<sup>th</sup> August 2021 denying eligibility under the CRSS and demanding the return of sums previously paid.

## Analysis

41. The central issue to be determined in this appeal by the Commissioner is whether the Appellant was required as a result of applicable business restriction provisions to prohibit, or significantly restrict, members of the public from having access to its business premises which is a prerequisite for CRSS eligibility under section 485 TCA 1997.
42. Section 485 TCA 1997 in itself is one of the more complicated sections of the TCA 1997. When combined with differing statutes and statutory instruments, it is appreciated by the Commissioner that it is not transparent for members of the public to implement as illustrated in this appeal.
43. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners and ors.* 2020 IEHC 552 (“*Perrigo*”) where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible."*

44. Section 485(1) TCA 1997 provides a number of definitions, one of which is "business activity". A "business activity", is defined as "*in relation to a person carrying on a trade either solely or in partnership, means— (A) where customers of the trade acquire goods or services from that person from one business premises, the activities of the trade...*".
45. Section 485(1) TCA 1997 further defines a business premises as: "*...in relation to a business activity a building or other fixed physical structure from which the business activity is ordinarily carried on.*"

46. The term “Applicable business restrictions” is defined in section 485(1) TCA 1997 as *“shall be construed in the manner provided for in the definition of ‘Covid restrictions period’ in this subsection; Covid restrictions”* pertain to: *“Restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947, being restrictions for the purposes of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period”*.

47. In essence what section 485 TCA 1997 provides for is that there is a “Covid restriction”. That restriction is provided for in regulations, made pursuant to section 5 and 31A of the Health Act 1947.

48. Those regulations (“the Regulations”) were introduced by a Statutory Instrument 701 of 2020, “Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 10) Regulations 2020 [**Appendix 2**]. On page 3 of those regulations, it states:

*“PART 1 - Preliminary and General*

*Citation, commencement and operation*

1. *(1) These Regulations may be cited as the Health Act 1947...*
2. *These Regulations shall come into operation on the 31st day of December 2020 and shall have effect for the period beginning on that date and ending on the 31st day of January 2021.”*

49. Section 3 of the Regulations at page 3 provides an interpretation section and includes within the definitions a definition of an “essential retail outlet” which is defined as *“a retail outlet that is specified in Part 1A of the Schedule.”* It further defines an “essential service”, as a *“service specified in Part 2 of the Schedule”*.

50. Part 1A of the Schedule set on page 19 of the Regulations defines an “essential retail outlet” as:

1. *“Outlets selling food or beverages on a takeaway basis, or newspapers, whether on a retail or wholesale basis and whether in a non-specialised or specialised outlet.*
2. *Markets that, wholly or principally, offer food for sale.*

3. *Outlets selling products necessary for the essential upkeep and functioning of places of residence and businesses, whether on a retail or wholesale basis.....”*

51. Part 2 of the Schedule set out on page 22 of the Regulations defines “Essential Services” as including:

“... ”

*Wholesale and retail trade.*

*The following services relating to wholesale and retail trade:*

*(a) the operation of essential retail outlets...”*

52. As the Appellant’s business provided goods and services of a type specified in Part 1A and 2 of the Regulation Schedules, subject to the Appellant’s submissions, it was considered both an essential retail outlet and an essential service under those Regulations.

53. The Commissioner notes from the Appellant’s submissions that it seeks to differentiate its business from an “ordinary” essential retail outlet, such as a supermarket (which it accepts was eligible to open during the periods under appeal). As noted, the definition of an “essential retail outlet” is defined under Regulation 11 (16) of S.I. 413/2020 as:

*“Outlets selling food or beverages whether on a retail or wholesale basis and whether in a non-specialised or specialised outlet, other than –*

*insofar as they sell food or beverages on a takeaway basis for consumption off the premises”.*

54. In applying the principles promulgated in *Perrigo* and in giving that definition its “ordinary and plain meaning”, the definition of an essential retail outlet may therefore be re-defined as follows:

*“An outlet selling food or beverages whether on a retail or wholesale basis (whether in a specialised or non-specialised outlet) insofar as they sell food or beverages on a takeaway basis for consumption off the premises.”*

55. In order for the Appellant’s submission to succeed, it is therefore necessary for it to establish that the foods and beverages which it sells are not available on a “takeaway basis for consumption off the premises”.



56. In understanding the nature of the Appellant's business operation (that a consultation was required with some customers before they placed orders), the Commissioner determines that this does not alter the position that the goods once ordered (had the Appellant chose to remain open during the periods it closed its business) would have been "available on a takeaway basis."
57. Furthermore, as no evidence was presented to the Commission that the food was not consumed on the Appellant's premises, it follows that the Appellant qualified as an "essential retail outlet" and thus was eligible to open during those periods which it elected to close. For the Appellant's submission to succeed, the Commissioner considers that words to the effect of "on an immediate takeaway basis" or such like would have been required to in the legislation. As they do not, the Commissioner determines that the Appellant was considered an "essential retail outlet" and thus, eligible to remain open for business during all periods of lockdown.
58. Part 2, set out on page 6 of the Regulations provides:

*"Temporary restrictions – national measures.*

*Restrictions of movement of relevant persons in relation to travel from place of residence.*

*(1) Subject to paragraph (2), an applicable person shall not leave his or her place of residence without reasonable excuse."*

59. Subsection 4 (2) continues "*Without prejudice to the generality of what constitutes a reasonable excuse for the purposes of paragraph (1), such reasonable excuse includes an applicable person leaving his or her place of residence in order to –*

*...*

*(t) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of the person's place of residence), or accessing services provided in the outlet, for the applicable person or any other person residing in the person's place of residence.*

*..."*

60. In summary, what the foregoing provides is that a person was permitted to leave their residence during the periods of lockdown for the purpose of accessing essential products or services which as detailed were goods and services of a type offered by the Appellant and hence the Appellant's business was not subject to the restrictions provided under the Regulations.

61. Turning back to section 485 TCA 1997, section (1) defines a "Covid restrictions period" as:

*"In relation to a relevant business activity carried on by a person means a period for which a person is required by the provisions of Covid restrictions to prohibit or significantly restrict members of the public from having access to the business premises in which the relevant business activity is carried on...."*

62. The key phrase under section 485 (1) TCA 1997 is that the business was "*required by the provisions of Covid restrictions...*" to have been required to prohibit or significantly restrict members of the public from having access to its business premises and as the Appellant was considered to provide both essential goods and services, it did not fulfil this requirement.

63. Section 485 (22) TCA 1997 provides that:

*"The Revenue Commissioners shall prepare and publish guidelines with respect to matters that are considered by them to be matters to which regard shall be had in determining whether—*

*(a) there are provisions of Covid restrictions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of a person is carried on in a Covid restrictions period, or Covid restrictions extension period, as the case may be, and*

*(b) as a result of the provisions referred to in paragraph (a), the turnover of the person in respect of the relevant business activity in the Covid restrictions period, or Covid restrictions extension period, as the case may be, will not exceed an amount that is 25 per cent (or less) of the relevant turnover amount."*

64. Those guidelines were published by the Respondent on the 23rd October 2020 (and subsequently updated on various dates in 2021). Paragraph 4.2.1 of those guidelines **[Appendix 3]** which endorses the Commissioner's findings states:

*“The CRSS scheme is targeted at those businesses which, under the specific terms of public health restrictions, introduced in line with the Living with Covid-19 Plan, are required to prohibit or considerably restrict customers from accessing their business premises such that the business is required to temporarily suspend its activities or its business is significantly disrupted. Generally, this refers to restrictions at Level 3, 4 or 5 of the Government’s Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation, and as a result they have had to temporarily suspend their business or they have been significantly disrupted as a result of having to prohibit or considerably restrict customers from accessing their business premises. The general public health guidelines around social distancing and related protective measures apply to society as a whole and are important and necessary measures for lowering the risk of transmission of Covid-19. However, these measures are not the level of Covid restrictions that are required to demonstrate eligibility for the CRSS. For the CRSS, the restrictions must require the person to either prohibit, or significantly restrict, customers from accessing their business premises [emphasis added].”*

65. Paragraph 4.2.4 of those guidelines continue:

*“What if a business is not prohibited or significantly restricted from allowing customers to access its business premises but its customers base has significantly reduced because of Covid-19?*

*The business must meet the requirement that it ordinarily operates from a fixed business premises and, under the specific terms of the Covid restrictions announced by the Government, customers of the business are prohibited, or significantly restricted, from accessing those business premises. It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or that the business supplies goods or services to another business that qualifies for the support because, under the Covid restrictions, that other business is required to temporarily close, or significantly reduce, its business activity.*

*Example 7*

*StockUp Limited is a wholesaler to the catering and restaurant industry. The company operates from a premises in Clones, Co. Monaghan and delivers to customers nationwide. Under the restrictions in place across the country, many of the customers in the restaurant trade have cancelled their upcoming orders. While StockUp Limited*

*has spotted an opportunity for additional business in the delivery and take-away sector, the company is experiencing a significant drop in turnover in the interim. Whilst StockUp Limited has experienced a reduction in turnover as a result of Government restrictions impacting its customers, the business itself, is not subject to restrictions prohibiting or restricting customers to its business premises. Therefore, it does not meet the eligibility criteria”.*

66. As is evident from the above example extracted from the guidelines which were available at the time the Appellant submitted its CRSS claim, the Appellant should have been deemed ineligible for inclusion in the CRSS and hence should not have received the payment as the turnover of the business reduced as a consequence of Covid 19 and not as a result of “*specific terms of the Covid restrictions announced by the Government*”.

67. Section 485 (17) TCA 1997 details the procedure to be followed in situations where an entity, such as the Appellant wrongly claimed and received payments under the CRSS. It provides:

*“(a) Where subsequent to a person making a claim under this section, it transpires that*

-

*(i) the requirements in subsection (4) (b) are not met (and a claim in respect of which those requirements are not met is referred to hereafter in this subsection as an ‘invalid claim’), or*

*(ii) the amount claimed exceeds the amount the person is entitled to claim under this section (and a claim to which this subparagraph applies is referred to hereafter in this subsection as an ‘overclaim’),*

*then the person shall, without unreasonable delay—*

*(I) notify the Revenue Commissioners of the invalid claim or overclaim, as the case may be, and*

*(II) repay to the Revenue Commissioners—*

*(A) in respect of an invalid claim, the amount paid in respect of that claim,*

*(B) in respect of an overclaim, the amount by which the amount paid in respect of that claim exceeds the amount the person is entitled to claim (hereafter referred to in this section as the ‘excess amount’).*

*(b) Where a person makes a claim under this section in respect of a claim period and it subsequently transpires that the claim is an invalid claim or an overclaim, as the case may be—*

*(i) then, subject to subparagraph (ii), the amount of the advance credit for trading expenses paid by the Revenue Commissioners in respect of the invalid claim, or the amount of the advance credit for trading expenses overpaid by the Revenue Commissioners in respect of an overclaim, as the case may be, shall carry interest as determined in accordance with section 1080 (2) (c) as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, and*

*(ii) where the invalid claim or overclaim, as the case may be, was made neither deliberately nor carelessly (within the meaning of section 1077E ) and the person complies with the requirements of paragraph (a)(II), the amount repaid to the Revenue Commissioners in respect of the invalid claim or overclaim, as the case may be, shall carry interest as determined in accordance with section 1080(2)(c) as if a reference to the date when the tax became due and payable were a reference to the date paragraph (a) is complied with.*

*(c) Paragraph (b) shall apply to tax payable on unauthorised amounts under subsections (15) and (16) as it applies to overpayments arising on invalid or overclaims.”*

68. Section 485(15) TCA 1997 provides:

*“Where a company makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the company has not repaid the amount as required by subsection (17)(a)(II)—*

*(a) the company shall be charged to tax under Case IV of Schedule D for the chargeable period in which the claim period commences, on an amount equal to 4 times so much of the amount under this section as was not so permitted to be made,”*

69. In accordance with the provisions of section 485 (17) TCA 1997, the Commissioner determines that the Appellant is required to repay to the Respondent the amount of CRSS wrongly received by it in the form of ACTE payments in the sum of €58,674 for the periods 21<sup>st</sup> October 2020 to 4<sup>th</sup> December 2020 and 26<sup>th</sup> December 2021 to 12<sup>th</sup> April 2021.

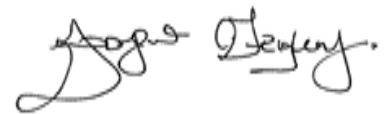
70. The legislation requires that such sum is to be repaid to the Respondent without “unreasonable delay” and in the event of this not occurring, the Respondent is authorised under section 485 15 (a) TCA 1997 to raise an assessment against the Appellant under Schedule D, Case IV for an amount of €234,696 which represents four times the amount of ACTE received by the Appellant in error.
71. It was noted by the Commissioner at the conclusion of the hearing that the Respondent indicated a willingness to collect the CRSS payments, if found to have been paid to the Appellant in error, on an instalment basis and as those circumstances have now crystallised, the Commissioner would encourage the Appellant and the Respondent to engage in this manner. The Commissioner appreciates that it cannot make any determination on the manner of the repayment but notes that it was the Respondent’s initial error that has resulted in this repayment.
72. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof, in these particular taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-
- “The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the relevant tax is not payable.”*
73. The Commissioner finds that the Appellant has not discharged the burden of proof in this appeal and finds that the Appellant has not shown that they were entitled to avail of the provisions of section 485 TCA 1997.

### **Determination**

74. For the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in demonstrating its eligibility for inclusion in the CRSS. Accordingly, the Appellant is required to repay to the Respondent the sum of €58,674, representing the ACTE sums received by it in error without “unreasonable delay”. Failing this, the Respondent is authorised to raise an assessment to tax under Schedule D, Case IV, against the Appellant in the sum of €234,696 which represents four times the amount of ACTE received by the Appellant in error.
75. It is understandable that the Appellant and its director may well be disappointed with the outcome of his appeal but the Commissioner has no discretion to deviate from the

legislation. The Appellant was correct to avail of its right of appeal and to check its legal entitlements. The Commissioner hopes the Appellant's business has fully recovered since the easing of Covid restrictions.

76. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



**Andrew Feighery**

**Appeal Commissioner**

**10<sup>th</sup> August 2023**

## Appendix 1 - Legislation and Guidelines

Section 484 TCA 1997 – “Objectives of Section 485, purposes for which its provisions are enacted and certain duty of Minister for Finance respecting those provisions’ operation” provides:

- (1) (a) The objectives of section 485 are to—
- (i) provide the necessary stimulus to the economy (in addition to that provided by Part 7 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and the Financial Provisions (Covid-19) (No. 2) Act 2020) so as to mitigate the effects, on the economy, of Covid-19, and
  - (ii) if, as of 1 January 2021, no agreement stands entered into between the European Union and the United Kingdom (with respect to the future relations between them on the relevant matters), mitigate the effects on the economy which are apprehended may arise therefrom.
- (b) In paragraph (a) ‘relevant matters’ means the matters described in Part II of the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom<sup>3</sup>.
- (c) The purposes for which the several provisions of section 485 (in this section referred to as the ‘Covid Restrictions Support Scheme’) are, in furtherance of the foregoing objectives, enacted are:
- (i) in addition to the provision of basic mechanisms to fulfil those objectives, to ensure the efficient use of the Covid Restrictions Support Scheme so as to minimise the cost to the Exchequer of the scheme (so far as consistent with fulfilment of those objectives);
  - (ii) to avoid, where possible, allocation of resources to sectors of the economy that are not in need of direct stimulus by means of the Covid Restrictions Support Scheme (and which sectors may reasonably be expected to be restored to financial viability and an eventual growth path by the indirect effects of the scheme);
  - (iii) to protect the public finances through mechanisms for the discontinuance or amendment of one or more of the payments under the Covid Restrictions Support Scheme (or for their variation) in defined circumstances;
  - (iv) to take account of the need to reflect changes in circumstances of persons who, as businesses, are persons in respect of whom payments under the Covid Restrictions Support Scheme are being made, in cases



*where such persons avail themselves of other financial supports provided by the State;*

*(v) to take account of changes in the State's economic circumstances and the demands on its financial resources which may occur in the remainder of the current financial year and thereafter.*

*(d) It shall be the duty of the Minister for Finance to monitor and superintend the administration of the Covid Restrictions Support Scheme (but this paragraph does not derogate from the function of the care and management conferred on the Revenue Commissioners by section 485(21)).*

*(e) Without prejudice to the generality of paragraph (d), the Minister for Finance shall cause an assessment, at such intervals as he or she considers appropriate but no less frequently than every 3 months beginning on 13 October 2020, of the following, and any other relevant matters, to be made—*

*(i) up-to-date data compiled by the Department of Finance relating to the State's receipts and expenditure,*

*(ii) up-to-date data from the register commonly referred to as the 'Live Register' and data related to that register supplied to the Department of Finance by the Department of Business, Enterprise and Innovation (whether data compiled by that last mentioned Department of State from its own sources or those available to it from sources maintained elsewhere in the Public Service),*

*(iii) such other data as the Minister for Finance may consider relevant in relation to the impact from, and effects of, Covid-19 or the fact (should that be so) of there not being an agreement of the kind referred to in paragraph (a)(ii), and, if the following is commissioned, by reference to an assessment, on economic grounds, of the Covid Restrictions Support Scheme that may be commissioned by the Minister for Finance and any opinion as to the sustainability of the scheme expressed therein.*

*(f) Following an assessment under paragraph (e), it shall be the duty of the Minister for Finance, after consultation with the Minister for Public Expenditure and Reform, to determine whether it is necessary to exercise any or all of the powers under subparagraphs (i) to (vi) of subsection (2)(a) so, as appropriate, to—*

*(i) fulfil, better, the objectives specified in paragraph (a), or*

*(ii) facilitate the furtherance of any of the purposes specified in paragraph (c), and, if the Minister for Finance determines that such is necessary, the powers under one, or more than one, as provided in that subsection (2)(a), of those subparagraphs (i) to (vi) shall become and be exercisable by the Minister for Finance.*

*(2) (a) Where the Minister for Finance makes a determination of the kind lastly referred to in subsection (1) (f), the Minister for Finance shall, as he or she deems fit and necessary—*

*(i) make an order that the reference in the definition of ‘Covid restrictions’ in section 485(1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period shall be limited in such respects as are specified in the order (including, if the Minister for Finance considers appropriate, by the specification of a requirement, with respect to the restriction of certain business activity, that particular business activity must be affected by the restriction to a specified extent) and an order under this subparagraph shall make such additional modifications to the provisions of section 485 as the Minister for Finance may consider necessary and appropriate in consequence of the foregoing limitation,*

*(ii) make an order that the day referred to in the definition of ‘specified period’ in section 485(1) as the day on which the period there referred to shall expire shall be such day as is later than 31 March 2021 (but not later than 31 December 2021) as the Minister for Finance considers appropriate and specifies in the order,*

*(iii) make an order that the percentage specified in section 485(4) (b) (i) shall be such a percentage, that is greater or lower than the percentage specified in that provision, as the Minister for Finance—*

*(l) considers necessary to—*

*(A) fulfil, better, the objectives specified in subsection (1) (a),*

*or*

*(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),*

*And*

*(ii) specifies in the order,*

*(iv) make an order that the percentage specified in subparagraph (i) (I) or subparagraph (ii)(I) of section 485 (7) (a) shall be such a percentage, that is greater or lower than the percentage specified in that subparagraph (i)(I) or subparagraph (ii)(I), as the Minister for Finance—*

*(I) considers necessary to—*

*(A) fulfil, better, the objectives specified in subsection (1) (a),*

*or*

*(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),*

*and*

*(ii) specifies in the order,*

*(v) make an order that the percentage referred to in subparagraph (i) (II) or subparagraph (ii)(II) of section 485 (7) (a) shall be such a percentage, that is greater or lower than that percentage specified in that subparagraph (i)(II) or subparagraph (ii)(II), as the Minister for Finance—*

*(I) considers necessary to—*

*(A) fulfil, better, the objectives specified in subsection (1) (a),*

*or*

*(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),*

*and*

*(ii) specifies in the order,*

*(vi) make an order either that subsection (8) of section 485 shall cease to be in operation on and from such day, or that the election referred to in paragraph (b) of that subsection, which that subsection enables a qualifying person to make, shall not be exercisable save in such circumstances, as the Minister for Finance—*

*(I) considers necessary to—*

*(A) fulfil, better, the objectives specified in subsection (1) (a),*

*or*

*(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),*

*and*

*(ii) specifies in the order,*

*and any matter that is provided for in the preceding subparagraphs is referred to in section 485(3) as a ‘modification’.*

*(b) Where an order under subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a) is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made unless a resolution approving of the draft has been passed by that House.*

Section 485 TCA 1997, “Covid Restrictions Support Scheme” provides:

*(1) In this section—*

*“applicable business restrictions provisions” shall be construed in the manner provided for in the definition of ‘Covid restrictions period’ in this subsection;*

*“business activity”, in relation to a person carrying on a trade either solely or in partnership, means—*

*(a) where customers of the trade acquire goods or services from that person from one business premises, the activities of the trade, or*

*(b) where customers of the trade acquire goods or services from that person from more than one business premises, the activities of the trade relevant to each business premises,*

*and where customers of the trade acquire goods or services from that person other than through attending at a business premises, that portion of the trade which relates to transactions effected in that manner shall be deemed to relate to the business premises or, where there is more than one business premises, shall be apportioned between such business premises on a just and reasonable basis;*

*“business premises”, in relation to a business activity, means a building or other similar fixed physical structure from which a business activity is ordinarily carried on;*

*“chargeable period” has the same meaning as in section 321 (2);*

*“claim period” means a Covid restrictions period, or a Covid restrictions extension period, as the context requires;*

*“Covid-19” has the same meaning as it has in the Emergency Measures in the Public Interest (Covid-19) Act 2020;*

*“Covid restrictions” means restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947, being restrictions for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;*

*“Covid restrictions extension period” has the meaning assigned to it in subsection (2);*

*“Covid restrictions period”, in relation to a relevant business activity carried on by a person, means a period for which the person is required by provisions of Covid restrictions to prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity is carried on (referred to in this section as ‘applicable business restrictions provisions’) and is a period which commences on the Covid restrictions period commencement date and ends on the Covid restrictions period end date;*

*“Covid restrictions period commencement date”, in relation to a relevant business activity, means the later of—*

*(a) 13 October 2020, or*

*(b) the day on which applicable business restrictions provisions come into operation (not having been in operation on the day immediately preceding that day);*

*“Covid restrictions period end date”, in relation to a relevant business activity, means the earlier of—*

*(a) the day which is three weeks after the Covid restrictions period commencement date,*

*(b) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement*

*date) to be the day on which the applicable business restrictions provisions shall expire,*

*(c) the day preceding the first day following the Covid restrictions period commencement date, on which the applicable business restrictions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in paragraph (b)), or*

*(d) 31 March 2021,*

*and, for the purposes of paragraph (c)—*

*(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and*

*(ii) the first reference in that paragraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations;*

*“partnership trade” has the same meaning as in section 1007;*

*“precedent partner”, in relation to a partnership and a partnership trade, has the same meaning as in section 1007;*

*relevant business activity” has the meaning assigned to it in subsection (4);*

*“relevant geographical region” means a geographical location for which Covid restrictions are in operation;*

*“specified period” means the period commencing on 13 October 2020 and expiring on 31 March 2021;*

*“tax” means income tax or corporation tax;*

*“trade” means a trade any profits or gains arising from which is chargeable to tax under Case I of Schedule D.*

- (2) (a) *Subject to subsection (8), where, in relation to a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions*

*period, the period for which those restrictions continue to so apply is referred to in this section as a 'Covid restrictions extension period', which period commences on the foregoing day (referred to in this section as a 'Covid restrictions extension period commencement date') and ends on the Covid restrictions extension period end date.*

*(b) In this section, 'Covid restrictions extension period end date', in relation to a relevant business activity, means the earlier of—*

*(i) the day which is three weeks after the Covid restrictions extension period commencement date,*

*(ii) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the day on which the applicable business restrictions provisions shall expire,*

*(iii) the day preceding the first day, following the Covid restrictions extension period commencement date, on which the applicable business restrictions provisions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in subparagraph (ii)), or*

*(iv) 31 March 2021,*

*and, for the purposes of subparagraph (iii)—*

*(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and*

*(ii) the first reference in that subparagraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations.*

*(c) Where, in relation a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions extension period, the period for which those restrictions continue to so apply is also referred in this subsection as a 'Covid restrictions extension period' which*

*period commences on the foregoing day and ends on the Covid restrictions extension period end date.*

(3) *The following provisions made in this section, namely:*

*(a) the reference in the definition of ‘Covid restrictions’ in subsection (1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;*

*(b) the specification of 31 March 2021 in the definition of ‘specified period’ in subsection (1) as the date on which the period there referred to shall expire;*

*(c) the specification of 25 per cent in subsection (4) (b) (i);*

*(d) the specification of 10 per cent in subsection (7)(a)(i)(I) or (ii)(I);*

*(e) the specification of 5 per cent in subsection (7) (a) (i) (II) or (ii)(II);*

*(f) subsection (8) and the election referred to in paragraph (b) of it which a qualifying person is, by virtue of that subsection, enabled to make,*

*shall, together with any other provision of this section that the following modification relates to, be construed and operate subject to any modification that is provided for in an order made under section 485(2)(a) and which is in force.*

(4) *(a) In this section—*

*“average weekly turnover from the established relevant business activity” means the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;*

*“average weekly turnover from the new relevant business activity”, means the average weekly turnover of the person, carrying on the activity, in respect of the new relevant business activity in the period commencing on the date on which the person commenced the business activity and ending on 12 October 2020;*

*“established relevant business activity” means, in relation to a person, a relevant business activity commenced by that person before 26 December 2019;*



*“new relevant business activity” means, in relation to a person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020;*

*“relevant business activity”, in relation to a person, means a business activity which is carried on by that person in a business premises located wholly in a relevant geographical region;*

*“relevant turnover amount” means—*

- (i) *where a person carries on an established relevant business activity, an amount determined by the formula—*

$$A \times B$$

*where—*

*A is the average weekly turnover from the established relevant business activity, and*

*B is the total number of full weeks in the claim period,*

*or*

- (ii) *where a person carries on a new relevant business activity, an amount determined by the formula—*

$$A \times B$$

*where—*

*A is the average weekly turnover from the new relevant business activity, and*

*B is the total number of full weeks that comprise the claim period.*

*(b) Subject to subsections (5) and (6), this section shall apply to a person who carries on a relevant business activity and who—*

- (i) *in accordance with guidelines published by the Revenue Commissioners under subsection (22), demonstrates to the satisfaction of the Revenue Commissioners that, in the claim period, because of applicable business restrictions provisions that prohibit, or significantly restrict, members of the*

*public from having access to the business premises in which the relevant business activity of the person is carried on—*

*(I) the relevant business activity of the person is temporarily suspended, or*

*(II) the relevant business activity of the person is disrupted, such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount, and*

*(ii) satisfies the conditions specified in subsection (5),*

*(hereafter referred to in this section as a 'qualifying person').*

*(5) The conditions referred to in subsection (4) (b) (ii) are—*

*(a) the person has logged on to the online system of the Revenue Commissioners (in this section referred to as 'ROS') and applied on ROS to be registered as a person to whom this section applies and as part of that registration provides such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of registration and which particulars shall include those specified in subsection (14),*

*(b) for the claim period, the person completes an electronic claim form on ROS containing such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of determining the claim and which particulars shall include those specified in subsection (14),*

*(c) for the claim period, the person makes a declaration to the Revenue Commissioners through ROS that the person satisfies the conditions in this section to be regarded as a qualifying person for that claim period,*

*(d) the person has complied with any obligations that apply to that person in respect of the registration for, and furnishing of returns relating to, value-added tax,*

*(e) the person is throughout the claim period eligible for a tax clearance certificate, within the meaning of section 1095, to be issued to the person, and*

*(f) the person would, but for the Covid restrictions, carry on the business activity, that is a relevant business activity, at the business premises in a relevant geographical*

*region, and intends to carry on that activity when applicable business restrictions provisions cease to be in operation in relation to that relevant business activity.*

(6) *Where a relevant business activity of a qualifying person does not constitute a whole trade carried on by that person, then, for the purposes of determining whether the requirements in subsection (4)(b) (i) are met, the relevant business activity shall be treated as if it were a separate trade and the turnover of the whole trade shall be apportioned between the separate trade and the other part of the trade on a just and reasonable basis, and the amount of turnover attributed to the separate trade during the claim period shall not be less than the amount that would be attributed to the separate trade if it were carried on by a distinct and separate person engaged in that relevant business activity.*

(7) *Subject to subsections (10) and (11), on making a claim under this section, a qualifying person shall, in respect of each full week comprised within the claim period, be entitled to an amount equal to the lower of—*

*(a) (i) where the qualifying person carries on an established relevant business activity, an amount equal to the sum of—*

*(I) 10 per cent of so much of the average weekly turnover from the established relevant business activity as does not exceed €20,000, and*

*(II) 5 per cent of any amount of the average weekly turnover from the established relevant business activity as exceeds €20,000,*

*Or*

*(iii) where the qualifying person carries on a new relevant business activity, an amount equal to the sum of—*

*(I) 10 per cent of so much of the person's average weekly turnover from the new relevant business activity as does not exceed €20,000, and*

*(II) 5 per cent of any amount of the person's average weekly turnover from the new relevant business activity as exceeds €20,000,*

*and*

*(b) €5,000 per week,*

*and any amount payable under this section is referred to in this section as an 'advance credit for trading expenses'.*

- (8) (a) *Where, in relation to a relevant business activity carried on by a person—*
- (i) applicable business restrictions provisions were in operation such that a qualifying person made a claim under this section in respect of a claim period and that claim, taken together with any claims made by the person immediately preceding that claim, is in respect of a continuous period of not less than three weeks, and*
  - (ii) those applicable business restrictions provisions cease to be in operation, then, where that qualifying person, within a reasonable period of time from the date on which the applicable business restrictions provisions cease to be in operation, resumes or continues, as the case may be, supplying goods or services to customers from the business premises in which the qualifying person's relevant business activity is carried on, that qualifying person may make an election under paragraph (b).*
- (b) Where no part of the week immediately following the date on which the applicable business restrictions provisions ceased to be in operation in respect of a relevant business activity would otherwise form part of a Covid restrictions period or a Covid restrictions extension period, a qualifying person to whom paragraph (a) applies may elect to treat that week as a Covid restrictions extension period and may make a claim under this section in respect of that period.*
- (9) *A claim made under this section in respect of an advance credit for trading expenses shall be made—*
- (a) subject to paragraph (b), no later than—*
- (i) eight weeks from the date on which the claim period, to which the claim relates, commences, or*
  - (ii) if the date on which the qualifying person is registered as a person to whom this section applies (following an application which is made in accordance with subsection (5) (a) and within the period of eight weeks specified in subparagraph (i)) falls on a date subsequent to the expiry of the period of eight weeks so specified, three weeks from the date on which the person is so registered,*
- and*

*(b) in the case of a claim made under this section that is referred to in subsection (8), no later than eight weeks from the date on which the applicable business restrictions provisions concerned cease to be in operation.*

*(10) Where, for any week comprised within a claim period, a person is a qualifying person in relation to more than one relevant business activity carried on from the same business premises, and a claim is made in relation to each relevant business activity, the amount the qualifying person shall be entitled to claim under this section in respect of all of those relevant business activities for any weekly period shall not exceed the amount specified in subsection (7)(b) and subsection (7) shall apply with any necessary modifications to give effect to this subsection.*

*(11) (a) Where a relevant business activity in respect of which a person is a qualifying person is carried on as the whole or part of a partnership trade, then any claim made under this section for an advance credit for trading expenses in respect of the relevant business activity shall be made by the precedent partner on behalf of the partnership and each of the partners in that partnership and the maximum amount of any such claim made in respect of the relevant business activity in any weekly period shall not exceed the lower of the amounts specified in subsection (7)(a)(i) or (a)(ii), as the case may be.*

*(b) Where a claim is made under this section by a precedent partner for an advance credit for trading expenses in respect of a relevant business activity carried on as the whole or part of a partnership trade then—*

*(i) for the purposes of subsections (15) and (16), each partner shall be deemed to have claimed, in respect of that partner's several trade, a portion of the advance credit for trading expenses calculated as—*

*A x B*

*where—*

*A is the advance credit for trading expenses claimed by the precedent partner,  
and*

*B is the partnership percentage at the commencement of the claim period,*

*(ii) the precedent partner shall, in respect of each such claim, provide a statement to each partner in the partnership containing the following particulars—*

*(I) the partnership name and its business address,*

*(II) the amount of advance credit for trading expenses claimed by the precedent partner on behalf of the partnership and each partner,*

*(III) the profit percentage for each partner,*

*(IV) the portion of the advance credit for trading expenses allocated to each partner,*

*(V) the commencement and cessation date of the claim period, and*

*(VI) the chargeable period of the partnership trade in which the claim period commences,*

*(iii) for the purposes of subsections (17) and (18), references to a person making a claim shall be taken as references to the precedent partner making the claim on behalf of the partnership and each of its partners, and*

*(iv) for the purposes of subsection (19), section 1077E shall apply as if references to a person were references to each partner and the references to a claim were a reference to a claim deemed to have been made by each partner under subparagraph (i).*

*(12) Any reference to ‘turnover’ in this section means any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, except for any amount recognised as turnover in that particular period of time due to a change in accounting policy.*

*(13) Where a person makes a claim for an advance credit for trading expenses under this section, in computing the amount of the profits or gains of the trade, to which the relevant business activity relates, for the chargeable period in which the claim period commences, the amount of any disbursement or expense which is allowable as a deduction, having regard to section 81, shall be reduced by the amount of the advance credit for trading expenses and the advance credit for trading expenses shall not otherwise be taken into account in computing the amount of the profits or gains of the trade for that chargeable period.*

*(14) (a) The particulars referred to in paragraphs (a) and (b) of subsection (5) are those particulars the Revenue Commissioners consider necessary and appropriate for the purposes of determining a claim made under this section, including—*

*(i) in relation to a qualifying person—*

*(I) name,*

*(II) address, including Eircode, and*

*(III) tax registration number,*

*and*

*(ii) in relation to a relevant business activity—*

*(I) name under which the business activity is carried on,*

*(II) a description of the business activity,*

*(III) address, including Eircode, of the business premises where the business activity is carried on,*

*(IV) where the business activity was commenced prior to 26 December 2019, the average weekly turnover of the qualifying person in respect of the business activity in the period commencing on 1 January 2019 and ending on 31 December 2019,*

*(V) where a trade is carried on in more than one business premises, the turnover of the qualifying person in respect of the business premises, to which the relevant business activity relates, in the period commencing on 1 January 2019 and ending on 31 December 2019,*

*(VI) where a business activity is a new relevant business activity, the date of commencement of the activity and the amount of turnover in respect of the new business activity beginning on the date of commencement and ending on 12 October 2020,*

*(VII) the average weekly turnover in respect of an established relevant business activity or a new relevant business activity, as the case may be,*

*(VIII) in respect of tax, within the meaning of section 2 of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clauses (IV) and (VI) the amount of tax that became due in accordance with section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010,*

*(IX) such other total income excluding the relevant business turnover in respect of the total tax returned in respect of section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clause (IV) or (VI),*

*(X) expected percentage reduction in turnover of the qualifying person in respect of the business activity in the claim period, and*

*(XI) such other particulars, as the Revenue Commissioners may require.*

*(b) Subsequent to receiving the information requested under this section, the Revenue Commissioners may seek further particulars or evidence for the purposes of determining the claim.*

*(15) Where a company makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the company has not repaid the amount as required by subsection (17)(a)(II)—*

*(a) the company shall be charged to tax under Case IV of Schedule D for the chargeable period in which the claim period commences, on an amount equal to 4 times so much of the amount under this section as was not so permitted to be made, and*

*(b) an amount chargeable to tax under this subsection shall be treated as income against which no loss, deficit, credit, expense or allowance may be set off, and shall not form part of the income of a company for the purposes of calculating a surcharge under section 440.*

*(16) (a) Where an individual makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the individual has not repaid the amount as required by subsection (17)(a)(II), the individual shall be deemed to have received an amount of income equal to 5 times so much of the amount under this section as was not so permitted to be made (referred to in this subsection as the 'unauthorised amount').*

*(b) The unauthorised amount shall, notwithstanding any other provision of the Tax Acts, be deemed to be an amount of income, arising on the first day of the claim period that is chargeable to income tax under Case IV of Schedule D.*



*(c) Where the taxable income of an individual includes an amount pursuant to paragraph (b), the part of the taxable income equal to that amount shall be chargeable to income tax at the standard rate in force at the time of the payment of the advance credit for trading expenses but shall not—*

*(i) form part of the reckonable earnings chargeable to an amount of Pay Related Social Insurance Contributions under the Social Welfare Acts, and*

*(ii) be an amount on which a levy or charge is required, by or under Part 18D.*

*(d) Notwithstanding section 458 or any other provision of the Tax Acts, in calculating the tax payable (within the meaning of Part 41A) on the unauthorised amount under this subsection, there shall be allowed no deduction, relief, tax credit or reduction in tax.*

*(e) In applying section 188 or Chapter 2A of Part 15, no account shall be taken of any income deemed to arise under this subsection or any income tax payable on that income.*

*(17) (a) Where subsequent to a person making a claim under this section, it transpires that -*

*(i) the requirements in subsection (4) (b) are not met (and a claim in respect of which those requirements are not met is referred to hereafter in this subsection as an 'invalid claim'), or*

*(ii) the amount claimed exceeds the amount the person is entitled to claim under this section (and a claim to which this subparagraph applies is referred to hereafter in this subsection as an 'overclaim'),*

*then the person shall, without unreasonable delay—*

*(I) notify the Revenue Commissioners of the invalid claim or overclaim, as the case may be, and*

*(II) repay to the Revenue Commissioners—*

*(A) in respect of an invalid claim, the amount paid in respect of that claim,*

*(B) in respect of an overclaim, the amount by which the amount paid in respect of that claim exceeds the amount the person is entitled to claim (hereafter referred to in this section as the 'excess amount').*

*(b) Where a person makes a claim under this section in respect of a claim period and it subsequently transpires that the claim is an invalid claim or an overclaim, as the case may be—*

*(i) then, subject to subparagraph (ii), the amount of the advance credit for trading expenses paid by the Revenue Commissioners in respect of the invalid claim, or the amount of the advance credit for trading expenses overpaid by the Revenue Commissioners in respect of an overclaim, as the case may be, shall carry interest as determined in accordance with section 1080 (2) (c) as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, and*

*(ii) where the invalid claim or overclaim, as the case may be, was made neither deliberately nor carelessly (within the meaning of section 1077E ) and the person complies with the requirements of paragraph (a)(II), the amount repaid to the Revenue Commissioners in respect of the invalid claim or overclaim, as the case may be, shall carry interest as determined in accordance with section 1080(2)(c) as if a reference to the date when the tax became due and payable were a reference to the date paragraph (a) is complied with.*

*(c) Paragraph (b) shall apply to tax payable on unauthorised amounts under subsections (15) and (16) as it applies to overpayments arising on invalid or overclaims.*

*(18) (a) For the purposes of this subsection, ‘claim’ and ‘overpayment’ shall have the same meanings respectively as they have in subsection (1) of section 960H.*

*(b) In this subsection, a claim period is a ‘reduced claim period’ where—*

*(i) in the case of a claim period which is a Covid restrictions period, the claim period ends on a date as provided for (in relation to that Covid restrictions period) by paragraph (c) of the definition of ‘Covid restrictions period end date’ in subsection (1), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the date on which the applicable business restrictions provisions shall expire, and*

*(ii) in the case of a claim period which is a Covid restrictions extension period, the claim period ends on a date as provided for (in relation to that Covid restrictions extension period) by subsection (2) (b)(iii), and such date precedes the date that*

*had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the date on which the applicable business restrictions provisions shall expire.*

*(c) Where a qualifying person makes an overclaim in respect of a reduced claim period, the Revenue Commissioners shall be entitled to recover the excess amount from the person in accordance with paragraph (d) where the following conditions are met:*

*(i) the claim is made before the end of the claim period; and*

*(ii) the claim is an overclaim solely by reason of the fact that the claim period is a reduced claim period.*

*(d) The Revenue Commissioners shall be entitled to recover the excess amount referred to in paragraph (c) by—*

*(i) setting the amount of an advance credit for trading expenses that the person is entitled to be paid in accordance with subsection (7) or (8) against the excess amount, or*

*(ii) where, after the end of the specified period, a repayment is due to the person in respect of a claim or overpayment, setting the amount of the repayment against the excess amount.*

*(e) Where the conditions referred to in paragraph (c) are met and the excess amount is recovered by the Revenue Commissioners in accordance with paragraph (d) within a reasonable period of time from the end of the specified period, the excess amount shall not be an unauthorised amount under subsection (15) or (16), as the case may be.*

*(f) Where the conditions referred to in paragraph (c) are met, the excess amount shall carry interest as determined in accordance with section 1080 (2) (c) as if the reference to the date when the tax became due and payable were a reference to the day after the day on which the specified period ends.*

*(19) Any claim made under this section shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E (11) or 1077E (12), a reference to an amount of tax that would have been payable for the relevant periods by the person*

*concerned shall be read as if it were a reference to a claim in respect of a claim period made in connection with subsection (7).*

*(20) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—*

*(a) knowingly or wilfully delivers any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person, or*

*(b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return or statement, or knowingly or wilfully furnish any incorrect information in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person,*

*and*

*the provisions of subsections (3) to (10) of section 1078, and section 1079, shall, with any necessary modifications, apply for the purposes of this subsection as they apply for the purposes of offences in relation to tax within the meaning of section 1078.*

*(21) The administration of this section shall be under the care and management of the Revenue Commissioners and section 849 shall apply for this purpose with any necessary modifications as it applies in relation to tax within the meaning of that section.*

*(22) The Revenue Commissioners shall prepare and publish guidelines with respect to matters that are considered by them to be matters to which regard shall be had in determining whether—*

*(a) there are provisions of Covid restrictions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of a person is carried on in a Covid restrictions period, or Covid restrictions extension period, as the case may be, and*

*(b) as a result of the provisions referred to in paragraph (a), the turnover of the person in respect of the relevant business activity in the Covid restrictions period, or Covid restrictions extension period, as the case may be, will not exceed an amount that is 25 per cent (or less) of the relevant turnover amount.*

- (23) *Notwithstanding any obligations imposed on the Revenue Commissioners under section 851A or any other enactment in relation to the confidentiality of taxpayer information (within the meaning of that section), the details referred to in clauses (I) and (III) of subsection (14) (a) (ii) shall, for all persons to whom an advance credit for trading expenses has been paid by the Revenue Commissioners under this section, be published on the website of the Revenue Commissioners.*
- (24) (a) *Where a Revenue officer determines that a person is not a qualifying person within the meaning of subsection (4) (b), the Revenue officer shall notify the person in writing accordingly.*
- (b) *A person aggrieved by a determination under paragraph (a), may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date on the notice of the determination.*
- (c) *Where the Appeal Commissioners determine that a person is a qualifying person within the meaning of subsection (4)(b), the 8 week period specified in subsection (9), shall commence in respect of such a person on the date that determination is issued.*
- (d) *The reference to the Tax Acts in paragraph (a) of the definition of 'Acts' in section 949A shall be read as including a reference to this section.*



STATUTORY INSTRUMENTS.

**S.I. No. 701 of 2020**



HEALTH ACT 1947 (SECTION 31A - TEMPORARY RESTRICTIONS)  
(COVID-19) (NO. 10) REGULATIONS 2020

S.I. No. 701 of 2020

HEALTH ACT 1947 (SECTION 31A - TEMPORARY RESTRICTIONS)  
(COVID-19) (NO. 10) REGULATIONS 2020

I, STEPHEN DONNELLY, Minister for Health, in exercise of the powers conferred on me by sections 5 and 31A (inserted by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (No. 1 of 2020)) of the Health Act 1947 (No. 28 of 1947) and -

- (a) having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and to the matters specified in subsection (2) of section 31A, and
- (b) having consulted with the Minister for Transport, the Minister for Enterprise, Trade and Employment, the Minister for Finance, the Minister for Justice and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media,

hereby make the following regulations:

**PART 1**  
**Preliminary and General**

**Citation, commencement and operation**

1. (1) These Regulations may be cited as the Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 10) Regulations 2020.

(2) These Regulations shall come into operation on the 31<sup>st</sup> day of December 2020 and shall have effect for the period beginning on that date and ending on the 31<sup>st</sup> day of January 2021.

**Revocation**

2. The Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 9) Regulations 2020 (S.I. No. 560 of 2020) are revoked.

**Interpretation**

3 In these Regulations -

“Act of 1947” means the Health Act 1947 (No. 28 of 1947);

“applicable person” means a person whose place of residence is located within a relevant geographical location;

“child” means a person who has not attained the age of 18 years;

“club” means a club registered under the Registration of Clubs Acts 1904 to 2008;

“essential retail outlet” means a retail outlet that is specified in Part 1A of the Schedule;

“essential service” means a service specified in Part 2 of the Schedule;

“household” means a person who lives alone or 2 or more persons who live together;

“licence”, in relation to premises, means a licence for the sale by retail of intoxicating liquor for consumption on or off the premises whether granted on



production or without production of a certificate of the Circuit Court or District Court;

“necessary person” means, in relation to a sporting event, any person whose presence at the event is necessary for the event to take place, and includes -

- (a) a person referred to in Regulation 10(2)(b) who is participating in the sporting event,
- (b) a member of staff of Sport Ireland or a member of staff of the relevant sporting body of an athlete or competitor participating in the event,
- (c) a coach or a trainer connected to the event,
- (d) medical personnel, including such personnel conducting doping testing, whose presence is required at the event,
- (e) a person who attends the event in order to ensure that it is conducted in accordance with the rules of the sport,
- (f) a person engaged by the organiser of the sporting event as a steward, whether in a remunerated or voluntary capacity, to implement crowd control, compliance with public health guidance and other safety measures,
- (g) a person whose attendance at the event is necessary for it to be reported, recorded or broadcast,
- (h) a person who is a parent or guardian of a person who -
  - (i) is participating in the event, and
  - (ii) is a child,
- (i) a person accompanying a person who is participating in the event, where that person normally requires assistance in carrying out his or her daily activities, or
- (j) a person providing necessary technical, administrative, logistical or other professional services to a person described in any of subparagraphs (a) to (i);

“paired household” has the meaning assigned to it in Regulation 6;

“place of residence” means -

- (a) in relation to a person who is ordinarily resident in the State -
  - (i) the home in which the person ordinarily resides, or
  - (ii) if the person does not have a home, such other premises, if any, at which he or she is currently residing, whether on a permanent or temporary basis, or
- (b) in relation to a person who is not ordinarily resident in the State, the premises in the State, if any, at which he or she is currently residing, whether on a permanent or temporary basis;

“premises” includes part of any premises;

“premises controller” means -

- (a) in relation to premises the subject of a licence, the holder of the licence, and
- (b) in relation to the premises of a club, every person whose name is entered in the register of clubs as an official or member of its committee of management or governing body at the material time;

“relevant event” means an event held, or to be held, for social, recreational, exercise, cultural, entertainment or community reasons, but does not include -

- (a) an event to be held in a dwelling,
- (b) a wedding reception,
- (c) a sporting event, or
- (d) a training event;

“relevant geographical location” means a geographical location to which an affected areas order applies;

“relevant household” means a household consisting of -

- (a) a person, including a vulnerable person, who lives alone,
- (b) one or more vulnerable persons who live together, or
- (c) one or more vulnerable persons and one other person (other than a vulnerable person) all of whom live together;

“specified person”, in relation to any premises, means -

- (a) the premises controller of the premises,
- (b) the occupier of the premises,
- (c) the manager of the premises, or
- (d) any other person for the time being in charge of the premises;

“sporting event” means an event to be held in a location other than in a dwelling that is -

- (a) to be held wholly or partly for competitive sport reasons, regardless of the nature of the sport or the competitive standard in question,
- (b) organised under the structure of, licenced by, or otherwise authorised by -
  - (i) a national governing body of the sport in question, or
  - (ii) a school, university or higher education institution, and

- (c) not a training event;

“substantial meal” means a meal -

- (a) such as might be expected to be served as a main midday or main evening meal or as a main course at either such meal, and
- (b) that is of a kind, having regard to all the circumstances, for which it would be reasonable to charge a sum that is not less than €9;

“training event” means an event -

- (a) to be held in preparation for a sporting event, and
- (b) that is supervised by a member of staff of Sport Ireland, a coach or a trainer;

“vulnerable person” means -

- (a) a person who normally requires assistance in carrying out his or her daily activities,
  - (b) a person who, although not normally requiring assistance in carrying out his or her daily activities, requires such assistance because he or she is -
    - (i) particularly susceptible to the risk posed to health by Covid-19, or
    - (ii) not in a position to leave his or her place of residence due to reasons related to the spread of Covid-19 or otherwise,
- or
- (c) a child.

## **Part 2**

### **Temporary restrictions – national measures**

#### **Restrictions of movement of relevant persons in relation to travel from place of residence**

4. (1) Subject to paragraph (2), an applicable person shall not leave his or her place of residence without reasonable excuse.

(2) Without prejudice to the generality of what constitutes a reasonable excuse for the purposes of paragraph (1), such reasonable excuse includes an applicable person leaving his or her place of residence in order to -

- (a) work, comply with a contract of employment or contract for services, or otherwise engage in work or employment where -
  - (i) such work, compliance, or engagement relates to an essential retail outlet or an essential service, and
  - (ii) in all the circumstances, it is not practicable to so work, comply or engage in the person’s place of residence,

- (b) without prejudice to the generality of subparagraph (a) -
  - (i) provide services to, or perform the functions of, an office holder appointed under any enactment or under the Constitution, or a member of either House of the Oireachtas, the European Parliament or a local authority, or
  - (ii) provide services essential to the functioning of diplomatic missions and consular posts in the State,
- (c) farm, carry out agricultural activities, or assist in farming or carrying out agricultural activities,
- (d) attend, for educational reasons -
  - (i) a primary or secondary school, or
  - (ii) a university, higher education institution or other education and training facility,

to the extent that it is necessary for such educational reasons to attend in person,

- (e) accompany to a school referred to in subparagraph (d)(i), or to a university, higher education institution or other education and training facility referred to in subparagraph (d)(ii), any other person residing with the person, or a vulnerable person,
- (f) access crèche or other childcare facilities,
- (g) attend a medical or dental appointment, or accompany, to such an appointment, any other person residing with the person, or a vulnerable person,
- (h) seek essential medical, health or dental assistance for the person, for any other person residing with the person, or for a vulnerable person,
- (i) donate blood or accompany any other person residing with the person to donate blood,
- (j) seek veterinary assistance,
- (k) attend to vital family matters (including providing care to vulnerable persons),
- (l) attend a funeral or a wedding,
- (m) fulfil a legal obligation (including attending court, satisfying bail conditions, or participating in ongoing legal proceedings), attend a court office where required, initiate emergency legal proceedings or execute essential legal documents,
- (n) if the person is a parent or guardian of a child, or a person having a right of access to a child, give effect to arrangements for access to the child by -
  - (i) the person, or
  - (ii) another person who is -

- (I) a parent or guardian of the child, or
  - (II) a person having a right of access to the child,
- (o) in the case of a minister of religion or priest (or any equivalent thereof in any religion) -
    - (i) lead worship or services remotely through the use of information and communications technology,
    - (ii) minister to the sick, or
    - (iii) conduct funeral or wedding services,
  - (p) move to another residence where, in all the circumstances of the case, such movement is reasonably necessary,
  - (q) return to the person's place of residence,
  - (r) where the person is not ordinarily resident in the State, leave the State,
  - (s) provide emergency assistance, avoid injury or illness, or escape a risk of harm, whether to the person or to another person,
  - (t) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of the person's place of residence), or accessing services provided in the outlet, for the applicable person or any other person residing in the person's place of residence,
  - (u) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of the place of residence of a vulnerable person), or accessing services provided in the outlet, for a vulnerable person,
  - (v) access an essential service, or assist any other person residing in the person's place of residence, or a vulnerable person, to access an essential service, where the access is immediately required and the person, other person residing in the person's place of residence or vulnerable person, as the case may be, cannot access the service concerned from the place of residence,
  - (w) in the case of a person who is part of a paired household, travel to an event in a dwelling in accordance with Regulation 5,
  - (x) exercise -
    - (i) alone,
    - (ii) with other persons residing in the relevant residence,
    - (iii) with persons from one other place of residence, or

(iv) with persons residing in the relevant household and persons from one other place of residence, within a 5 kilometre radius of the person's place of residence,

(y) attend -

(i) a retail outlet specified in paragraph 1 of Part 1B of the Schedule, during the period specified in that paragraph, for the purpose of -

(I) obtaining items provided in the outlet, or

(II) working in the outlet, or

(ii) an indoor leisure facility, including a dance studio, gym or swimming pool, specified in paragraph 2 of Part 1B of the Schedule, during the period specified in that paragraph insofar as they provide facilities for use by persons taking exercise on an individual basis, or

(z) attend the offices of a planning authority or An Bord Pleanála to engage in a statutory planning process (including making or inspecting a planning application or appeal, making an observation or submission or participating in a Development Plan process) or inspect a site notice (within the meaning of the Planning and Development Act 2000 (No. 30 of 2000)).

(3) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

### **Restrictions on events in dwellings**

5. (1) A person shall not organise, or cause to be organised, an event to be held in a dwelling in a relevant geographical location for social or recreational reasons other than in accordance with paragraph (2).

(2) An applicable person may organise, or cause to be organised, an event to be held in a dwelling in a relevant geographical location for social or recreational reasons where -

(a) the dwelling is the applicable person's place of residence, and

(b) the person takes all reasonable steps to ensure that the persons attending, or proposed to attend the event (for whatever reason)

-

(i) are part of the same household as the person organising the event, or

(ii) are part of a paired household in respect of the person organising the event.

(3) Where an event under paragraph (2) is attended by -

(a) a child, and

(b) a parent or guardian of such child, who is not part of the same household as the child,

the parent or guardian, as the case may be, shall be deemed to be part of the same household as the child.

(4) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

### **Paired households**

6. (1) Subject to paragraph (2), a relevant household may agree with one other household (including another relevant household) that each household may be treated as a paired household for the purpose of attending events in a dwelling in accordance with Regulation 5, and each of those households shall, in these Regulations, be referred to as a “paired household”.

(2) Where a relevant household makes an agreement with another household in accordance with paragraph (1) -

- (a) neither such household may already be a paired household, and
- (b) neither such household may subsequently agree to be a paired household with any other household.

### **Restriction on persons attending events in dwellings**

7. (1) Subject to paragraph (2), a person shall not without reasonable excuse attend an event to be held for social or recreational reasons in a dwelling in a relevant geographical location other than where the event is organised in accordance with Regulation 5(2).

(2) Paragraph (1) shall not apply to a person attending an event referred to in that paragraph where the person is -

- (a) part of the same household as the person organising the event, or
- (b) part of a paired household in respect of the person organising the event.

(3) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

### **Restrictions on relevant events and funerals**

8. (1) A person shall not organise, or cause to be organised, a relevant event in a relevant geographical location other than to exercise outdoors –

- (a) alone,
- (b) with other persons residing in the person’s relevant residence,
- (c) with persons from one other place of residence, or
- (d) with persons residing in the relevant household and persons from one other place of residence,

within a 5 kilometre radius of the person’s place of residence.

(2) A person shall not organise, or cause to be organised, a funeral to be held in a relevant geographical location other than where the number of people, excluding a minister of religion or priest (or any equivalent thereof in any religion), attending the funeral does not exceed 10.

(3) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

(4) For the purposes of this Regulation, in reckoning the number of persons attending a relevant event, no account shall be taken of persons so attending in a professional capacity, in the course of their employment, or in fulfilment of a contract for services.

### **Wedding Receptions**

9. (1) A person shall not organise, or cause to be organised, a wedding reception in a relevant geographical location other than in accordance with paragraph (2).

(2) A person may organise, or cause to be organised, a wedding reception in a relevant geographical location in a premises other than a dwelling where the person takes all reasonable steps to ensure that the maximum number of persons attending, or proposed to attend, the wedding reception –

- (a) for the period beginning on the 31<sup>st</sup> day of December 2020 and ending on the 2<sup>nd</sup> day of January 2021, does not exceed 25 persons, or
- (b) for the period beginning on the 3<sup>rd</sup> day of January 2021, does not exceed 6 persons.

(3) For the purposes of this Regulation, in reckoning the number of persons attending a wedding reception, no account shall be taken of -

- (a) the persons getting married, or
- (b) persons so attending in a professional capacity, in the course of their employment, or in fulfilment of a contract for services.

### **Restrictions on sporting events**

10. (1) Subject to paragraph (2), a person shall not organise, or cause to be organised, a sporting event in a relevant geographical location.

(2) A person may organise, or cause to be organised, a sporting event in a relevant geographical location where the person takes all reasonable steps to ensure that -

- (a) the event is attended, or proposed to be attended, only by necessary persons, and
- (b) every person participating in the event -
  - (i) is in receipt of financial support provided by Sport Ireland under the scheme commonly known and referred to as the Sport Ireland International Carding Scheme,



- (ii) competes at a senior level and is a participant in a high performance training programme of the national governing body of the sport, which body receives, from Sport Ireland, financial support commonly known and referred to as the Sport Ireland High Performance Programme Funding,
- (iii) is a professional sportsperson who receives payment for training and playing sport under a contract of employment with a soccer club or the rugby football organisation commonly known and referred to as the Irish Rugby Football Union,
- (iv) is involved in the training and preparation of racehorses for events held under the authority of Horse Racing Ireland,
- (v) is involved in the training and preparation of sport horses for events held under the authority of Horse Sport Ireland, or
- (vi) is involved in the training and preparation of greyhounds for events held under the authority of Rásaíocht Con Éireann.

#### **Restrictions on training events**

11. (1) A person shall not organise, or cause to be organised, a training event in a relevant geographical location other than in accordance with paragraph (2).

(2) Paragraph (1) shall not apply to a training event in which every person participating in the event -

- (a) is in receipt of financial support provided by Sport Ireland under the scheme commonly known and referred to as the Sport Ireland International Carding Scheme,
- (b) competes at a senior level and is a participant in a high performance training programme of the national governing body of the sport, which body receives, from Sport Ireland, financial support commonly known and referred to as the Sport Ireland High Performance Programme Funding,
- (c) is a professional sportsperson who receives payment for training and playing sport under a contract of employment with a soccer club or the rugby football organisation commonly known and referred to as the Irish Rugby Football Union,
- (d) is involved in the training and preparation of racehorses for events held under the authority of Horse Racing Ireland,
- (e) is involved in the training and preparation of greyhounds for events held under the authority of Rásaíocht Con Éireann,

- (f) is involved in the training and preparation of sport horses for events held under the authority of Horse Sport Ireland, or
- (g) is a coach or trainer in respect of a person referred to in any of subparagraphs (a) to (f).

**Carrying on or provision of certain businesses or services**

12. (1) A specified person shall ensure that members of the public and workers are not permitted, or otherwise granted, access to a premises -

- (a) in or at which a business or service is carried out, and
- (b) that is in a relevant geographical location,

other than in accordance with paragraph (2).

(2) A specified person may permit, or otherwise grant, access to a premises in a relevant geographical location to -

- (a) a worker -
  - (i) where access to the premises by the worker is necessary for the provision of an essential service or the operation of an essential retail outlet, or
  - (ii) where access to the premises by the worker is necessary for the operation of a retail outlet specified in paragraph 1 of Part 1B of the Schedule, during the period specified in that paragraph, or
  - (iii) where access to the premises by the worker is necessary for the operation of an indoor leisure facility, including a dance studio, gym or swimming pool, specified in paragraph 2 of Part 1B of the Schedule during the period specified in that paragraph, insofar as they provide facilities for use by persons taking exercise on an individual basis, or
- (b) members of the public -
  - (i) where the premises is an essential retail outlet, provided that such access is granted, or otherwise permitted, only to such part of the premises as is operating solely as an essential retail outlet,
  - (ii) where the premises is used to provide an essential service, provided that such access is granted, or otherwise permitted, only to such part of the premises as is operating solely to provide the essential service,
  - (iii) where the premises is a retail outlet specified in paragraph 1 of Part 1B of the Schedule, during the period specified in that paragraph,
  - (iv) where the premises is an indoor leisure facility, including a dance studio, gym or swimming pool, specified in paragraph 2 of Part 1B of the Schedule, during the period specified in that paragraph, insofar as they provide

facilities for use by persons taking exercise on an individual basis.

- (3) For the avoidance of doubt, paragraph (1) does not prohibit -
- (a) the filming or other recording of performances in a theatre, concert hall, museum or art gallery, without an audience present, for the purposes of broadcasting such performances on the internet, radio or television,
  - (b) the holding of horseracing or greyhound racing at a racecourse in accordance with these Regulations, or
  - (c) the use of a premises for the purposes of -
    - (i) a meeting of a local authority (within the meaning of the Local Government Act 2001 (No. 37 of 2001)),
    - (ii) a meeting of a regional assembly (within the meaning of the Local Government Act 1991 (Regional Assemblies) (Establishment) Order 2014 (S.I. No. 573 of 2014)),
    - (iii) a sitting of one or both Houses of the Oireachtas or a committee thereof (within the meaning of section 2 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (No. 33 of 2013)),
    - (iv) a meeting of a political party registered in the Register of Political Parties (within the meaning of Part III of the Electoral Act 1992 (No. 23 of 1992)) or a meeting of a parliamentary party of such political party, or
    - (v) a wedding held in accordance with Regulation 9.

(4) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

(5) In this Regulation, “worker” means, in relation to a premises that is a place of work -

- (a) an employee working at the premises,
- (b) a member of staff at the premises, or
- (c) a person providing professional services to or at the premises.

### **Requirements in relation to hotels and other services**

13. (1)(a) Subparagraph (b) applies notwithstanding anything contained in the Licensing Acts 1833 to 2018 or the Registration of Clubs Acts 1904 to 2008.
- (b) Without prejudice to the generality of Regulation 12(1), a specified person shall ensure that –
- (i) members of the public are not, permitted, or otherwise granted, access to relevant premises, or permitted to remain on such premises,

- (ii) relevant guests who are not resident in the relevant premises are not, during the relevant period, permitted, or otherwise granted, access to the relevant premises concerned, or permitted to remain on such premises, other than for the purpose of ordering, or collecting, or both, food or non-alcoholic beverages for consumption off such premises,
  - (iii) relevant guests who are resident in the relevant premises are not, during the relevant period, permitted to order alcoholic beverages, and
  - (iv) relevant guests are not permitted to purchase or otherwise acquire intoxicating liquor for consumption on the relevant premises unless the intoxicating liquor is -
    - (I) ordered by or on behalf of the relevant guest at the same time as a substantial meal is so ordered, during the meal or after the meal has ended, and
    - (II) consumed by that relevant guest during the meal or after the meal has ended whilst such person is seated at a table.
- (c) For the avoidance of doubt, it is hereby declared that the period of 30 minutes referred to in section 7(1) and (2) of the Intoxicating Liquor Act 1962 (No. 21 of 1962), commonly referred to as drinking-up time, does not apply in relation to the relevant period.

(2) A specified person shall, in relation to a relevant premises, make a record of the time and date that each relevant guest is permitted, or otherwise granted, access to the relevant premises, and the guest's name and telephone number and make a record of the substantial meal or meals ordered pursuant to paragraph (1)(b)(iv).

(3) A specified person shall retain and make available records made under paragraph (2) for the purposes of inspection by a member of the Garda Síochána acting in the course of his or her duties under these Regulations, or by a person appointed by the Health Service Executive for the purposes of the programme commonly known as the Covid-19 Contact Management Programme, for a period of 28 days after the records have been made.

(4) For the purposes of paragraph (2), a specified person may request a relevant guest to provide the specified person with the relevant guest's name and telephone number and, where that specified person does so, the relevant guest shall comply with that request.

(5)(a) A specified person shall ensure that members of the public are not, during the specified period -

- (i) permitted, or otherwise granted, access to a specified premises, or
- (ii) permitted to remain on a specified premises,

except for the purpose of ordering, or collecting, or both, food or non-alcoholic beverages for consumption off the specified premises.

(b) In this paragraph -

“specified period”, in relation to specified premises to which, but for this Regulation, access by members of the public may be lawfully permitted, or otherwise granted, on and after 11.30 p.m. on a particular day, means the period -

(a) commencing at 11.30 p.m. on that day, and

(b) ending at -

(i) subject to subparagraph (ii), the later time on that day, or the later time on the next succeeding day, as the case may be, on and after which access by members of the public would no longer be lawful even if this Regulation had never been made, or

(ii) 6.00 a.m. on the next succeeding day in any case where such first-mentioned access would extend beyond that time but for this Regulation;

“specified premises” means a premises in a relevant geographical location where -

(a) food or non-alcoholic beverages may be lawfully sold or supplied for consumption on such premises, or

(b) food or beverages may be lawfully sold or supplied for consumption on such premises but any beverage which is an intoxicating liquor may not be so consumed.

(6) Paragraphs (1), (2) and (3) are penal provisions for the purposes of section 31A of the Act of 1947.

(7) In this Regulation -

“relevant period”, in relation to a relevant premises to which, but for this paragraph, access by relevant guests may be lawfully permitted, or otherwise granted, on and after 11.30 p.m. on a particular day, means the period -

(a) commencing at 11.30 p.m. on that day, and

(b) ending at the later time on that day, or the later time on the next succeeding day, as the case may be, on and after which access by members of the public would no longer be lawful even if this Regulation had never been made;

“relevant guest”, in relation to a hotel or similar accommodation, means a person staying in the hotel or similar accommodation in one or more of the circumstances referred to in subparagraphs (a) to (d) of paragraph 8 of Part 2 of the Schedule;

“relevant premises” means a premises in a relevant geographical location where a business or service of a type specified in subparagraphs (a) to (d) of paragraph 8 of Part 2 of the Schedule that is selling or supplying intoxicating liquor for consumption on the premises to relevant guests and that, but for this Regulation, is otherwise permitted by law to do so, is lawfully carried on or otherwise provided.

### **Data Protection**

14. (1) Personal data collected for the purposes of these Regulations may be processed by -

- (a) a specified person for the purposes of -
  - (i) complying with the requirements of these Regulations, or
  - (ii) providing information to the Health Service Executive for the purposes referred to in paragraph (b),
- (b) the Health Service Executive for the purposes of the identification, tracing and contacting of persons who have been in contact with persons who have been diagnosed, or suspected of having been infected, with Covid-19, and
- (c) a member of the Garda Síochána for the purposes of -
  - (i) monitoring compliance by a specified person with, or
  - (ii) enforcement of,

these Regulations.

(2) For the purposes of these Regulations, a specified person, the Health Service Executive and the Garda Síochána are designated as data controllers in relation to personal data respectively processed by them pursuant to paragraph (1).

(3) Subject to paragraph (4), personal data collected for the purposes of these Regulations shall be permanently deleted no later than 28 days after the records referred to in Regulation 13 have been collected under paragraph (2) of that Regulation.

(4) Where personal data collected in accordance with these Regulations are required for the purposes of the prevention, investigation, detection or prosecution of a criminal offence, the data -

- (a) may be processed for as long as they are required for such prevention, investigation, detection or prosecution, and
- (b) shall be permanently deleted after they are no longer required for such prevention, investigation, detection or prosecution.

(5) In this Regulation -

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>1</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“personal data” has the meaning it has in the General Data Protection Regulation;

“processing”, in relation to personal data, has the meaning it has in the General Data Protection Regulation.

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<sup>1</sup> OJ No. L 119, 4.5.2016, p. 1.

