

SL(5)685 – The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the principal Regulations”) and also make technical amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (“the Functions of Local Authorities Regulations”).

Amendments to the Principal Regulations

The principal Regulations put in place restrictions and requirements on a pan-Wales basis following the “firebreak” that operated in Wales between 23 October and 8 November.

These Regulations make amendments to those Regulations to:

- require bars, cafes, canteens, restaurants and pubs to be closed to customers between 6.00 p.m. and 6.00 a.m. (though this restriction is subject to specific exceptions in new regulation 19B, including in relation to holiday or travel accommodation and for wedding or civil partnership receptions booked before these Regulations come into force);
- prevent any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses (though this does not prevent alcohol being sold to residents in holiday or travel accommodation as part of room service (subject to requirements in regulation 20), or prevent residents from drinking alcohol in their private rooms);
- require indoor premises of entertainment venues and visitor attractions to close;
- prohibit travel into Wales from, or out of Wales to, areas which are subject to the highest levels of restrictions in England and Scotland, and also Northern Ireland.

The Regulations also amend various enforcement provisions (including for example, clarifying that the power of an enforcement officer to enter a private dwelling may only be exercised by a police constable) and provide that it is an offence to fail, without reasonable excuse, to take measures specified in a premises improvement notice issued under Schedule 3 to the principal Regulations.

Amendments to the Functions of Local Authorities Regulations

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 were made on 17 September 2020 and came into force the next day. They include a ‘sunset provision’ within them, such that those Regulations will expire at the end of 8 January 2021. The principal Regulations, to which those Regulations relate, will expire at the end of 19 February 2021. Therefore the first amendment being made in these Regulations is to align expiry dates between the two sets of Regulations, so that both will expire at the end of 19 February 2021.



Regulation 6 of the Functions of Local Authorities Regulations gives local authorities the power to issue directions (“events directions”) requiring an event to stop or not be held, or imposing restrictions or requirements on the holding of the event. They can do this only if certain conditions are met and having had regard to whether people will be gathered illegally at the event. Two minor amendments are being made to this regulation –

- to amend a cross reference; and
- to require local authorities, in deciding whether to issue an event direction, to also have regard to whether more than 15 people are in attendance (if it is indoors) or 30 people are in attendance (if it is outdoors).

Despite the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, these regulations clarify that penalty notices issued under those Regulations must be taken into account in determining the amount of a fixed penalty notice to be issued under regulation 19 of the functions of local authorities Regulations;

Regulation 46 of the principal Regulations permits local authorities to bring prosecutions under those Regulations themselves, but this is not currently provided for under the Functions of Local Authority Regulations. An amendment is therefore made to regulation 20 to now provide for this, so as to ensure there is consistency in prosecution powers for local authorities.

Procedure

Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

“The amendments contained in these Regulations continue to engage under the principal Regulations and the Functions of Local Authorities Regulations 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.”



2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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 1 December the Welsh Government’s intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.”

It has been well documented in the media that these Regulations have had a significant direct economic impact on businesses, particularly in the hospitality sector and the businesses that provide goods and services to that sector. The Committee note that the announcement for the policy and legal changes being brought about by these Regulations were made on 1st December, only four days before coming into force. Given that many of the affected businesses would have invested heavily at this time of year, for example, in perishable stock, what measures of financial support have the Welsh Government put in place to ameliorate the economic impact and what consideration was given to other policy alternatives?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

The Explanatory Note to these regulations contain errors. The Explanatory Note states :- “The amendments to the Functions of Local Authorities Regulations (a) provide for the Regulations to expire on 19 February 2020 instead of 8 January 2020, to align with the expiry date of the Principal Regulations.” The new sunset dates specified should be in 2021, not 2020. Both the Regulations and the Explanatory Memorandum specify the correct dates.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum explains that this is “due to the need to put them in place urgently to deal with a serious and imminent threat to public health.”. The Explanatory Memorandum goes on to state that “a summary integrated impact assessment has been prepared and will be published on the gov.wales website - <https://gov.wales/impact-assessments-coronavirus>. However, at the time of writing (9 December) none have been published. The Welsh Government are asked to confirm when such summaries are expected to be published.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is required to merits reporting points 2,3 and 4.



Committee Consideration

The Committee considered the instrument at its meeting on 14 December 2020 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee