

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

Vaughan Gething
Minister for Health and Social Services

12 May 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) which—

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, and;
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, 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 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. A number of provisions see an addition to the list of specified reasonable excuses, which people may rely upon to leave, or remain away from, the place where they are living, including the need for people with particular health conditions or disabilities to exercise more than once a day and to allow people to visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person.

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, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

These 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 amendments achieved through these Regulations include:

- Requiring cafés accessible by the public in hospitals, as well as canteens in schools, prisons and for use by the armed forces, to ensure all reasonable physical distancing measures are put in place.
- Requiring businesses that are providing facilities for “order and collect” services to take all reasonable measures to ensure a distance of 2 metres is maintained between persons on the premises where those facilities are provided (and between persons waiting to enter those premises). “Click and collect” facilities are already permitted to remain open, this amendment ensures that they are subject to the same requirements as any other establishment which is permitted to remain open under the regulations.
- Amending the requirement that a person must not leave the place where they live without a reasonable excuse to provide that a person must not leave nor remain away from the place where they live without such an excuse.
- Enabling currency exchanges, savings clubs and money transmission services to remain open so as to allow people to access money and to send money to other persons.

- Extending the definition of a vulnerable person to include other groups of people that could benefit from assistance and to whom providing supplies etc. would amount to a “reasonable excuse” for being away from a person’s place of residence.
- Extending the reasonable excuse of leaving the place where you live for the purposes of exercise to allow for exercise more than once a day when that is necessary because of a particular health condition or disability. For example, certain persons with autism may be recommended to exercise more than once a day as part of a set routine.
- Making it clear that visiting a cemetery or other burial ground or garden of remembrance to pay respects to a deceased person is a reasonable excuse for leaving the place where you live.

In addition, further technical amendments have been made to the drafting in relation to:

- Clarifying the description of ‘the person’s child’ in relation to the reasonable excuse of leaving the place where the person lives for the purposes of accessing childcare or educational facilities.
- Drafting improvements to the reasonable excuses listed in sub-paragraphs (a) and (l) of regulation 8(2) to resolve the tautological nature of the original drafting.
- Clarifying that it is a reasonable excuse to go to a bank or similar establishment to both withdraw and deposit money.
- Ensuring consistency in the reasons for which both Part 2 (cultural and leisure) and Part 3 (holiday accommodation) businesses can be asked to open premises; namely for any purpose at the request of either local authorities or the Welsh Ministers.
- Ensuring physical distancing measures are in place in businesses asked to open at the request of local authorities or the Welsh Ministers.
- Clarifying the powers of enforcement in regulation 10 of the principal Regulations, to ensure consistency as regards the test that an officer is to apply when deciding whether to use the enforcement power and clarifying the powers available in relation to the dispersal of public gatherings.
- The Welsh language text of the principal Regulations to ensure linguistic consistency.

The Welsh Ministers are required to keep the need for the restrictions under review every 21 days. As soon as the Welsh Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against,

control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction terminating it.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 26 March 2020 and will therefore expire on 26 September 2020.

It is critical to take all reasonable steps to limit 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 restrictions and requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

The restrictions form part of the UK response to coronavirus. Restrictions have also been put in place by regulations made by the Secretary of State in relation to businesses, public spaces and the movement of individuals in England.

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 amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment 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.