

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 24 August 2020	Committee Clerk
Meeting time: 10.00	0300 200 6362
	SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Informal pre-meeting (09:30–10:00)

- 1 Introduction, apologies, substitutions and declarations of interest
10:00

- 2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3
10:00–10:05 (Pages 1 – 2)
CLA(5)–24–20 – Paper 1 – Statutory instruments with clear reports
Affirmative Resolution Instruments
- 2.1 SL(5)593 – The National Health Service (Pharmaceutical Services) (Wales)
Regulations 2020

Made Affirmative Resolution Instruments
- 2.2 SL(5)597 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales)
(Amendment) (No. 5) Regulations 2020
(Pages 3 – 14)

CLA(5)–24–20 – Paper 2 – Regulations
CLA(5)–24–20 – Paper 3 – Explanatory Memorandum
CLA(5)–24–20 – Paper 4 – Letter from the First Minister, 14 August 2020



CLA(5)-24-20 – Paper 5 – Written statement

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

10:05–10:15

Negative Resolution Instruments

3.1 SL(5)589 – The Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020

(Pages 15 – 37)

CLA(5)-24-20 – Paper 6 – Report

CLA(5)-24-20 – Paper 7 – Regulations

CLA(5)-24-20 – Paper 8 – Explanatory Memorandum

CLA(5)-24-20 – Paper 9 – Letter from the Minister for Finance and Trefnydd, 27 July 2020

3.2 SL(5)590 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020

(Pages 38 – 54)

CLA(5)-24-20 – Paper 10 – Report

CLA(5)-24-20 – Paper 11 – Regulations

CLA(5)-24-20 – Paper 12 – Explanatory Memorandum

CLA(5)-24-20 – Paper 13 – Letter from the Minister for Finance and Trefnydd, 30 July 2020

CLA(5)-24-20 – Paper 14 – Written statement

3.3 SL(5)594 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020

(Pages 55 – 69)

CLA(5)-24-20 – Paper 15 – Report

CLA(5)-24-20 – Paper 16 – Regulations

CLA(5)-24-20 – Paper 17 – Explanatory Memorandum

CLA(5)-24-20 – Paper 18 – Letter from the Minister for Finance and Trefnydd, 6 August 2020

CLA(5)-24-20 – Paper 19 – Written statement

3.4 SL(5)598 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.5) Regulations 2020

(Pages 70 – 84)

CLA(5)–24–20 – Paper 20 – Report

CLA(5)–24–20 – Paper 21 – Regulations

CLA(5)–24–20 – Paper 22 – Explanatory Memorandum

CLA(5)–24–20 – Paper 23 – Letter from the Minister for Finance and Trefnydd, 14 August 2020

CLA(5)–24–20 – Paper 24 – Written statement

3.5 SL(5)592 – The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

(Pages 85 – 116)

CLA(5)–24–20 – Paper 25 – Report

CLA(5)–24–20 – Paper 26 – Regulations

CLA(5)–24–20 – Paper 27 – Explanatory Memorandum

3.6 SL(5)596 – The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020

(Pages 117 – 126)

CLA(5)–24–20 – Paper 28 – Report

CLA(5)–24–20 – Paper 29 – Regulations

CLA(5)–24–20 – Paper 30 – Explanatory Memorandum

Made Affirmative Resolution Instruments

3.7 SL(5)591 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.3) Regulations 2020

(Pages 127 – 143)

CLA(5)–24–20 – Paper 31 – Report

CLA(5)–24–20 – Paper 32 – Regulations

CLA(5)–24–20 – Paper 33 – Explanatory Memorandum

CLA(5)–24–20 – Paper 34 – Letter from the First Minister, 31 July 2020

CLA(5)–24–20 – Paper 35 – Written statement

- 3.8 SL(5)595 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020**
(Pages 144 – 170)
- CLA(5)–24–20 – Paper 36 – Report
CLA(5)–24–20 – Paper 37 – Regulations
CLA(5)–24–20 – Paper 38 – Explanatory Memorandum
CLA(5)–24–20 – Paper 39 – Letter from the First Minister, 7 August 2020
CLA(5)–24–20 – Paper 40 – Written statement
- 4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**
10:15–10:20
- 4.1 SL(5)573 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020**
(Pages 171 – 178)
- CLA(5)–24–20 – Paper 41 – Report
CLA(5)–24–20 – Paper 42 – Welsh Government response
- 4.2 SL(5)579 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**
(Pages 179 – 191)
- CLA(5)–24–20 – Paper 43 – Report
CLA(5)–24–20 – Paper 44 – Welsh Government response
- 4.3 SL(5)584 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020**
(Pages 192 – 194)
- CLA(5)–24–20 – Paper 45 – Report
CLA(5)–24–20 – Paper 46 – Welsh Government response
- 4.4 SL(5)585 – The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020**
(Pages 195 – 199)
- CLA(5)–24–20 – Paper 47 – Report

CLA(5)–24–20 – Paper 48 – Welsh Government response

4.5 SL(5)587 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 200 – 202)

CLA(5)–24–20 – Paper 49 – Report

CLA(5)–24–20 – Paper 50 – Welsh Government response

5 Welsh Government report: The legislative response by the Welsh Ministers to the coronavirus pandemic

10:20–10:25

(Pages 203 – 224)

