

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 4) (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. 4) (Wales) Regulations 2020.

**Mark Drakeford**  
**First Minister**

5 November 2020

## **1. Description**

The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus immediately following the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.

## **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.

### 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 and requirements 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 45B, 45C(1) and (3), 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.

Note that the regulations are made under both sections 45B and 45C of the 1984 Act (due to the provisions relating to travel in and out of Wales having an effect on both domestic and international travel). Regulations under those sections are subject to different Senedd procedure. However, in accordance with section 40 of the Legislation (Wales) Act 2019, these regulations are subject to the made affirmative procedure as set out in sections 45Q and 45R of the 1984 Act.

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 Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, put in place a firebreak or circuit break between 23 October and 8 November by means of restrictions and requirements. While the impact of the firebreak on the reproduction rate of COVID-19 will not be fully known for some weeks, the purpose of making the Regulations was to provide conditions which would see a reduction in the reproduction rate. 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, the Welsh Ministers have decided to put in place new restrictions and requirements on a pan-Wales basis.

The advice of the Chief Medical Officer for Wales is that the public health context supports a gradual rather than total easing of the restrictions and requirements imposed during the firebreak, this includes seeking to strike the right balance between limiting mixing in public and private spaces to decrease transmission and allowing people to meet friends and family, which is important for people’s well-being. 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 the following key areas:

- a) prohibiting gatherings in a private dwelling, other than with members of the same household or extended household, without reasonable excuse;
- b) allowing up to two households to agree to form an extended household (this will not be limited to circumstances where one household has only one adult member);
- c) prohibiting gatherings in public places without reasonable excuse, but
  - a. allowing up to four people from any household, or any number of members of the same household, to gather outdoors or in regulated premises;
  - b. allowing for an extended household to gather outdoors;
  - c. allowing gatherings of up to 15 indoors or 30 outdoors to take part in an activity organised by a responsible body;
- d) permitting travel within and across Wales but prohibiting travel out of and into Wales without reasonable excuse;
- e) introducing requirements for people to self-isolate in the event of having tested positive for coronavirus or being notified to do so by a contact tracer;
- f) placing obligations on persons responsible for premises open to the public, or for work being carried out at any premises, to take all reasonable measures to minimise the risk of exposure to, or spread of, coronavirus – including requiring employers to enable or allow employees to self-isolate when the employee is required to do so by a contact tracer;
- g) requiring face coverings to be worn on public transport and in public areas of indoor premises, subject to certain exemptions and exceptions.

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

Part 1 of the Regulations provides that the new provisions come into force at the beginning of 9 November 2020. As with the earlier Regulations dealing with coronavirus, these new Regulations must be reviewed regularly. They must be reviewed:

- by 19 November,
- at least once in the period from 20 November to 3 December,
- at least once in the period from 4 December to 17 December, and
- at least every 21 days after that.

The Regulations will expire at the end of the day on 19 February 2021 unless they are revoked before then.

Part 2 of the Regulations imposes limits on gathering with other people.

Within private dwellings (including gardens), people may only gather with members of their household and extended household. They provide that an extended household may be formed by all of the adults in a maximum of two households agreeing.

Outside of private dwellings, people may gather outdoors in groups of up to four (not counting children under 11), or with members of their own household and extended household (regardless of the number).

In accommodation in a hotel or other holiday accommodation, people can only gather with members of their own household (so for example, people from different households cannot stay in the same hotel room).

In other indoor places, people can gather with either the members of their own household or in groups of up to four (but not counting any children under 11).

In each case a person may be in a gathering in breach of the restrictions if they have a reasonable excuse. A reasonable excuse means:

- i. any situation where a person is participating in a gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, examples of which include work, obtaining or providing medical assistance, or meeting a legal obligation; or
- ii. where specific listed circumstances apply. These circumstances are more limited for gatherings in a private dwelling than for other gatherings. Examples of the circumstances in which a person may gather outside a private dwelling include attending, by invitation, a wedding ceremony, civil partnership formation or funeral; attending an activity organised by a responsible body involving up to 15 people indoors or 30 people outdoors, provided that the organiser has undertaken a risk assessment and takes reasonable measures to minimise the risk of the spread of coronavirus. For these purposes, people working or providing voluntary services at the event, or children under 11 attending at the event, are not included in the limit of 15 or 30 people.

