

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru 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 Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
24 July 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. 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 coronavirus. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions and the new requirements on face-coverings as now set out in the principal Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

European Convention on Human Rights

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.

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. The continued easing of the restrictions made under the principal Regulations by these Regulations, is a proportionate response, as is the new requirement to wear face-coverings on public transport. These provisions balance 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 avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence.

3. Legislative background

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The amendments to the principal Regulations will come into force in two parts. The first set of amendments will come into force at the beginning of 25 July, and will –

- permit holiday accommodation, including hostels and hostel type accommodation, hotels and other serviced accommodation, with shared facilities, such as shower blocks, to reopen but shared rooms being open only to members of the same or extended households and subject to requirements related to physical distancing.
- clarify that a reasonable excuse for gathering with other persons may include access any public services and supervised children’s recreation. This will allow, for example, families to access summer camps and children’s clubs during the holiday period.
- reopen underground attractions. Operators of such attractions must take all reasonable measures to minimise the spread of coronavirus;
- remove the requirement to work from home where it is practicable to do so. There is evidence of the well-being benefits for some of working from offices and other locations away from the home, and this coupled with the obligations on employers to take all reasonable measures to prevent the spread of coronavirus, means it is no longer proportionate to maintain this requirement. However there are also clear benefits from home working, so employers are being encouraged to continue to facilitate this.

The second set of amendments to the principal Regulations will come into force at the beginning of 27 July, and will –

- enable businesses such as nail and beauty salons; massage parlours; and establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture, to reopen. Supporting guidance explains the need to limit face to face interaction, as well as underpinning the duty to take reasonable measures to minimise the risk of exposure to coronavirus, including –
 - maintain hygiene
 - provide information to people on minimising the risk of exposure to coronavirus, and
 - take all reasonable measures to ensure 2 metres distance is kept between people on premises and people waiting to enter premises.

This guidance forms part of a wider set of documents about how to work safely in different types of close contact service workplaces in Wales.

- allow crematoriums to open to the extent they are not already and enable (indoor) cinemas as well as museums, galleries and archive services to open to customers and visitors. The requirements to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises will apply to the operators of these businesses and services.
- allow amusement arcades to open. This sector includes Family Entertainment Centres which provide family entertainment both at the seaside and inland venues and high street Adult Gaming Centres which provide amusement machine-based entertainment to adults. There have been concerns about the risks associated with the number and flow of people around these sort of attractions, coupled with the number of shared surfaces and machines that visitors would touch. The British Amusement Catering Trade Association has worked with the Government to produce guidance for operators to implement a range of business specific mitigations in readiness for opening.
- permit house rental and sales activity to take place in occupied properties. The housing sector has been able to undertake viewings and associated activity in unoccupied premises since 22 June. Based on the experiences gathered from this limited re-opening and work undertaken with industry bodies and local government on revised guidance to include mitigations to the risks to households, professionals and property viewers, it is now considered proportionate to reopen the sector fully.
- require face coverings to be worn by people using public transport (including taxis). The requirement will be subject to certain exemptions. For example children under the age of 11; ferries where passengers are fully outdoors or social distancing can be maintained; passengers on aircraft passing over Wales (but which neither takes off nor stops in

Wales). Individuals may also have a reasonable excuse not to wear a face covering, including because of physical or mental illnesses or impairments, or disability; removal to take medication; where a person is asked to remove the mask by an enforcement officer or someone operating or employed by the public transport service.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that easing and adapting the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. Individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 9 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 24 July.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

A summary equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.