

EXPLANATORY MEMORANDUM TO THE HEALTH PROTECTION (CORONAVIRUS) (WALES) REGULATIONS 2020

This Explanatory Memorandum has been prepared by Public Health Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus) (Wales) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
17 March 2020

1. Description

1.1 This instrument makes provision for the purpose of enabling a number of public health measures to be taken for the purpose of reducing the public health risks arising from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). The Regulations are made without a draft having been laid and approved by a resolution of the Assembly. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 and reduce the risk of it becoming more widespread in the community.

2.2. The Regulations cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of the Assembly.

2.3 The instrument applies in relation to Wales.

4. Legislative Background

4.1 The Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and regulations made under it provide a legislative framework for health protection in England and Wales.

4.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

4.3 Specifically, section 45B of the 1984 Act enables the appropriate Minister (defined in section 45T as the Welsh Ministers for Wales and the Secretary of State for England) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

4.4 Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to

the incidence or spread of infection or contamination in England and Wales. The threat can come from outside England and Wales.

4.5 Until recently, no regulations had been made under section 45B, but regulations had been made under section 45C.

4.6 On 10 February 2020 regulations were made by the Secretary of State for Health and Social Care on an England only basis, known as the Health Protection (Coronavirus) Regulations 2020 (2020 No. 129). These regulations were made under sections 45B, 45C, 45F and 45P of the 1984 Act to enable a number of public health measures to be taken for the purpose of reducing the public health risks arising from Coronavirus.

4.7 The regulations now laid before the Assembly have also been made under sections 45B, 45C, 45F and 45P of the 1984 Act to enable a number of public health measures to be taken for the purpose of reducing the public health risks arising from Coronavirus in relation to Wales.

4.8 These regulations enable the imposition of proportionate restrictions (which may include screening, isolation and other appropriate restrictions) on individuals where the Welsh Ministers or a registered public health consultant have reasonable grounds to suspect that the individual is, or may be, contaminated with the Coronavirus. The regulations provide for a police constable to detain an individual and enforce those restrictions as required.

4.9 These regulations also include provision for police constables to detain individuals where they have reasonable grounds to believe an individual is, or may be, infected or contaminated with Coronavirus and are posing a risk to others. The constable is obliged to have due regard to Welsh Government guidance and consult a registered public health consultant in the exercise of their powers.

5. Purpose and intended effect of the legislation

5.1 The amendments to the 1984 Act made by the 2008 Act comprehensively modernised the legal framework for health protection. Part 2A of the 1984 Act, as inserted by the 2008 Act, takes an “all hazards” approach to health protection, where the criterion for action is based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.

5.2 The only current legal option to enforce a quarantine period is via a Part 2A order under the Public Health (Control of Disease) Act 1984. The relevant local authority is able to file for a Part 2A order which is then made by a Justice of the Peace. The Welsh Ministers currently have no powers to apply for a Part 2A order, to enforce quarantine or to place appropriate restrictions on individuals outside of this process.

5.3 In summary, we believe there are two major reasons to introduce these new Regulations. Firstly, it is critical for the Welsh Government to take all reasonable steps to limit onward transmission of Coronavirus, where possible. Coronavirus was recently declared a pandemic by World Health Organisation. In addition, the Chief Medical Officer for Wales and other UK CMOs currently assess the risk to the UK as high. It is also essential that the Welsh Government retains public trust in its public health protection measures. This level of trust will be critical to ensuring that the public

continues to engage and comply with interventions designed to protect individuals and communities if transmission of the virus within Wales and the wider UK continues to increase, as expected, in the coming weeks.

5.4 The regulations only apply once Welsh Ministers have made a public declaration that there is a serious and imminent threat to public health and the measures in the regulations would be effective in delaying or preventing further transmission. Once this declaration is revoked, the powers in the regulations would no longer be exercisable.

6. Consultation

6.1 There has been no formal consultation but the Welsh Government has been in regular contact with the UK government and other devolved administrations who have introduced similar provisions.

8. Regulatory Impact Assessment

8.1 An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation due to the urgency required to make these Regulations.