

SL(5)641 – The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 and its amending regulations which include measures put in place for local lockdowns in Wales. (A complete list of the regulations revoked are listed in regulation 34.)

These Regulations impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus. This is in response to the worsening trend and prevalence of Covid-19 and the risk to public health based on scientific evidence provided by the Welsh Government's Technical Advisory Cell.

These Regulations came into force at 6pm on Friday 23rd October 2020 and expire at the end of the day on 8th November 2020 (a total of 17 days). According to Government guidance, *"following the end of this period, a new set of national rules will be introduced, covering how people can meet and how the public sector and businesses operate."*

These Regulations make provision in 4 key areas:

- a. limiting movement and travel by requiring people to stay at home unless they have a reasonable excuse;
- b. limits gatherings with other people;
- c. closure of certain types of businesses and premises; and
- d. obligations placed on persons responsible for premises open to the public, or for work being carried out at any premises.

In summary:

Part 2 imposes limits on movement and travel. Regulation 3 requires people living in Wales to stay at home, unless they have a reasonable excuse not to. The Regulations make specific provision for attendance at an event to commemorate Remembrance Sunday to be a reasonable excuse to gather with others, subject to certain conditions. In addition, in the limited circumstances where people can leave home, there is a restriction in regulation 4 on people gathering with anyone who is not part of their household. The overall effect of these provisions is to restrict movement of people within Wales. Regulation 5 provides that people who live outside Wales need a reasonable excuse to travel into Wales. Regulations 6 and 7 limit the circumstances in which a pupil or student has a reasonable excuse to attend the premises of a school or further education institution. Regulation 9 makes further provision making it an offence (punished by a higher penalty) for organising large scale music events that encourage people to gather illegally.



Part 3 relates to business and services whose premises are ordinarily open to the public, requiring many to close. Part 1 of Schedule 1 lists those businesses and services whose premises must be closed to the public. Part 2 of Schedule 1 lists businesses and premises whose premises must be closed but to which access may be allowed on a limited basis. These are categorised as premises selling food and drink (which are listed in Chapter 1); premises offering hotel or holiday accommodation (which are listed in Chapter 2) and others (which are listed in Chapter 3). Regulation 16 provides that where more than one type of business or service is provided at the same premises, e.g. at a large supermarket, those types of business that are prohibited may not continue for the period that these regulations remain in force.

Part 4 makes provisions for the purpose of minimising risk of exposure to coronavirus. Regulation 17 applies to “regulated premises” (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken, for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that not carrying out an activity, closing part of a premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures. Regulations 18 and 19 provide that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions. Regulation 20 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 5 relates to the enforcement of the restrictions and requirements. This part lists who may take enforcement action and includes wide powers of entry, powers to remove and disperse persons and powers to use reasonable force in certain circumstances.

Part 6 makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 30 relates to offences by bodies corporate. Regulation 31 allows for offences to be punished by way of fixed penalty notices and regulation 32 relates to prosecutions of offences under the regulations.

Part 7 contains defined terms and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 (S.I. 2020/725 (W. 162)) as they were amended. Regulation 33 also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. This allows a person who lives alone or only with children to agree to form an extended household with another household, which means that members of both households can interact with each other as if they were members of one household.



Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new national restrictions for a limited period of 17 days under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which



remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my press conference on 19 October the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported."

Whilst the Committee acknowledges that these Regulations have been made in response to a public health emergency the Committee note the widespread reporting in the media of dissatisfaction at the short notice given by the Government in relation to the introduction of these Regulations. For example the BBC reported that the Federation of Small Businesses in Wales were disappointed at the short notice given for these changes and restrictions placed on businesses. The Committee would like the Government to provide further detail on who it consulted and when, prior to making these Regulations.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

Regulation 16 places restrictions on mixed businesses. Under the regulations, mixed businesses are those that run both permitted and prohibited businesses on the same premises. The Committee notes the widespread criticism of this particular policy, the confusion that it has caused amongst stakeholders and the Senedd petition that has been signed by a record 66,000 citizens (as of 26th October 2020). Given clarity is essential when making legislation the Government is asked to provide an update as to whether it intends to amend this particular provision or whether further guidance is to be given to businesses and members of the public in relation to this provision.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The regulations make provision for the government to provide guidance on the legislative changes that it makes for this 17-day period. The Government is asked to provide further



details of when such guidance was published to provide stakeholders the opportunity to comply with these legislative changes.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The Committee note that relevant impact assessments were published for these regulations on 26th October 2020 and can be found here - <https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school-html>

Further to our meeting on 2 November, we include the following merits reports in addition to those above.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We would welcome clarification from the Welsh Government about the following (and in respect of points (a) and (b) it would be helpful to see practical examples):

- (a) where, and how, do the Regulations prohibit a supermarket from selling non-essential items;
- (b) the meaning of “business” in regulations 11, 15 and 16, including:
 - (i) the meaning of a business “forming part of a larger business” and “forming part of a larger undertaking”,
 - (ii) the extent to which a “supermarket” is captured by regulations 15 and 16 and Part 3 of Schedule 1,
 - (iii) the First Minister’s statement on 19 October 2020, regarding the closure of “all non-food retail”, bearing in mind the list of businesses and services that can stay open under Part 3 of Schedule 1 include building supplies, petrol stations, bicycle shops and launderettes;
- (c) whether the Regulations are being used to any extent to prevent distortion of competition, given that [Welsh Government guidance states:](#)

“So for example, because there is a prohibition on hairdressers’ shops from opening as this is seen as a non-essential activity, mobile hairdressers are also not permitted to provide their services in clients’ homes or their own homes. This is to avoid gatherings of people being displaced from one setting to another, and to minimise unfair distortion of competition between similar businesses.”



7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We would welcome clarification from the Welsh Government about the following (and in respect of point (a) it would be helpful to see practical examples):

- (a) what are extended households allowed to do under the Regulations. And where do the Regulations allow for extended households to spend time with each other indoor and outdoors as if they lived together. We note the apparent limits of what regulation 33(3) allows extended households to do together under the Regulations, but also the following from Welsh Government guidance:

“The people you choose to join with, in effect, become part of your household, and legally you can treat any member of your extended household as if you lived with them;”

- (b) why does Welsh Government guidance say that there are “no rules specifying that your extended household has to be with someone in your local authority area”, when the Regulations say that if you formed an extended household with another person from your local authority area under the previous local county lockdowns, you cannot be part of a different extended household now;
- (c) whether the exclusions in regulation 33(3) regarding extended households should also include regulation 33(3) itself.

8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We would welcome clarification from the Welsh Government about the following:

- (a) how the Regulations apply to cemeteries (and visiting cemeteries), whether at crematoriums or otherwise;
- (b) the reasons for limiting the hours of selling alcohol to the hours of 6am to 10pm;
- (c) whether the conditions for attending a Remembrance Sunday event under regulation 3(3) are cumulative (given there is no “and” after regulation 3(3)(b)).

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to merits reporting points 2, 3, 4, 6, 7 and 8.

Committee Consideration

The Committee considered the instrument at its meeting on 2 November 2020 and reports to the Senedd in line with the reporting points above.

