

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) 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. 9) Regulations 2020.

Mark Drakeford
First Minister

11 September 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.

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 adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by 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 coronavirus, taking into account the scientific evidence.

The Regulations, in particular, limit the number of persons who may meet indoors and require face coverings to be worn within open premises, subject to exemptions and exceptions. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of thought, conscience and religion); Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim. The restriction on indoor

gatherings responds to threats to health and the requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions, including in respect of children under 11, the inability to wear coverings due to a physical or mental illness or impairment, or, otherwise as a result of difficulties in communicating.

3. Legislative background

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

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

The principal Regulations were 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).

These Regulations amend the principal regulations to:

- restrict the number of people who may meet socially indoors. This will be limited to no more than 6 people from an (exclusive) extended household (excluding any child under 11 years of age). This limit applies to all indoor settings, including homes, restaurants and pubs.
- require people to wear face coverings while in shops and certain other indoor public places and transport hubs. There is an exemption for those under the age of 11, and when anyone is on premises where food or drink is sold or otherwise provided, for consumption on those premises. (Where only part of a premises is available for consumption of food/drink, the requirement to wear a face covering will still apply in the other parts of the premises.) The Regulations also provide that where a person has a reasonable excuse (examples of which are given) a face covering need not be worn. These new requirements are in addition to the existing requirement that already applies (across Wales) to wear face coverings on public transport.

Earlier this week the principal Regulations were amended to introduce stricter restrictions in respect of Caerphilly County Borough, which was designated as a 'local health protection area'. This included the requirement to wear face coverings. In light of the expansion of this requirement across Wales as a whole, the principal Regulations are amended by these Regulations so as to remove the specific requirement for face coverings from the local health protection area provisions.

- make a further amendment to the provisions on the local health protection area in respect of the requirement to work from home, unless it is not reasonably practicable to do so. From 8 September this applied to persons living in the local health protection area, but did not apply to persons living outside but working in

that area. From 14 September, it will not be a reasonable excuse to enter Caerphilly County Borough to work if it reasonably practicable for the work to be done outside the area.

Further amendments are also being made to the principal Regulations, by these Regulations, in consequence of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020. Duties imposed on local authorities, National Park authorities, Natural Resources Wales and the National Trust have been removed from the principal Regulations and reproduced in the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

The Regulations come into force at the beginning of 14 September 2020.

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 introducing these requirements and 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, there has been no public consultation in relation to these Regulations.

More widely, 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 and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I informed Members of the Senedd, in a written statement issued earlier today, of the intention to impose the restrictions achieved in these Regulations. I also led a press conference following which the proposed changes have been reported by the media.

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 as part of the ongoing response to a serious and imminent threat to public health.

An integrated impact assessment is being developed and will be published shortly.