## SCHEDULE

*Regulation 3*

### Part 1A

#### Essential Retail Outlets

1. Outlets selling food or beverages on a takeaway basis, or newspapers, whether on a retail or wholesale basis and whether in a non-specialised or specialised outlet.
2. Markets that, wholly or principally, offer food for sale.
3. Outlets selling products necessary for the essential upkeep and functioning of places of residence and businesses, whether on a retail or wholesale basis.
4. Pharmacies, chemists and retailers or wholesalers providing pharmaceuticals or pharmaceutical or dispensing services, whether on a retail or wholesale basis.
5. Outlets selling health, medical or orthopaedic goods in a specialised outlet, whether on a retail or wholesale basis.
6. Fuel service stations and heating fuel providers.
7. Outlets selling essential items for the health and welfare of animals (including animal feed and veterinary medicinal products, pet food, animal bedding and animal supplies), whether on a retail or wholesale basis.
8. Laundries and drycleaners.
9. Banks, post offices and credit unions.
10. Outlets selling safety supplies (including work-wear apparel, footwear and personal protective equipment), whether on a retail or wholesale basis.
11. Hardware outlets, builders' merchants and outlets that provide, whether on a retail or wholesale basis -



- (a) hardware products necessary for home and business maintenance or construction and development,
- (b) sanitation and farm equipment, or
- (c) supplies and tools essential for farming or agriculture purposes.

12 Outlets providing for the repair and maintenance of mechanically propelled vehicles or bicycles and any related facilities (including tyre sales and repairs).

13. The following outlets, insofar as they offer services on an emergency basis only:

- (a) Outlets selling office products and services for businesses or for relevant persons working from their respective places of residence, whether on a retail or wholesale basis;
- (b) Outlets providing electrical, information and communications technology and telephone sales, repair and maintenance services for places of residence and businesses.

14. Any other retail outlet that operates an online or other remote system of ordering goods for purposes of collection at the retail outlet.

15. Outlets selling food or beverages whether on a retail or wholesale basis and whether in a non-specialised or specialised outlet -

- (a) insofar as they sell food or beverages on a takeaway basis or for consumption off the premises,
- (b) insofar as they are staff canteens operating for the exclusive use of persons working in, or at, a particular premises, or
- (c) hotels or similar accommodation services referred to in subparagraphs (a) to (d) of paragraph 8 of Part 2, insofar as they sell food or beverages for consumption on the premises in accordance with subparagraphs (a) to (d) of paragraph 8 of that Part.

16. Optician and optometrist outlets.

17. Outlets providing hearing test services or selling hearing aids and appliances.

**Part 1B**

1. Retail outlets selling goods or products (other than goods or products specified in Part 1A) during the period beginning on the commencement of these Regulations and ending at 6.00 p.m. on the 31<sup>st</sup> day of December 2020.
  
2. Indoor leisure facilities, including dance studios, gyms and swimming pools, insofar as they provide facilities for use by persons taking exercise on an individual basis during the period beginning on the commencement of these Regulations and ending at 6.00 p.m. on the 31<sup>st</sup> day of December 2020.

**Part 2**  
**Essential Services**

**Agriculture, horticulture, forestry, fishing, animal welfare and related services**

1. The following services relating to agriculture, horticulture, forestry, fishing, animal welfare and related services:

- (a) farming;
- (b) farm labour;
- (c) farm relief services;
- (d) crop and animal production;
- (e) fishing for commercial purposes;
- (f) aquaculture and fish farming;
- (g) horticulture;
- (h) forestry;
- (i) veterinary, animal welfare and related services;
- (j) marts held online only;
- (k) the provision of support services relating to any of the services specified in subparagraphs (a) to (j) (including artificial insemination and animal disposal).

**Manufacturing**

2. The following services relating to manufacturing:

- (a) the manufacture, production or processing of food and beverage products;
- (b) the manufacture, production or processing of animal feeds;
- (c) the manufacture of work-wear apparel, personal protective equipment or footwear;
- (d) the manufacture of wood pulp, paper and paperboard;
- (e) the operation of sawmills and the processing of wood and cork;
- (f) the printing and reproduction of newspapers and other media services;
- (g) the distillation of coke and refined petroleum products;
- (h) the refining of alumina;
- (i) the manufacture of chemicals and chemical products;

- (j) the manufacture of pharmaceutical products and preparations;
- (k) the manufacture of products necessary for the supply chain of essential services;
- (l) the manufacture of products necessary for national and international supply chains, other than such supply chains referred to in subparagraph (k);
- (m) the manufacture of computers, electronic and optical products (including semi-conductors);
- (n) the manufacture of electrical equipment, machinery and other equipment (including agricultural and forestry machinery);
- (o) the manufacture of medical devices or appliances;
- (p) the manufacture of medicinal, health, dental and other personal hygiene products, equipment, appliances and supplies.

### **Supply, repair and installation of machinery and equipment**

3. The following services relating to the supply, repair and installation of machinery and equipment:

- (a) the supply, repair and installation of machinery and equipment (including mechanically propelled vehicles, industrial machinery and equipment) for essential services;
- (b) the repair of mechanically propelled vehicles or the repair of bicycles and related facilities.

### **Electricity, gas, water, sewage and waste management**

4. The following services relating to electricity, gas, water, sewage and waste management:

- (a) the generation, transmission, supply and distribution of electric power;
- (b) the extraction and distribution of gas and decommissioning activities in relation to offshore gas field facilities;
- (c) the collection, treatment and supply of water;
- (d) the collection, treatment and disposal of sewage or wastewater;
- (e) the collection of waste, remediation activities and other waste management treatment and disposal activities (including the operation of landfill sites, waste transfer

stations, waste processing centres and recycling facilities or waste recovery).

### **Construction and development**

5. The following services relating to construction and development:
- (a) construction or development work and the provision of support services relating to construction and development work;
  - (b) the repair, maintenance and construction of road, rail and utility infrastructure;
  - (c) the supply and delivery of maintenance and repair services to businesses and places of residence (including electrical, gas, oil, plumbing, glazing and roofing services).

### **Wholesale and retail trade**

6. The following services relating to wholesale and retail trade:
- (a) the operation of essential retail outlets;
  - (b) wholesale and distribution services necessary for ensuring the availability for sale of food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of a place of residence;
  - (c) the operation of automated teller machines and related services.

### **Transport, storage and communications**

7. The following services relating to transport, storage and communications:
- (a) the provision of land transport, including bus, rail and taxi services;
  - (b) road, rail, sea and air freight;
  - (c) the provision of sea and air passenger services;
  - (d) the operation of ports, harbours and airports;
  - (e) the operation of lighthouses;
  - (f) warehousing and support activities (including cargo-handling, postal and courier activities) for the transportation of goods;
  - (g) the control and critical maintenance of the transport infrastructure network (including roads);

- (h) any service required for the safe provision of a service specified in subparagraphs (a) to (g).

### **Accommodation and food services**

8. The following services relating to accommodation and food services provision:

- (a) hotel or similar accommodation services to persons who are guests of those hotels or similar accommodation on the 26<sup>th</sup> day of December 2020 until the date of their departure;
- (b) hotel or similar accommodation services to guests travelling for purposes other than social, recreational, cultural or tourist purposes;
- (c) the operation of hotels or similar accommodation services providing essential accommodation (including accommodation for homeless persons and persons in direct provision, persons who are unable to reside in their usual place of residence due to reasons related to the spread of Covid-19 or otherwise) and related services;
- (d) hotel or similar accommodation services to guests attending a wedding;
- (e) food and beverage service activities for supply to a business engaged in an essential service;
- (f) the provision of food or beverage takeaway or delivery services.

### **Information and communications**

9. The following services relating to information and communications:

- (a) the production and publication of newspapers, journals and periodicals and the distribution of those publications, whether in hardcopy or digital format;
- (b) the production of television and radio programmes, video, sound, digital or other electronic content and the broadcast or publication of the same to the public or a portion of the public;
- (c) the provision of services necessary to deliver and support electronic communications services, networks and associated facilities (including wired and wireless telecommunication activities, satellite telecommunication activities, and other communications activities (including broadband, internet and cloud services providers) from providers authorised by legislation);

- (d) the provision of data centre services and related services.

**Financial and legal activities**

10. The following services relating to financial and legal activities:

- (a) financial, insurance and banking services (including post office and credit union services) provided by a financial services provider;
- (b) accounting services or audit services;
- (c) legal services provided by practising barristers or practising solicitors.

**Professional, scientific and technical activities**

11. The following services relating to professional, scientific and technical activities:

- (a) the provision of engineering, technical testing activities and analysis (including the performance of physical, chemical and other analytical testing of materials and products);
- (b) the provision of scientific research and development services;
- (c) regulation, inspection and certification services, in accordance with law, of a particular sector by a body created by statute for that purpose.

**Rental and leasing activities**

12. The following services relating to rental and leasing activities:

- (a) property services (within the meaning of the Property Services (Regulation) Act 2011 (No. 40 of 2011)), property letting and management services;
- (b) the provision of a service for the rental or leasing of mechanically propelled vehicles or bicycles.

**Administrative and support activities**

13. The following services relating to administrative and support activities:

- (a) payroll and payment services necessary for the operation of undertakings and bodies;
- (b) employment placement and human resources services associated with the recruitment and deployment of workers engaged in the provision of essential services;

- (c) data processing, website hosting and related activities;
- (d) security activities to assist in either or both of the following:
  - (i) the delivery of essential services;
  - (ii) the securing of premises closed to the public;
- (e) funeral, burial and related services;
- (f) business support services (including information and communications technology support and sales, repair and maintenance for information and communications technology and telephones) where such services are necessary to support -
  - (i) any other essential service,
  - (ii) a person working from their place of residence where the business concerned is being operated from a place of residence, or
  - (iii) a business that is not an essential service, to the extent required to maintain that business in operation or to minimise any delay in the business resuming operation after these Regulations have ceased to be in operation;
- (g) where such services are necessary to support any other essential service:
  - (i) the cleaning of buildings;
  - (ii) industrial cleaning activities;
  - (iii) the provision of key third party supports other than those referred to in paragraph (f) provided under contract to a person providing an essential service;
- (h) essential health and safety training (that cannot be done remotely).

**Public administration, emergency services and defence**

14. The following services relating to public administration, emergency services and defence:

- (a) the performance by the Garda Síochána, including members and civilian staff of the Garda Síochána, of its functions under the Garda Síochána Act 2005 (No. 20 of 2005);
- (b) public order, rescue and emergency services (including fire, coastguard, lifeboat, mountain rescue and ambulance services);



- (c) the performance by the Defence Forces of the functions conferred on them by or under any enactment;
- (d) emergency call answering services;
- (e) services to enable the administration of justice;
- (f) prison services and child detention services (including all onsite activities);
- (g) cyber-security services;
- (h) the provision of social protection benefits;
- (i) regulatory processes and certification required to ensure supply chains, safety of food, beverages, medicinal products, medical devices or appliances, other medical or health supplies or products, and general process safety;
- (j) the operation and maintenance of botanical gardens, parks, forests, nature reserves and playgrounds;
- (k) activities relating to the management, protection, restoration and conservation of protected species, habitats and designated natural, archaeological and built heritage sites;
- (l) providing security, care and maintenance of the premises, collections and objects under the care and management of the National Gallery of Ireland, the National Library of Ireland, the National Museum of Ireland, the National Concert Hall, the National Archives, the Irish Museum of Modern Art, the Chester Beatty Library and the Crawford Art Gallery;
- (m) services relating to the deaths and funerals of persons;
- (n) chaplaincy services;
- (o) services provided or functions performed by an office holder appointed under any enactment or under the Constitution, or members of either House of the Oireachtas, the European Parliament or a local authority;
- (p) services provided under the Child Care Act 1991 (No. 17 of 1991);
- (q) adoption services under the Adoption Act 2010 (No. 21 of 2010);
- (r) services provided to victims;
- (s) services, including regulation services, provided by, and activities of, the Central Bank of Ireland, the Investor Compensation Company DAC (otherwise known as the Investor Compensation Company Limited) and the National Treasury Management Agency;

- (t) any other service provided, or function performed, by a public body (within the meaning of the Data Sharing and Governance Act 2019 (No. 5 of 2019)), where the provision of the service or performance of the function is necessary to support or manage -
  - (i) other essential services, or
  - (ii) the response of the State to the spread of Covid-19;
- (u) Driver Testing Services provided by the Road Safety Authority for the purposes of section 33 of the Road Traffic Act 1961 (No. 24 of 1961) for people involved in the provision of essential services or essential retail outlets;
- (v) Driving instruction provided by instructors on the Register of Approved Driving instructors, established under Part 3 of the Road Traffic (Driving Instructor Licensing) (No.2) Regulations 2009 (S.I. No. 203 of 2009), where the person receiving instruction has a booking reserved to undergo a test for the purposes of section 33 of the Road Traffic Act 1961 (No. 24 of 1961).
- (w) Commercial Vehicle Roadworthiness Test services provided by the Road Safety Authority for the purposes of section 5 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 (No. 16 of 2012);
- (x) National Car Test services provided by the Road Safety Authority for the purposes of section 18(8) of the Road Traffic Act 1961 (No. 24 of 1961);
- (y) statutory planning system activities, insofar as they cannot be carried out remotely;
- (z) National Driver Licence Service, insofar as it provides services by appointment to persons involved in the provision of essential services or essential retail outlets, and insofar as such services cannot be carried out remotely.

#### **Human health and social work activities**

15. The following services relating to human health and social work activities:

- (a) hospital services;
- (b) therapy services provided by a member of a designated profession within the meaning of section 3 of the Health and Social Care Professionals Act 2005 (No. 27 of 2005);

- (c) services relating to public health, including services relating to -
  - (i) the identification, tracing and contacting of persons who have been in contact with persons who have been diagnosed, or are suspected of having been infected, with Covid-19, and
  - (ii) the testing of persons for Covid-19;
- (d) laboratory services;
- (e) drug treatment and addiction services;
- (f) hospice services;
- (g) pharmacy services;
- (h) primary care and general and specialist medical practice activities;
- (i) dental services;
- (j) blood donation and related services;
- (k) tissue or organ donation and related services;
- (l) residential care services (including nursing care, mental health and substance abuse services, services for elderly persons and persons with disabilities) and children's residential services;
- (m) homecare, home help and other health services in the community;
- (n) social work and social care services, (including disability services, mental health services, child protection and welfare services, domestic, sexual and gender-based violence services) and homeless services including homeless outreach services;
- (o) paramedical, ambulance and pre-hospital care services;
- (p) services provided by minor injury units;
- (q) maternity services;
- (r) food safety and environmental services;
- (s) childcare services;
- (t) anti-doping services in accordance with Part 4 of the Sport Ireland Act 2015 (No. 15 of 2015).

## **Education**

16. The following services relating to education activities:

- (a) primary and post primary school;

- (b) higher and further education, insofar as onsite presence is required and such education activities cannot be held remotely.

**Community and voluntary services**

17. The following services relating to community and voluntary services:

- (a) services not otherwise specified in this Schedule, provided by community and voluntary workers and the Civil Defence, as part of a publicly commissioned service, deployed to assist in the delivery of essential services;
- (b) volunteer services operating under the local authority emergency management framework in accordance with public health guidance.

**Diplomatic missions and consular affairs**

18. The provision of services essential to the functioning of diplomatic missions and consular posts in the State.



GIVEN under my Official Seal,  
30 December, 2020.

STEPHEN DONNELLY,  
Minister for Health.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations revoke the Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 9) Regulations (S.I. No. 560 of 2020), as amended. These Regulations provide for temporary restrictions on a range of indoor and outdoor events, along with temporary restrictions on access by the public to a range of businesses and services. They also provide for temporary restrictions on travel. The Regulations remain in operation until 31 January 2021.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
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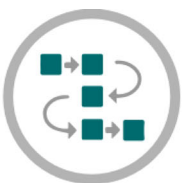


# Covid Restrictions Support Scheme



## **Guidelines on the operation of the Covid Restrictions Support Scheme**

23 October 2020



# CRSS Guidelines – 23 October 2020

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## 1. Overview of the CRSS

Details of the proposed Covid Restrictions Support Scheme (“CRSS”) were published in the Finance Bill 2020. The CRSS is a targeted support for businesses significantly impacted by restrictions introduced by the Government under public health regulations to combat the effects of the Covid-19 pandemic.

