Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) 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. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020.

Mark Drakeford
First Minister

22 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 Welsh Ministers are of the opinion that the restrictions now being imposed in relation to Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Welsh Ministers must review the restrictions and requirements imposed by the Regulations by 24 September and at least once every seven days thereafter.

<u>European Convention on Human Rights</u>

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 impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport, as well as Caerphilly County Borough and Rhondda Cynon Taf County Borough. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the

areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household and require licensed premises to close by 11pm each day. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and 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 both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter.

The Regulations also permit up to six people who live in shared accommodation within premises to gather indoors. This will enable those in shared student accommodation and other accommodation to gather, for example in using shared facilities within their homes. It will help enable people to exercise rights under Article 8 (right to respect for family and private life), albeit within a limited context, reflecting the risks posed to public health by wider indoor, social interaction.

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).

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area', and apply those restrictions to the area of Caerphilly County Borough Council. These Regulations now extend restrictions to other local health protection areas, namely Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport. The effect of this in respect of these new areas is to:

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 SI 2020/961 (W. 215)

- provide that no household within each area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;

- prohibiting persons living in each area from leaving or remaining away from the area without reasonable excuse;

- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;

- prohibit people outside of the areas entering the areas without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

- require licensed premises to close by 11pm each evening and not open prior to 6am any morning. In this context "licensed premises" means public houses, bars (including bars in members' clubs, hotels or other accommodation), cafés and restaurants (including restaurants or dining rooms in members' clubs, hotels or other accommodation) in respect of which an authorisation has been granted or given for the sale or supply of alcohol.

In addition, the restrictions on opening hours of licensed premises will now also apply in Caerphilly County Borough.

These Regulations also amend the principal Regulations, to provide that it is a reasonable excuse for no more than 6 persons living in accommodation where certain facilities are shared, to gather indoors as if they were a single household (this includes houses in multiple accommodation and student accommodation.

The Regulations come into force at 6.00 p.m. on 22 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 24 September, and at least once every seven days thereafter.

These Regulations also make minor technical and consequential amendments to the principal Regulations.

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 is 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 myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authorities and NHS bodies for the areas now included as well as for Caerphilly and Rhondda Cynon Taf.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained in a press conference yesterday the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been widely 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.