

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) 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. 3) (Wales) Regulations 2020.

Mark Drakeford
First Minister

22 October 2020

1. Description

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 (“the principal Regulations”) and subsequent amending Regulations. The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus.

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 and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

These Regulations include a ‘sunset provision’ which means they will expire at the end of 8 November 2020.

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.

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.

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”.

Since the last review of restrictions and requirements imposed by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, Wales has continued to see a worsening trend in the prevalence of COVID-19. It is estimated the level of infections today is at 2,500 and at the current rate of growth the number of infections would exceed the level of the March peak by the end of October. For the first time in this second wave of infections, incidence for Wales is higher than 100 cases per 100,000 people and positivity for Wales is above 7.5%. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government’s [Technical Advisory Cell](#) and available on the gov.wales website.

In recognition of this, and as part of the ongoing review of restrictions and requirements in the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, the Welsh Ministers have decided to put in place new restrictions and requirements for a short time period, with the aim of rapidly reducing the rate of transmission and bringing the virus back under control. Information about previous restrictions and associated impact assessments can also be found on the gov.wales website.

The advice of the Chief Medical Officer for Wales is that action is needed now if we are to prevent NHS capacity in Wales becoming stressed and potentially

overwhelmed. These Regulations are intended to prevent direct covid-19 deaths and deaths related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

These Regulations make provision in four key areas:

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

The Regulations also provide for the enforcement of these requirements and restrictions.

Part 1 provides that these Regulations come into force at 6 p.m. on 23 October 2020 and expire at the end of the day on 8 November 2020.

Part 2 of the Regulations 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. In addition, in the limited circumstances where people are permitted to leave home, there is a restriction on people gathering without reasonable excuse with anyone who is not part of their household. The Welsh Ministers recognise there are lower risks of coronavirus transmission associated with being outdoors. The seriousness of the current public health situation, however, means that for the short period in which these Regulations have effect, gatherings outdoors of people not from the same household or organised outdoor activities will generally not be permitted. 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. The overall effect of these provisions is to restrict movement of people within Wales so as to minimise transmission of the coronavirus within the community. In order not to undermine the effectiveness of the restrictions on movement and travel within Wales, the Regulations also require 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 of the Regulations requires certain businesses and services whose premises are ordinarily open to the public to close. Chapter 2 of that Part refers to those businesses and services whose premises must be closed to the public, which are more particularly listed in Part 1 of Schedule 1 (though regulation 11 makes clear that this does not prevent certain activities from taking place on the premises). Chapter 3 makes provision for those businesses and services which must be closed

but to which limited access may be allowed, which are more particularly listed in Part 2 of Schedule 1: premises selling food and drink (to which limited access is allowed in accordance with regulation 12); premises offering hotel or holiday accommodation (to which limited access is allowed in accordance with regulation 13); and places of worship and other places (to which limited access is allowed in accordance with regulation 14). Regulation 15 provides for an exception to the requirement to close which applies to the premises of businesses or services listed in Part 3 of Schedule 1. Regulation 16 makes clear that where more than one type of business or service is provided at the same premises, those businesses prohibited by regulation 11 (and listed in Part 1 of Schedule 1) may not continue.

The urgent need to contain the spread of the coronavirus requires non-essential customer facing businesses and those which involve people coming into contact with each other to close. These include non-essential retail, close contact services, tourism, the events sector and hospitality (with the exception of hotels and other accommodation will be required to close but their premises may be used for such purposes as requested or authorised by the Welsh Ministers or local authorities (for example, to house people that would otherwise be homeless; people fleeing from domestic abuse; key workers, and those working in sectors that can remain open but for which working from home is not viable, such as for professional sports). Under these Regulations, construction, manufacturing and other non-customer facing businesses can continue to operate, including those in the supply chain, such as builder's merchants. These are critical industries that cannot be disaggregated but provide essential infrastructure and services for food and energy supply chains, or are essential to emergency responses. Employees in all sectors will be required to work from home where reasonably practicable to do so. Similarly, pharmacies and chemists, dental services and other medical or health services (including services relating to mental health) may remain open during the period in which the Regulations have effect.

Part 4 of the Regulations places certain obligations on persons responsible for premises open to the public, or responsible for work being carried out at any premises, in order to minimise 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. Part 4 also specifies that ceasing an activity, closing part of a premises 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 of the Regulations relates to the enforcement of the restrictions and requirements. Regulation 21 makes provision about those who can take enforcement action; regulation 22 makes further provision (in Schedules 2 and 3) about enforcing

the need to take preventative measures under regulation 17; regulation 23 relates to compliance notices, and regulation 24 to powers of removal and dispersal. Regulation 25 relates specifically to enforcing the requirement to wear a face covering and regulation 26 to children. Regulation 27 contains a power to enter premises and regulation 28 allows reasonable force to be used in certain circumstances.

Part 6 of the Regulations makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in the 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.

Finally, Part 7 contains defined terms and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 and related amending instruments. 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. As was the case previously in the local health protection areas established under the previous Regulations, under these Regulations a person who lives alone or only with children may 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. This will help mitigate the effects of isolation and loneliness of single adult households.

It is critical to take all reasonable steps to contain increasing transmission of coronavirus. The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they 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.

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.

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 integrated impact assessment has been prepared and will be published on the GOV.wales website.