The key features of the proposed scheme are:

- The CRSS will provide support for companies and self-employed individuals carrying on a trade or trading activities, either solely or in partnership, the profits from which are chargeable to tax under Case I of Schedule D, from a business premises located in a region subject to restrictions introduced in line with the Living with Covid-19 Plan, with the result that the business is required to prohibit or considerably restrict customers from accessing their business premises. Generally, this refers to Covid restrictions at Level 3, 4 or 5 of the Government’s Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation.
- Where a company or a self-employed individual is either forced to temporarily close their business, or the business is required to operate at significantly reduced levels, because of the restrictions, the company or self-employed individual will qualify for the support.
- To qualify under the scheme, a business must be able to demonstrate that, because of the Covid restrictions, the turnover of the business in the period for which the restrictions are in operation, and for which a claim is made, will be no more than 25% of an amount equal to the average weekly turnover of the business in 2019 (or average weekly turnover in 2020 in the case of a new business) multiplied by the number of weeks in the period for which a claim is made.
- A qualifying person will be able to make a claim to Revenue under the CRSS for a cash payment to be known as an “Advance Credit for Trading Expenses”. This payment will be equal to 10% of their average weekly turnover in 2019 up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000, for each week that their business is affected by the Covid restrictions. For businesses established between 26 December 2019 and 12 October 2020, the claim will be based on their weekly average turnover in the period between the date of commencement and 12 October 2020 (subject to the weekly cap of €5,000).
- The person must register to claim on the Revenue Online Service (ROS), provide certain information and make a declaration that they satisfy the conditions to make a claim. Where Covid restrictions for a geographical region are extended beyond the date on which they were due to expire, a new claim may be made.

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- To make a claim under the scheme, a number of other conditions must be satisfied including that the person has an up to date tax clearance certificate and complied with their VAT obligations.
- Provision is made for the publication of the names of claimants on the Revenue website.

The scheme will operate on a self-assessment basis. A person registering their details and the details of their business activity for the purposes of a making a claim should retain evidence supporting their basis for making a claim under the scheme, which may be requested by Revenue under future eligibility checks.

The scheme will operate from 13 October 2020 to 31 March 2021 and there is provision for the Minister for Finance to vary aspects of the scheme by order, specifically the restrictions, the end date, the percentage rate payable and the turnover test to determine a person's eligibility.

In this document, information is provided on how the CRSS will operate, based on proposed legislation contained in Finance Bill 2020, as initiated.

## 2. Who is eligible to make a claim under the CRSS?

Companies and self-employed individuals will be eligible to make a claim for an Advance Credit for Trading Expenses (“ACTE”) under the CRSS where:

- (a) the company or self-employed individual carries on a trade or trading activities, either solely or in partnership, from a business premises located wholly within a region of the country for which restrictions announced by the Government to combat the effect of Covid-19 are in operation – referred to as a ‘**relevant business activity**’ (refer to section 4.1), and
- (b) under the specific terms of the **Covid restrictions** in operation for the region in which the relevant business activity is carried on, members of the public are either prohibited from accessing, or restricted from accessing, the business premises in which the relevant business activity is carried on (refer to section 4.2), and
- (c) as a result of the Covid restrictions, the company or self-employed individual’s turnover from the relevant business activity in the period for which the restrictions are in operation, will be **no more than 25%** of an amount based on the average turnover of the business in 2019 (or in the case of a new business, an amount based on the average turnover of the business in 2020) (refer to section 4.3), and
- (d) the company or self-employed individual meets **certain other conditions** such as having a tax clearance certificate and having complied with obligations in relations to VAT (refer to section 4.4).

The above eligibility criteria must be met by a claimant in respect of each period for which an ACTE is being claimed under the CRSS, referred to as a “claim period” (refer to section 5 for information on how a claim period is determined). Where a person meets the eligibility criteria, the person will be able to make a claim under the CRSS (section 4).

## 3. How to make a claim

Where a company or self-employed individual is eligible to make a claim under the CRSS, a **claim may be made through the Revenue Online System (ROS)** for an ACTE.

Detailed guidance on the eligibility criteria is provided in Section 4. The amount of an ACTE that a qualifying person can claim for a claim period will be calculated by reference to a weekly amount based on the qualifying person's previous turnover in respect of the business activity, subject to a weekly cap of €5,000. Further information on the computation of the amount of an ACTE that can be claimed is set out in section 6.

A claim may be made through ROS as early as the beginning of the claim period (see Section 5 for guidance on the term "claim period") and no later than 8 weeks from the date on which the claim period commences.

A two-step process is necessary to make a claim under the CRSS. The qualifying person must:

1. first register for CRSS on ROS, and
2. then complete a claim in respect of a claim period or claim periods.

Where a qualifying person is satisfied that they are eligible to claim the CRSS, having regard to the eligibility criteria outlined in Section 4 and will maintain the necessary supporting documentation to demonstrate that eligibility, they may register for the CRSS on ROS. Once successfully registered, it will be necessary for the person to complete a claim on ROS in respect of each claim period as outlined in Section 3.2. While supporting documentation is not required to be submitted with the claim, Revenue may request documentation to substantiate the claim at a later date (see Section 4.4.2 for details of the type of documentation Revenue will expect in support of a claim).

### 3.1. Step 1: Registration

It will be necessary to register for CRSS via the eRegistration system on ROS and the facility to register will be available soon. It is important to note that the person must have an up to date tax clearance certificate in order to successfully register (see Section 4.4.1 for details on how to obtain a tax clearance certificate).

As part of the registration process, the person will be required to provide details in respect of the business premises from which the person carries on their relevant business activity or, if there is more than one, each business premises from which the person carries on a relevant business activity.

The following information is required for registration;

- Business / Premises Name (required for each business premises in which a relevant business activity is carried on and for which a claim will be made),

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- Address including Eircode (required for each business premises in which a relevant business activity is carried on and for which a claim will be made),
- Business Sector,
- Average weekly turnover in respect of 2019 (required for each business premises in which a relevant business activity is carried on and for which a claim will be made) for business established before 26 December 2019,
- Average actual weekly turnover for 2020 (required for each business premises in which a relevant business activity is carried on and for which a claim will be made) for businesses established on or after 26 December 2019 and before 13 October 2020,
- Date of commencement for new business,
- VAT in respect of T1 on VAT 3 (i.e. VAT on outputs),
- Other Income in respect of which VAT was charged.

## 3.1.1. Registration Declaration

As part of the registration process, taxpayers will be required to declare that they meet the eligibility criteria for the scheme and that the information provided is correct and complete.

## 3.2. Step 2: Making a claim for CRSS

A claim portal in respect of CRSS will be available via the eRepayments system on ROS from mid-November. It is important to note that the CRSS 'Tax Head' will only be visible to those taxpayers who have successfully completed the CRSS eRegistration process.

Qualifying persons can make a claim for each claim period in which they meet the eligibility criteria and a new claim should be made for each claim period. Before any new claim, taxpayers should review the eligibility criteria in Section 4 and ensure they meet all conditions before making a claim for each claim period.

The following information will be required at the claim stage:

- Business Premises (in which a relevant business activity is carried) in respect of which a claim is made,
- Claim period start week,
- Claim period end week.

### 3.2.1. Claim Declarations

As part of the claim process, taxpayers will be required to declare that the information provided is correct and complete and to acknowledge that, as a recipient of the CRSS, details of the business will be published on the Revenue website.

## 4. Eligibility criteria for making a claim under the CRSS

### 4.1. Requirement 1 – Relevant business activity

To make a claim under the CRSS, a person must carry on a relevant business activity.

A **relevant business activity** is a **business activity** carried on by a person in a **business premises** located in a geographical region subject to Covid restrictions.

Where a person carries on a business activity from multiple business premises, then the business activity carried on from each business premises located in a geographical region subject to Covid restrictions will be regarded as a relevant business activity.

#### 4.1.1. What is a business premises?

For the purposes of the CRSS, a **business premises** is the building, or similar fixed physical structure, in which a business activity is ordinarily carried on. Mobile premises, or premises which are not permanently fixed in place, do not meet the definition of business premises. Examples of what would not meet the definition of a business premises for these purposes include vans, trucks or similar vehicles and stalls such as market stalls or trade fair stalls.

#### 4.1.2. What constitutes a business activity?

A **business activity** is, depending on the circumstances, a person's trade or trading activities carried on from a business premises, the profits from which are chargeable to tax under Case I of Schedule D.

Where customers of the person's trade acquire goods or services from the person from a single business premises, then the person's business activity is the trade carried on from that business premises. Where customers of the person's trade acquire goods or services from that person from multiple business premises, trading activities carried on from each of the business premises will be regarded as a business activity.

#### **Example 1**

Mr. B carries on a retail trade, a gift shop, from a premises in Westport, Co. Mayo. In this example, Mr. B's business activity is the trade carried on from that business premises.

Where Covid restrictions (see Section 4.2) apply for Co. Mayo, that business activity will be regarded as a relevant business activity.

## Example 2

Ms. C carries on a retail trade consisting of the sale of Aran jumpers from two small shops, one in Co. Galway and the other in Co. Clare. For the purposes of the CRSS, Ms. C has two business activities, one relating to the trading activities carried on from her business premises in Co. Galway and the other relating to her trading activities carried on from her business premises in Co. Clare.

Where Covid restrictions are in operation for both Co. Galway and Co. Clare, Ms C will have two relevant business activities.

### 4.1.3. More than one relevant business activity carried on from the same business premises

A person may carry on more than one relevant business activity from the same business premises, such as where the person carries on separate trades from that premises. Depending on the particular circumstances, some or all of those relevant business activities may qualify for an ACTE under the CRSS. However, where a person qualifies for an ACTE in respect of more than one relevant business activity carried on from the same business premises, the maximum amount of an ACTE that can be claimed in respect of all of them cannot exceed the cap of €5,000 per week (see Section 6).

## Example 3

Mr. S operates two trades from the same premises in Rosslare, Co. Wexford – a pub and a supermarket (which is attached but with a separate entrance). The Government Covid restrictions in force for Co. Wexford are such that the pub must prohibit customers from entering the premises, although a takeaway and delivery service is allowed. There are no restrictions in place which would require Mr. S to significantly prohibit customers from entering the supermarket, although general public health advice does apply around social distancing and general protective measures. Mr. S is not set up to operate a takeaway or delivery service from the pub, so he is forced to temporarily close the pub, and although he continues to run the supermarket, he has noticed a significant drop in turnover.

Mr. S has two relevant business activities operating from the same business premises. However, only one relevant business activity, being the pub trade, is eligible for support under the CRSS. This is because, under the terms of the Covid restrictions, customers of the pub trade are prohibited from accessing the part of the premises in which the pub trade is carried on (see Section 4.2.1 below). No such restrictions apply in connection with the supermarket.

To make a claim under CRSS, Mr. S must satisfy the turnover conditions in relation to the relevant business activity (pub trade), and other qualifying criteria (see Section 4.4).



## 4.2. Requirement 2 – Impact of Covid restrictions; access to the business premises

In order to be eligible to make a claim for an ACTE under the CRSS in a claim period, a person must be able to demonstrate to Revenue that, as a direct consequence of **Covid restrictions**, customers are prohibited or significantly restricted from accessing their business premises (see 4.1.1 for what is regarded as a business premises for these purposes), and as a result, that person’s relevant business activity in the claim period (see Section 5) will either be temporarily suspended or disrupted, with the result that turnover for that claim period will be no more than 25% of the average weekly turnover in 2019 for a period equal to the same number of weeks in (or using 2020 turnover figures for new businesses) (see Section 6.2).

### 4.2.1. What are the Covid restrictions?

On 15 September 2020, the Government published “[Resilience and Recovery 2020-2021 – Plan for Living with Covid-19](#)” for managing the Covid-19 pandemic in the short to medium term. Included in the publication is a “Framework for Restrictive Measures” which was developed based on a five “Levels” approach. Each level contains guidelines which are intended, collectively, to contribute to lowering the risk of transmission of Covid-19 and which aligns with the deemed risk level at the time. The various measures apply to society as a whole with many also having direct impact on the business community. In certain instances, the public health restrictive measures introduced by the Government may result in businesses having to close completely for a period of time and, in other instances, they may significantly restrict how customers may access a business premises, and they may impact the goods and services offerings that can be provided by a business from its business premises.

The public health restrictive measures, as referenced in the Level 1-5 Framework for Restrictive measures broadly apply to the following business:

- Commercial wedding venues
- Commercial indoor and outdoor events
- Commercial sporting events
- Gyms, leisure centres and swimming pools
- Museums, public galleries and other similar cultural attractions
- Bars, cafes and restaurants (including Hotel bars, cafes and restaurants)
- Pubs, Nightclubs, discos and casinos
- Hotels, B&B’s, Guesthouses and similar accommodation providers
- Retail (inclusive of services)
- Commercial park, commercial children’s play centres and theme parks

The CRSS scheme is targeted at those businesses which, under the specific terms of public health restrictions, introduced in line with the Living with Covid-19 Plan, **are required to**

**prohibit or considerably restrict customers from accessing their business premises** such that the business is required to temporarily suspend its activities or its business is significantly disrupted. Generally, this refers to restrictions at Level 3, 4 or 5 of the Government’s Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation, and as a result they have had to temporarily suspend their business or they have been significantly disrupted as a result of having to prohibit or considerably restrict customers from accessing their business premises.

The general public health guidelines around social distancing and related protective measures apply to society as a whole and are important and necessary measures for lowering the risk of transmission of Covid-19. However, these measures are not the level of Covid restrictions that are required to demonstrate eligibility for the CRSS. For the CRSS, the restrictions must require the person to either prohibit, or significantly restrict, customers from accessing their business premises.

#### 4.2.2. A business must ordinarily operate from a fixed business premises to which specific Covid restrictions apply

Where businesses ordinarily operate from a fixed business premises (generally a building) located in a region for which restrictions are in operation, they may qualify under the scheme provided they meet the eligibility criteria, including the requirement that customers are either prohibited, or significantly restricted, from accessing their business premises to purchase goods or services due to the specific terms of the Covid restrictions announced by Government.

##### **Example 4**

Showtime Theatres Limited operates a large theatre in Dublin city centre. The business premises encompass a 1,000-seat theatre, a bar and cloakroom facilities. The Covid-19 restrictions in place in Co. Dublin in October 2020 prohibit all theatres from opening their doors to the public and as a result Showtime Theatres Limited has temporarily closed but does intend to re-open when allowed in the future.

As the company ordinarily operates from a fixed business premises and, under the terms of Covid restrictions, it is not permitted to allow customers to access its business premises, the company will be entitled to make a claim under CRSS provided all other criteria of the scheme are met.

Where a person does not ordinarily operate from a fixed business premises to which Covid restrictions apply, that person will not meet the eligibility criteria.

## **Example 5**

Ms P runs an online gift store. She operates the website from her home in Bray Co. Wicklow and rents a small unit in a local warehouse for storing her stock. All of Ms. P's business is transacted through her website, and all of the products are delivered directly to the customer.

Although there are Government restrictions in place for Co. Wicklow, there are no restrictions on Ms. P running her business. Ms. P does not have a fixed business premises to which Covid restrictions apply and therefore does not meet the eligibility criteria to claim under the CRSS.

### **4.2.3. What if a business is prohibited or significantly restricted from allowing customers to access parts of a business premises in which a trade is carried on?**

There may be cases where, under the terms of Covid restrictions, customers of a relevant business activity may be restricted from accessing substantial elements of the business premises in which a relevant business activity is carried on, with the result that substantial parts of the relevant business activity will either be suspended or significantly disrupted. In those circumstances, provided that all other eligibility criteria are met (as outlined in this section 4) in relation to the entire relevant business activity, it will be accepted that the business will be eligible to make a claim under the CRSS.

## **Example 6**

Large Hotels Limited operates a hotel in Kilkenny city. The hotel business premises incorporate 200 hotel rooms, a large banqueting hall used for weddings and conferences, a hotel bar and a restaurant. Whilst the hotel has separate revenue streams, these are all part of the one trade of hotel keeping.

Government restrictions in place for Co. Kilkenny are such that while the hotel may remain open, hotel services are restricted to residents only. As a result, Large Hotels Limited is significantly restricted from allowing customers into parts of its premises given that conferences are prohibited, weddings are restricted to 25 patrons and restaurants and bar service to non-guests is restricted to takeaway and delivery only.

Large Hotels Limited will be entitled to make a claim under CRSS provided all other eligibility criteria of the scheme are met. For these purposes, turnover from all trading activities carried on from the hotel will be taken into account for the purposes of determining eligibility.

## 4.2.4. What if a business is not prohibited or significantly restricted from allowing customers to access its business premises but its customers base has significantly reduced because of Covid-19?

The business must meet the requirement that it ordinarily operates from a fixed business premises and, under the specific terms of the Covid restrictions announced by the Government, customers of the business are prohibited, or significantly restricted, from accessing those business premises.

It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or that the business supplies goods or services to another business that qualifies for the support because, under the Covid restrictions, that other business is required to temporarily close, or significantly reduce, its business activity.

### Example 7

StockUp Limited is a wholesaler to the catering and restaurant industry. The company operates from a premises in Clones, Co. Monaghan and delivers to customers nationwide. Under the restrictions in place across the country, many of the customers in the restaurant trade have cancelled their upcoming orders. While StockUp Limited has spotted an opportunity for additional business in the delivery and take-away sector, the company is experiencing a significant drop in turnover in the interim.

Whilst StockUp Limited has experienced a reduction in turnover as a result of Government restrictions impacting its customers, the business itself, is not subject to restrictions prohibiting or restricting customers to its business premises. Therefore, it does not meet the eligibility criteria.

## 4.3. Requirement 3 - Impact of Covid restrictions; turnover requirements

To make a claim for an ACTE under the CRSS, the claimant must be able to demonstrate that, because of the Covid restrictions, the **turnover** of the relevant business activity in the claim period will be no more than 25% of the **relevant turnover amount** (see Section 4.3.2 below for the meaning of that term).