The Regulations also prohibit the organisation of events where more than 15 people attend (if the event is mainly indoors) or 30 people attend (if it is mainly an outdoor event) and make particular provision prohibiting large scale music events that are unlicensed.

Part 3 prohibits persons living in Wales from leaving Wales, and persons living outside from entering Wales without reasonable excuse. Again reasonable excuse means either—

- i. a situation where entering or leaving Wales is reasonably necessary and there is no practicable alternative (examples of which are set out in the Regulations), or
- ii. in specific circumstances listed in the Regulations.

Travel within Wales is allowed.

Part 4 imposes new requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive, and people who have had “close contact” with someone who has tested positive, and who been notified by a contact tracer are required not to leave the place they are living until the end of the last day of their isolation. The period of isolation is generally 10 days for those who have tested positive and 14 days for those who have had close contact but the start of those periods varies depending on the circumstances (for example; whether the person has reported symptoms or not). Adults with responsibility for a child required to isolate, are required to take all reasonable measures to ensure the child self-isolates. The regulations enable contact tracers to share information insofar as necessary for the operation and enforcement of the self-isolation system.

Part 5 and Schedule 1 relate to business and services whose premises are required to close to the public. Schedule 1 sets out a limited number of business which must remain closed including theatres, concert halls, night clubs and adult entertainment venues. Part 5 also contains provision prohibiting alcohol from being sold, on premises which are licenced to sell it, after 10.00 p.m. and require the premises to be closed by no later than 10.20 p.m.

Part 6 and Schedule 2 include provision imposing requirements on those responsible for premises—

- i. open to the public and listed in Schedule 2,
  - ii. public transport vehicles, and
  - iii. premises where work is being carried out
- (collectively referred to as “regulated premises”) to take reasonable measures for the purpose of minimising risk of exposure to coronavirus, and the spread of the virus.

This includes a requirement on those responsible for regulated premises to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises and other measures for example to limiting close face to face interaction, maintaining hygiene and to providing information to those entering or working at premises about how to minimise risk of exposure to coronavirus.

The Regulations also specify that allowing employees to self-isolate when they have been required to do so by a contact tracer is a reasonable measure. And the collection of contact details from customers and taking reasonable measures to ensure those details are correct are also specified as reasonable measures.

Further reasonable measures are specified in relation to premises licensed to sell or supply alcohol—

- i. A person must be present to control entry to licensed premises and to allocate a specific time period that customer may stay at the premises

- (guidance will be issued about the recommended time period in certain settings). This is to ensure that all customers have a booking and that people do not stay in the same place for long periods.
- ii. Customers in licensed premises must order, be served, and must consume any food or drink while seated at a table.

The Regulations also set out requirements to wear face coverings on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 7 and Schedule 3 relates to the enforcement of the restrictions and requirements, including who can take enforcement action, the issue of compliance notices, powers of removal and dispersal of gatherings, powers to stop events, powers to direct people who breach self-isolation to return home and enforcement of the requirement to wear face coverings. It provides for a power to enter premises, for police to undertake road checks and for the use of reasonable force in certain circumstances.

Schedule 3 sets out a regime for enforcing the requirement to take all reasonable measures in regulated premises. Local authority enforcement officers may inspect regulated premises and issue improvement notices setting out measures that premises must take. If those measures are not taken, or if an enforcement officer considers there to be an urgent public health risk, a closure notice may be issued and the premises must close. Breach of a closure notice is an offence.

Part 8 makes provision about offences and penalties. This includes offences in respect of which a fixed penalty notice may be issued as an alternative to bringing court proceedings.

Part 9 contains defined terms and a consequential amendment.

## **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, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 3 November 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: <https://gov.wales/impact-assessments-coronavirus>.