### 4.3.1. Turnover of relevant business activity

For the purposes of the CRSS, turnover will include any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, with the exception of any amount recognised as turnover in that particular period of time due to a change in accounting policy. Where applicable, companies should have regard to the meaning given to turnover in the Companies Act 2014.

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For the majority of claimants, turnover will simply be the total sales made by the person (exclusive of VAT) in respect of the relevant business activity in a particular period of time. Where the person is in receipt of other types of income, such as grants and public funding, whether that income is included in turnover will depend on the specific nature and terms of the funding arrangement, having regard to the applicable accounting standards and required recognition treatment of such income.

## 4.3.2. Relevant turnover amount

Relevant turnover amount will be calculated by reference to the claimant's average weekly turnover (VAT exclusive) for the relevant business activity in a **prior period**.

For **established businesses** (i.e. businesses that commenced prior to 26 December 2019), the relevant turnover amount will be calculated by reference to turnover for the period from 1 January 2019 to 31 December 2019, as follows:

Average weekly turnover for 2019 x Number of weeks in claim period

For **new businesses** (i.e. businesses that commenced between 26 December 2019 and 12 October 2020), the relevant turnover amount will be calculated by reference to turnover for the period commencing on the date on which the business commenced and ending on 12 October 2020, as follows:

Average weekly turnover for trading period x Number of weeks in claim period

## Example 8

Mr. E has been operating a retail business since 2005. Most of the trade is carried on from a building in Galway city, however recently Mr. E launched his website and has started selling online and delivering direct to customers. For the purposes of the CRSS, Mr. E's relevant business activity is made up of the trade carried on from the premises in Galway city including that part of the trade carried on online.

His turnover from the clothes sales trade in 2019, was €115,700 (VAT exclusive), which means that his **average weekly turnover** for 2019 was €2,225.

Due to Government restrictions in place for Co. Galway prohibiting Mr. E from allowing customers on his premises, Mr. E is forced to temporarily close his shop for the 6 weeks the restrictions have been announced for. For the purposes of determining whether Mr. E is eligible to claim under the CRSS, on the basis that the turnover from his relevant business activity during the claim period will not exceed 25% of the average weekly turnover for 2019 over the same number of weeks, turnover from online sales in that period must be taken into account.

Based on his previous experience of the Government restrictions in place between March and June 2020, he expects that his turnover for this 6-week period will be approximately €2,700 from online sales, and nil from shop sales given that he will be closed to customers.

To qualify for an ACTE, Mr. E must be able to demonstrate that, as a result of having to close his premises to customers for 6 weeks, the turnover of the relevant business activity in that period will be no more than 25% of the relevant turnover amount.

**Relevant turnover amount** = €13,350 (i.e. €2,225 x 6)

$$\frac{€2,700 \times 100}{€13,350} = 20.23\%$$

Based on the expected turnover amount, Mr. E satisfies the 25% reduction in turnover condition and may proceed to make a claim for the ACTE, provided all other conditions are satisfied.

At the end of the claim period, Mr. E should review his actual turnover figure for that claim period to ensure that the reduction in turnover condition was met (See Section 4.3).

## Example 9

Ms H. set up a café in January 2020 in Schull Co. Cork specialising in hand roasted coffees and home-made pastries. Ms. H rents a premises on the main street, and despite a number of closures due to Government restrictions earlier on in the year, she was still operating her business until Government restrictions in place for Co. Cork from 22 October meant that is restricted to take-away service only. As a result, Ms. H must significantly restrict access to customers entering her business premises. As a relevant business activity set up in 2020, to be eligible to claim an ACTE under the CRSS, Ms. H must demonstrate that the turnover for the duration of the restrictions (the claim period) will not exceed 25% of the average weekly turnover for the same number of weeks, in the period from when she commenced to 12 October 2020.

Her turnover from the date of commencement to 12 October was €28,000, which means that her **average weekly turnover** during that period was €700 i.e. €28,000/40 (no of trading weeks to 12 October).

**Relevant turnover amount** = €4,200 (i.e. €700 x 6)

Ms. H expects her turnover for this 6-week restricted period (the claim period) will be approximately €1,000.

$$\frac{€1,000 \times 100}{€4,200} = 23.80\%$$

Based on the expected turnover amount, Ms.H satisfies the 25% reduction in turnover condition and may proceed to make a claim for the ACTE, provided all other conditions are satisfied.

At the end of the claim period, Ms. H should review her actual turnover figure for that claim period to ensure that the reduction in turnover condition was met (See Section 4.3).

## 4.3.3. Relevant business activity carried on as part of a wider trade

Where a person carries on a relevant business activity as part of a wider trade, that relevant business activity is to be treated as a separate trade for the purposes of determining the relevant turnover amount. The total turnover of the trade must be allocated between the separate trade and the wider trader on a just and reasonable basis.

### **Example 10**

NewCars Limited runs two car dealerships in Co. Donegal and Co. Roscommon.

Government restrictions in place in Co. Donegal have meant that NewCars Limited is prohibited from allowing customers into its premises in Donegal, and as a result, NewCars Limited is forced to temporarily close the dealership. Similar restrictions are not in place for Roscommon (this is a hypothetical example), and that dealership can operate without restrictions.

In this case, the Donegal dealership is a relevant business activity which is part of the wider trade of NewCars Limited. To determine the relevant turnover amount of the Donegal dealership to establish whether NewCars Limited is eligible to make a claim under CRSS, that relevant business activity is to be treated as a separate trade, and the total turnover of NewCars Limited's trade must be allocated between the separate trade (the Donegal dealership) and the wider trader on a just and reasonable basis.

NewCars Limited's total turnover in 2019 was €2,550,000 (VAT exclusive), of which 65% (€1,657,500) is attributable to the Donegal dealership. The **average weekly turnover** for 2019 for the Donegal dealership was €31,875.

**Relevant turnover amount** = €95,625 (i.e. €31,875 x3)

Due to Government restrictions in place for Co. Donegal, NewCars Limited expects that during the expected 3 weeks of restrictions that the Donegal dealership will be forced to be closed, turnover will be nil and therefore the company is eligible to make a claim under the CRSS in respect of that relevant business activity, provided all other conditions are satisfied.



## 4.3.4. Seasonal businesses

A relevant business activity which is “seasonal” in nature is not restricted from qualifying under CRSS where they are subject to Covid restrictions and as a result, are prohibited or significantly restricted from allowing customers access their business premises, and they meet all other qualifying criteria.

### **Example 11**

YuleTime Limited runs a business specialising in Christmas decorations. For much of the year, the company would have very little turnover but is busy sourcing stock and preparing for the Christmas period. The company rents a vacant unit in a shopping centre in Co. Dublin every year from September to December, and it is during this period that the company makes its annual turnover.

The Government restrictions in place means that after only a few weeks of opening, YuleTime Limited is forced to close its unit as a non-essential retail outlet prohibited from allowing customers access its premises. For the purposes of determining whether YuleTime Limited is eligible to claim under the CRSS, the company must be able to demonstrate that the turnover from its relevant business activity during the claim period will not exceed 25% of the average weekly turnover for 2019 over the same number of weeks (i.e.  $(\text{total turnover in 2019} / 52) \times \text{number of weeks in the claim period}$ ). YuleTime Limited is not restricted from CRSS on the basis that the company has a seasonal business, where all qualification criteria are met.

## 4.3.5. Partnerships

Where the person carries on the relevant business activity in partnership with another person, the person’s turnover in relation to the relevant business activity will be determined as such proportion of the turnover of the partnership trade (or trading activities relating to the particular business premises) as corresponds to that proportion of the partnership profits which the person is entitled to under the agreed profit-sharing ratio of the partnership that is in place at the commencement of the claim period. See Section 6.3 below for the details of the maximum amount of relief that can be claimed a person who carries on a relevant business activity in partnership.

## 4.4. Requirement 4 – Other Qualification Conditions

A company or self-employed individual must meet certain other conditions in order to be eligible for an ACTE with respect to a claim period. The following other conditions must be met by the claimant for each claim period:

1. The claimant has been issued a **tax clearance certificate** (see Section 4.4.1) for the claim period and has complied with any obligations in relation to registering for and accounting for VAT;
2. The claimant intends to resume trading after the Covid restrictions are lifted;
3. The claimant has registered for the CRSS on ROS, providing all of the information requested by Revenue (see Section 3.1 above for further details);
4. The claimant applies for the ACTE on the Revenue Online Service (ROS), providing all of the information requested by Revenue and making a declaration that they qualify for the ACTE (see Section 3.2 above for further details).

### 4.4.1. Tax Clearance

Claimants must possess an up to date tax clearance certificate and continue to maintain tax clearance for the duration of the claim period. Claimants can check their current tax clearance status through ROS. After logging in, current tax clearance status is displayed in blue writing above the grey banner for “My Frequently Used Services”.

If a claimant does not currently hold tax clearance, an application can be made online and assessed in real-time through the ROS e-Tax clearance service by selecting “Manage Tax Clearance” under the “Other Services” section on the ROS home screen and following the online instructions.

Tax Clearance will be granted if the tax affairs of the claimant and, where applicable, their connected parties, are up to date. Connected parties for tax clearance purposes are as follows:

- Business Partners (not civil partner or spouse);
- Partnerships;
- Directors/Shareholders of a company;
- Previous Business Entity/Licence holder where the applicant is succeeding to the licenced trade;
- Employer where the applicant is SPSV Driver or CAB applicant; and
- VAT Group remitter if the applicant is a member of a VAT Group.

Further information can be found at <https://www.revenue.ie/en/online-services/services/manage-your-record/apply-for-tax-clearance-online-using-etc.aspx>.

If there are outstanding returns or debts for the claimant or any of their connected parties, tax clearance will be refused. Therefore, it is imperative that all tax returns are filed, and payments made, or payment arrangements entered into to cover all outstanding debts.

Claimants with COVID-19 related tax debts which are warehoused, or non-COVID-19 debts which are included in a phased payment arrangement (PPA), will not be prevented from qualifying for tax clearance. Further information on these initiatives and all Covid-19 related information and advice for taxpayers and agents, can be found at the following link on the Revenue website;

<https://www.revenue.ie/en/corporate/communications/covid19/index.aspx>

#### 4.4.2. Books and Records

Any person making a claim for an ACTE is required to maintain and have available such books and records as may be reasonably required for the purposes of demonstrating that the person is eligible to make a claim under the scheme and to fully support any amount claimed. Should the person's claim be selected for verification by Revenue, these books and records will be examined by Revenue to verify the person's entitlement to the ACTE.

To avail of the CRSS the person must be in a position to demonstrate:

- the link between the Covid restrictions in operation for a geographical region at the time the claim was made and their impact on that person's relevant business activity during the claim period, and
- that turnover of the relevant business activity in the claim period will not exceed 25% of an amount equal to the average weekly turnover of the business in 2019 (or average weekly turnover in 2020 in the case of a new business) multiplied by the number of weeks in the claim period, and
- that the business intended to resume/ continue trading once the relevant Covid restrictions were removed, and
- that they would have operated the business in the Covid restriction claim period but for the Covid restrictions being in operation.

Where a person operates from a number of business premises, it will be necessary for the person to demonstrate the turnover directly attributable to each business premises. Example of records include till reports, copies of invoices, sales daybooks etc. Where a business carries on a number of different trades from one business premises it will be necessary to demonstrate the turnover of the trades separately. Where the person is trading through a partnership, the relevant partnership agreement(s) should be retained, specifying details of the partnership profit allocations.

Claimants should refer to Revenue's guidance on the requirement for persons who are registered for any tax to maintain proper books and records contained in [Tax and Duty Manual 38-03-17](#).

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In addition to the usual types of books and records that a tax-registered person is required to maintain to complete their tax returns, claimants must be able to demonstrate that, during the claim period (see Section 5 for details), members of the public were either prohibited from accessing, or restricted from accessing, the business premises in which the relevant business activity is carried on.

## 5. How to determine a claim period

### 5.1. Significance of a claim period

A person carrying on a relevant business activity will be required to assess whether they are eligible for support under the CRSS with respect to a **claim period** (see Section 5.2 below). If the person does qualify for support with respect to a claim period, then the amount they are entitled to claim will be determined by the number of full weeks the claim period covers. Therefore, determining the start and end dates of a claim period is important for the purposes of making a claim.

For a claim period that commences before mid-November 2020 (see Section 5.3 below), a person who meets the eligibility criteria will be able to make a claim from mid-November 2020, when the relevant portal on ROS is available to make a claim. As outlined in Section 5.4 below, for a claim period that commences after mid-November 2020, a person who meets the eligibility criteria will be able to make a claim as early as the first day of a claim period in respect of the number of weeks that are covered by that claim period.

### 5.2. What is a claim period?

A **claim period** comprises a period of time during which Covid restrictions<sup>1</sup> are in operation for a particular geographical region and will equate to either a **Covid restrictions period** or a **Covid restrictions extension period**.

A **Covid restrictions period** is generally a period which:

- begins on the date that Covid restrictions are in operation for a particular geographical area (or 13 October if restrictions are in operation prior to that date), and
- ends on the date on which the Covid restrictions in operation for the particular geographical area were, at the time they were introduced, due to end<sup>2</sup>.

If the restrictions that are in operation in the **Covid restrictions period** are subsequently amended or extended, the Covid restrictions period will be immediately followed by a **Covid restrictions extension period**.

A **Covid restrictions extension period** is generally a period which:

- begins on the day after the day on which the Covid restrictions period was due to end, and

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<sup>1</sup> **Covid restrictions** are restrictions introduced by Government regulations for the purpose of preventing or reducing the risk of the transmission of Covid-19 and which restrict certain business activity (see Section 4.2 for further details).

<sup>2</sup> The exception to this is where the Covid restrictions are ended before the date on which they were due to end (and they were not amended or extended). In such a case, the Covid restrictions period will end on the date they actually ended.

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- ends on the date on which the extended period of Covid restrictions is, at the time the period is extended, due to end.

If the period during which restrictions are in operation is further amended or extended, there will be a further Covid restrictions extension period, the beginning and end dates of which will be determined in the same way.

With the exception of claim periods commencing prior to mid-November 2020, the design of a claim period, based on a Covid restrictions period or a Covid restrictions extension period, allows a person to make a claim as early as the first day of a claim period (where they meet the eligibility criteria) for the number of full weeks that are expected to comprise the period in which Covid restrictions are in place. Therefore, where Covid restrictions are extended for a geographical region, it is appropriate that a new claim period should only begin after the end of a period for which support may have already been claimed under the CRSS.

## **5.3. Claim periods commencing between 13 October and mid November 2020**

Each Covid restrictions period and Covid restrictions extension period will constitute a separate claim period, with each claim period starting on the day after the previous claim period began. When the online CRSS system becomes operational on mid-November 2020, it will be possible for claimants to combine claims for claim periods commencing between 13 October and mid-November 2020 within one claim, provided that the claimant qualifies for support in respect of each claim period (see Example 12). From that point on, separate claims must be made for each claim period (see Example 13).

## **5.4. Claim period treated as commencing on an earlier date in certain circumstances**

It is acknowledged that certain businesses that do not qualify for relief during an initial period of Covid restrictions may be significantly restricted from operating during a later period of Covid restrictions. For example, a clothes shop that trades as normal during an initial period of Covid restrictions (where the restrictions are at Level 3 under the Plan for Living with Covid-19), but is required to close during a later period of restrictions (where the restrictions are at Level 4 or 5 under the Plan for Living with Covid-19). To ensure that they can benefit fully from the CRSS, the claim period for such businesses will be treated as commencing on the day on which the later period of restrictions commences (rather than on the day after the initial period of Covid restrictions ends, which could be a later date) (see Example 14).

## 5.5. Claim period examples

Illustrative examples of how to determine a claim period are provided below.

### Example 12 – Claim period commences on 13 October 2020

As of 13 October, Covid restrictions are in operation across Ireland, which were due to expire on 28 October in accordance with the Government regulations providing for the restrictions. Therefore, the period 13 to 28 October 2020 is a **Covid restrictions period** and constitutes a **claim period**.

On 22 October<sup>3</sup>, further restrictions are introduced by Government regulations across Ireland. They are due to end on 1 December 2020. The period 29 October (the day after the Covid restrictions period is due to end) to 1 December is a **Covid restrictions extensions period** and constitutes a new **claim period**.

A company running a nightclub located in Galway city, which has been closed in accordance with Government regulations since March 2020, qualifies for support in respect of both claim periods. When the online CRSS system becomes available in mid-November, and as a practical matter, the company may lodge **one claim** in respect of both claim periods. If there are further claim periods, the company will be required to lodge separate claims in respect of each one.

### Example 13 – Claim period commences after mid-November 2020

Restrictions come into operation for Co. X on 3 January 2021 for a period of 3 weeks. In the Government regulations providing for the restrictions, they are due to expire on 23 January 2021. A **Covid restrictions period** runs from 3 January 2021 to 23 January 2021 and constitutes a claim period. Provided the eligibility criteria are met, Co. X can make a claim for the claim period as early as 3 January 2021 for an ACTE for a period of 3 weeks.

On 18 January 2021, the Government announces that the restrictions that have been in operation since 3 January 2021 are being extended to 6 February 2021. A **Covid restrictions extension period** runs from 24 January 2021 (the day after the Covid restrictions period ends) to 6 February 2021. This constitutes a new **claim period**. Provided the eligibility criteria are met, Co. X. can make a claim for the claim period as early as 24 January 2021 for an ACTE for a period of 2 weeks.

<sup>3</sup> The Covid restrictions in operation at 13 October 2020 were varied and amended with effect from 18 October to 9 November 2020, before being further varied and extended with effect from 22 October to 1 December (with Level 5 restrictions coming into operation nationwide). For simplicity, the extension that came into effect on 18 October is not factored into this example (and Example 14). Of note, one claim can be made for the entire period from 13 October to 1 December 2020 where the person meets the eligibility requirements.

## Example 14 – Claim period commences on 22 October 2020

As of 13 October, Covid restrictions are in operation across Ireland, which were due to expire on 28 October in accordance with the Government regulations providing for the restrictions. Therefore, the period 13 to 28 October 2020 is a **Covid restrictions period** and constitutes a **claim period**. These restrictions do not have a negative impact on a hairdressing business run by Mr. P and he does not qualify for support under the CRSS in respect of this claim period.

However, on 22 October, further restrictions are introduced by Government regulations across Ireland. They are due to end on 1 December. The period 29 October (the day after the Covid restrictions period ends) to 2 December is a **Covid restrictions extension period** and constitutes a new **claim period**.

Under the restrictions introduced on 22 October, Mr. P is forced to temporarily suspend his business. As Mr. P was only affected by the restrictions from 22 October (and did not qualify for support during the first claim period), he may use the 6-week period 22 October to 1 December 2020 as a claim period for the purposes of assessing his eligibility for the CRSS and, if he is eligible, the amount of an ACTE he can claim. From mid-November, he can make a claim for an ACTE in respect of that 6-week period.



## 6. Amount that can be claimed under the CRSS

Companies and individuals that satisfy the eligibility criteria in relation to a relevant business activity for a claim period will be entitled to apply for an **ACTE** for the duration of that claim period.

Subject to a weekly cap of €5,000, the ACTE will be calculated by reference to a weekly amount based on the person's previous turnover in respect of the relevant business activity, as follows:

### 6.1. Established businesses

For **established businesses** (i.e. businesses that commenced prior to 26 December 2019), the weekly amount will be calculated by reference to turnover for the business activity for the period from 1 January to 31 December 2019:

- 10% of average weekly turnover for 2019, so long as it does not exceed €20,000, and
- 5% of so much of average weekly turnover for 2019 that exceeds €20,000.

The ACTE will comprise this weekly amount multiplied by the number of weeks in the claim period (up to the €5,000 weekly limit).

Where a person carries on more than one relevant business activity in the same business premises, the amount of an ACTE that can be claimed in respect of all relevant business activities will be capped at €5,000.

### 6.2. New businesses

For **new businesses** (i.e. businesses that commenced between 26 December 2019 and 12 October 2020), the weekly amount will be calculated by reference to turnover for the period commencing on the date on which the business commenced and ending on 12 October 2020 (referred to as 'the trading period'):

- 10% of average weekly turnover for the trading period, so long as it does not exceed €20,000, and
- 5% of so much of average weekly turnover for the trading period that exceeds €20,000.

The ACTE will comprise this weekly amount multiplied by the number of weeks in which the restrictions are in place (up to the €5,000 weekly limit).

Where a person carries on more than one relevant business activity in the same business premises, the amount of the ACTE that can be claimed in respect of all relevant business activities will be capped at €5,000.

## 6.3. Partnerships

Where the person is carrying on the relevant business activity in a partnership, the person (and any other partner seeking to make a claim), is required to apportion the amounts of turnover and the weekly turnover of the partnership to correspond with that proportion of the partnership profits which the person is entitled to, as determined under the agreed profit-sharing ratio of the partnership in place at the commencement of the claim period (referred to as a 'partner's proportionate share').

The maximum weekly amount of an ACTE that each partner can claim will be the lower of—

- 10% of that partner's proportionate share of weekly turnover up to an amount equal to such percentage of the €20,000 threshold as corresponds to that partner's proportionate share, and 5% of any balance of the partner's proportionate share of weekly turnover above that threshold, and
- such percentage of the maximum weekly limit of €5,000 as corresponds to that partner's proportionate share.

## 6.4. Examples of ACTE calculations

Illustrative examples of how an ACTE is calculated are set out below. Please note that the beginning and end dates of the claim periods referred to in these examples are hypothetical.

### Example 15

Mr. A has been running a pub (that does not serve food) in Dublin City for many years. In the year ended 31 December 2019, his turnover from the business was €663,000 (excluding VAT). His VAT returns are up to date and he has tax clearance. On 15 March 2020, he closed the pub to customers in line with Government restrictions. The pub has remained closed for business since that time.

As of 13 October 2020 (the date the CRSS was announced), restrictions under the Living with Covid-19 Plan are in place for Co. Dublin and are expected to be in place for 6 weeks. The restrictions mean that the pub will have to remain closed until 3 December. As a result of these restrictions, Mr. A expects that he will have no turnover in the period 13 October to 2 December.

Based on:

- a) the fact that official Covid restrictions are in place which prohibit customers from accessing the pub, requiring him to temporarily close his pub between 13 October and 2 December, and
- b) Mr. A's reasonable expectation that he will have no turnover between 13 October and 2 December,

he is entitled to apply to Revenue for an Advance Credit for Trading Expenses (ACTE) for the period 13 October to 2 December, which constitutes a claim period.

The amount of the ACTE that he is entitled to for this claim period will be calculated by reference to his turnover for 2019 and the number of full weeks that comprise the claim period, as follows:

Average weekly turnover 2019	€12,750 (i.e. €663,000 / 52)
10% of €12,750	€1,275
Number of full weeks	7
€1,275 X 7	ACTE is €8,925

If the restrictions are extended, with the result that his pub remains closed and the pub will have no turnover, he can make a subsequent claim for the extended period of restrictions, which will constitute a new claim period, and on making a further claim he will be entitled to a payment of €1,275 for every week of the new claim period.

## Example 16

Yummy Nibbles LTD carries on a café trade operating from separate business premises, one located in Letterkenny and the other in Sligo town. Because the cafes are operated from separate business premises, they are treated as separate relevant business activities for the purposes of the CRSS.

### *Yummy Nibbles Letterkenny café*

In the year ended 31 December 2019, turnover for the Letterkenny café was €195,000 (excluding VAT). As of 13 October 2020 (the date the CRSS was announced), restrictions under the Living with Covid-19 Plan are in place for Co. Donegal are expected to stay in place until 3 December, at which point the situation will be reviewed by the Government. In this period of restrictions, the café can stay open for take-away and delivery only. However, the café has a thriving take-away service. As a result, Yummy Nibbles LTD expects that while turnover in period of restrictions will be reduced, it will not be less than 25% of the relevant turnover amount for the cafe.

### *Yummy Nibbles Sligo town café*

In the year ended 31 December 2019, turnover for the Sligo town café was €221,260 (excluding VAT). As of 13 October 2020, restrictions under the Living with Covid-19 Plan are in place for Co. Sligo and are expected to be in place for 6 weeks. While the restrictions are in place, the café can operate on a take-away only basis. Yummy Nibbles LTD expects that in the 7-week period of restrictions, turnover will be approximately €4,900. This represents 16.45% of the relevant turnover amount for the café, i.e. 16.45% of €29,785 (average weekly turnover for the café in 2019 x 7).

### *Yummy Nibbles LTD claim*

Although both business premises from where the cafés operate are subject to Government restrictions, the company is not entitled to claim an ACTE in respect of the Letterkenny Café because turnover for the period during which the restrictions are in place will not be less than 25% for the comparable period in 2019. However, Yummy Nibbles LTD is entitled to apply to Revenue for an ACTE in respect of the Sligo Café for the claim period 13 October to 2 December. The amount of the ACTE that the company is entitled to for this claim period is calculated by reference to the Sligo town café's turnover for 2019 and the number of full weeks that comprise the claim period, as follows:

Average weekly turnover 2019	€4,255 (i.e. €221,260 / 52)
10% of €4,255	€425.50
Number of full weeks	7
€425.50 X 7	ACTE is €2,978.50

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If the restrictions for Co. Sligo are extended, Yummy Nibbles LTD can make a new claim for the extended period of restrictions, where the Sligo business continues to qualify. Yummy Nibbles LTD will be entitled to a payment of €425.50 for every week of the new claim period.

If it later transpires that the Letterkenny café did not do as well as had been expected, the company may then be entitled to apply for an ACTE, as long as a claim is made within 8 weeks of the commencement of the restricted period. Similarly, the company may be entitled to make a claim for an ACTE in respect of the Letterkenny café for a later period of restrictions.

The company has filed VAT returns and has tax clearance.

### Example 17

Ms. Y runs a small dance studio from premises in Co. Clare, from which she teaches contemporary dance to groups of children and teenagers on a part-time basis. Her turnover in 2019 was €35,100 and she is not registered for VAT. As of 13 October (the date the CRSS was announced), Level 3 restrictions under the Living with Covid-19 Plan are in place for Co. Clare and are expected to be in place until 2 December. As dance classes may not take place during the period of restrictions, she cancels all classes for the 7-week period in which the restrictions are in place and issues refunds to affected customers. As a result, she expects to have no turnover for the 7-week period.

Based on the foregoing, she is entitled to apply to Revenue for an ACTE for the claim period, 13 October to 2 December (she will need to apply for tax clearance) as follows:

Average weekly turnover 2019	€675 (i.e. €35,100 / 52)
10% of €675	€67.50
Number of full weeks	7
€67.50 X 7	ACTE is €475.50

If the restrictions for Co. Clare are extended, Ms. Y can make a new claim for the extended period of restrictions, where her business continues to qualify. She will be entitled to a payment of €67.50 for every week of the new claim period.

## Example 18

Style Ltd operates a clothing retail outlet from a business unit in the Cork Shopping Centre in Co. Cork.

The Covid restrictions in place require all non-essential retail outlets to close, Cork Shopping Centre will remain open for the period of these restrictions to the public as other essential retail outlets operate in the centre such as a pharmacy and food retail outlet.

Style Ltd is required to close as they are prohibited from allowing customers into the business premises, therefore Style Ltd may make a claim for the restricted period announced of 3 weeks.

Based on the foregoing, Style Ltd is entitled to apply to Revenue for an ACTE for the claim period, 8 November to 29 November (Style Ltd will need to apply for tax clearance) as follows:

Average weekly turnover 2019	€2,885 (i.e. €150,000 / 52)
10% of €2,885	€288
Number of full weeks	3
€288 X 3	ACTE is €864

## 7. Withdrawal and amendment of claims

### 7.1. Can a claim be withdrawn?

Where a person claims an ACTE and it later transpires that the person is not entitled to it, for example when the person's turnover for the claim period is greater than expected, the person can withdraw the claim by:

- notifying Revenue that the person is withdrawing the claim; and
- repaying the ACTE to Revenue.

Provided the person does so as soon as is reasonably practical, penalties and interest will not be applied.

### 7.2. Can a claim be reduced?

Where a person claims an ACTE and it later transpires that the amount claimed exceeded the amount that the person was entitled to, for example because the person miscalculated their average weekly turnover for 2019 (or 2020 for new businesses), the person can reduce the amount claimed by:

- notifying Revenue that the person is reducing the claim; and
- repaying to Revenue the amount that was claimed in error.

Provided the person does so as soon as is reasonably practicable, penalties and interest will not be applied.

### 7.3. Withdrawal of an ACTE by Revenue

Where a claim for an ACTE is subsequently found to be unauthorised or overstated, then there are implications relating to the following:

- Clawback of the additional tax due
- Interest
- Penalties
- Possible publication

Where a clawback arises on the ACTE amount, a Schedule D Case IV assessment will be made by Revenue.

#### 7.3.1. Company clawback - Case IV of Schedule D

The clawback amount is calculated on the ACTE amount that is as unauthorised or overstated, which is an amount equal to 4 times the excess ACTE claimed. Where the ACTE is clawed back, a company is prohibited from offsetting any credits, losses, expenses or

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allowance against that tax liability. The clawback amount will not attract the close company surcharge.

## Example 19

A company makes a claim for an ACTE in respect of a claim period. The amount of the ACTE for the year ended 31/12/2020 was €15,000. On a compliance review, the ACTE claim was amended to €5,000. The unauthorised claim related to the incorrect allocation of turnover from a business premises in a geographical location which was not significantly impacted by Government restrictions.

To recover this amount, an assessment is made under Case IV of Schedule D in the sum of 4 times the amount of the unauthorised amount [€10,000\*4], which will be charged to corporation tax at 25%;

### Assessed

Case IV	€40,000
Charged to CT @ 25%	€10,000*

\* This ensures that the amount that should not have been claimed is fully recovered. Interest and tax geared penalties will apply from the day the unauthorised claim was paid.

## 7.3.2. Individual clawback - Case IV of Schedule D

The clawback amount is calculated on the ACTE amount that is as unauthorised or overstated, which is an amount equal to 5 times the excess ACTE claimed. Where the ACTE is clawed back, no deduction, relief, tax credit or reduction in tax is permitted against that tax liability.

## Example 20

An individual sole trader makes a claim for an ACTE in respect of a claim period. The amount of the ACTE for year ended 31/12/2020 was €10,000. On a compliance review, the ACTE claim was amended to €nil. The unauthorised claim related to a takeaway. The takeaway was not a relevant business as they were not restricted from customers attending their business premises under Government restrictions.

To recover this amount of tax, an assessment is made under Case IV of Schedule D in the sum of 5 times the amount of the unauthorised amount [€10,000\*5], which will be charged at the standard rate of income tax;

### Assessed

Cases IV Income	€50,000
Charged to standard rate of income tax @ 20%	€10,000*

\* This ensures that the amount that should not have been claimed is fully recovered. Interest and tax geared penalties will apply from the day the authorised claim was paid.



### 7.3.3. Penalty and publication application

Where a penalty is chargeable on the Case IV assessment, section 1077E of the Taxes Consolidation Act 1997 and the [\*Code of Practice for Revenue Audit and other Compliance Interventions\*](#) will apply. Publication on the list of tax defaulters under section 1086 of the Taxes Consolidation Act 1997 may also apply, where the criteria in relation to tax, interest and penalties are met.

## 8. Is an Advance Credit for Trading Expenses taxable?

An ACTE will be taken into account when calculating the taxable trading profits of a claimant by reducing the amount of deductible expenditure – expenditure which is revenue in nature, and incurred wholly and exclusively for the purpose of the trade – which would include all common business fixed costs such as rent, insurance, light & heat and wages.

Whilst an ACTE will reduce the amount of trading expenses that are deductible in computing the taxable income of a business, it will not result in an additional tax liability unless that business has trading profits for the year. Where a business is in a loss-making position, an ACTE will have the effect of reducing the amount of trading losses available for offset against future or previous profits of the business.

In the example below, a CRSS payment of €1,000 will result in additional tax of €125 for the profitable business. For the business in a loss-making position, the CRSS payment will have the effect of reducing the amount of trading losses available for offset against future or previous profits of the business, again a reduction in available tax losses of €125 for every €1,000 CRSS payment received.

<b>Example 21</b>	<b>Profit Making Company</b>	<b>Loss Making Company</b>
	€	€
<b><u>Income</u></b>		
Turnover from operations	100,000	50,000
<b><u>Expenses</u></b>		
Rent	25,000	25,000
Rates	5,000	5,000
Insurance	25,000	25,000
Utilities	10,000	10,000
CRSS Payment	(1,000)	(1,000)
	64,000	64,000
Profit / (Loss) per accounts	36,000	(14,000)
<b>Corporation Tax Charge:</b>	4,500	NIL

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In the example below based on an individual, the CRSS payment will not result in additional tax unless the individual has trading profits for the year. In the example above, a CRSS payment of €1,000 resulted in additional tax of €240. This would increase for individuals at the marginal rate of tax.

<b>Example 22</b>	<b>Profit Making Individual</b>	<b>Loss Making Individual</b>
<b><u>Income</u></b>	€	€
Turnover from operations	30,000	50,000
<b><u>Expenses</u></b>		
Rent	2,500	25,000
Rates	500	5,000
Insurance	2,500	25,000
Utilities	1,000	10,000
CRSS Payment	<b>(1,000)</b>	<b>(1,000)</b>
	<hr/> 5,500	<hr/> 64,000
 Profit / (Loss)	 <hr/> <b>24,500</b>	 <hr/> <b>(14,000)</b>
 <b>Standard rate of Income tax at 20%</b>	 4,900	
<b>PRSI @ 4%</b>	980	
<b>USC*</b>	405	
Less tax credits **	<hr/> (3300)	
Tax liability	<hr/> <b>2,985</b>	NIL
 *based on rates applying from 1 January 2021		
** Single person credit plus Earned income credit (€1,650 from 1 January 2021)		

## 9. Contact Us

You can also contact us by e-mail using the secure 'MyEnquiries' service available in myAccount or ROS.