CLA(5)–24–20 – Paper 51 – Welsh Government report

CLA(5)–24–20 – Paper 52 – Written statement, 19 August 2020

6 Papers to note

10:25–10:30

6.1 Letter from the Minister for Environment, Energy and Rural Affairs: Basic Payment Scheme and rural support legislative framework from 2021

(Pages 225 – 226)

CLA(5)–24–20 – Paper 53 – Letter from the Minister for Environment, Energy and Rural Affairs, 6 August 2020

6.2 Letter from the Minister for Finance and Trefnydd: The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020

(Page 227)

CLA(5)–24–20 – Paper 54 – Letter from the Minister for Finance and Trefnydd, 11 August 2020

6.3 Letter from the Counsel General: Welsh Government analysis of the UK Government’s White Paper on the UK Internal Market

(Pages 228 – 238)

CLA(5)–24–20 – Paper 55 – Letter from the Counsel General, 14 August 2020

6.4 Letter from the Minister for International Relations and the Welsh Language: Ministerial Forum for Trade

(Pages 239 – 240)

CLA(5)-24-20 – Paper 56 – Letter from the Minister for International Relations and the Welsh Language, 14 August 2020

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

10:30

8 Consideration of issues arising

10:30–10:45

Date of the next meeting – 14 September 2020

Statutory Instruments with Clear Reports Agenda Item 2

24 August 2020

SL(5)593 – The National Health Service (Pharmaceutical Services) (Wales) Regulations 2020

Procedure: Affirmative

These Regulations revoke and replace the National Health Service (Pharmaceutical Services) (Wales) Regulations 2013 as the Regulations which, in Wales, govern the provision of pharmaceutical services as part of the National Health Service.

The 2020 Regulations introduce the requirement for health boards to conduct pharmaceutical needs assessments and, as a consequence, also change the criteria for making applications by those persons wishing to provide NHS pharmaceutical services in Wales. A pharmaceutical needs assessment is a statement of the assessment a health board must make, at least every 5 years, of the needs in its area for pharmaceutical services provided as part of the NHS in Wales. The intended effect of introducing pharmaceutical needs assessments is to improve the planning and delivery of pharmaceutical services by ensuring the health boards robustly consider the pharmaceutical needs of their populations and align services more closely with them.

Parent Act: National Health Service (Wales) Act 2006

Date Made:

Date Laid: 06 August 2020

Coming into force date: Coming into force in accordance with regulation 1(2) and (3)



SL(5)597 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020

Procedure: Provisional Affirmative

These Regulations make further amendments to the coronavirus restrictions in Wales.

These Regulations:

- specify that collecting contact information from people for the purpose of informing those who may have been exposed to coronavirus is a “reasonable measure” that may need to be taken by workplaces, business premises, places of worship etc. to minimise risk of exposure to coronavirus;
- clarify that the maximum penalty for breach of the requirement to close premises after a premises closure notice has been issued is a fine (and not imprisonment).

Parent Act: Public Health (Control of Disease) Act 1984

Date Made: 14 August 2020

Date Laid: 14 August 2020

Coming into force date: 17 August 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Agenda Item 2.2

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 867 (W. 189)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”). The amendments—

- (a) specify that collecting contact information from people for the purpose of informing those who may have been exposed to coronavirus is a “reasonable measure” that may need to be taken, depending on the circumstances, under regulation 12 of the principal Regulations;
- (b) clarifying that the maximum penalty for breach of the requirement to close premises

after a premises closure notice has been issued, under paragraph 3(1) of Schedule 5 to the principal Regulations, is a fine (and not imprisonment).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 867 (W. 189)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 5) Regulations
2020**

Made *at 2.50 p.m. on 14 August 2020*

Laid *before* *Senedd*
Cymru *at 5.50 p.m. on 14 August 2020*

Coming into force *17 August 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020 and they come into force on 17 August 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 12—

(a) in the words at the beginning of paragraph (2), after “premises,” insert “or the spread of coronavirus by those who have been at the premises”;

(b) at the end of paragraph (2A), insert—

“(c) collecting contact information from each person at the premises or, in relation to persons from the same household, from one of them, and retaining it for 21 days for the purpose of providing it to the Welsh Ministers or to a public health officer upon either’s request.”;

(c) after paragraph (4), insert—

“(5) In this regulation—

(a) “contact information”, in relation to a person at the premises, means the person’s name and information sufficient to enable the person to be contacted, to inform them that they may have been exposed to coronavirus at the premises (including a telephone number and the date and time at which the person was at the premises);

(b) “public health officer” has the same meaning as in paragraph 3(2)(c) of

(1) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/843 (W. 186)).

Schedule 21 to the Coronavirus Act 2020(1).”.

- (3) In regulation 20—
- (a) omit paragraph (3A);
 - (b) in paragraph (4), for “Any other” substitute “An”.
- (4) In Schedule 5, in paragraph 5(6), for “compensate the person responsible for the premises” substitute “pay compensation”.

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Mark Drakeford

First Minister, one of the Welsh Ministers
At 2.50 p.m. on 14 August 2020

(1) 2020 c. 7.

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) 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. 5) Regulations 2020.

Mark Drakeford
First Minister

14 August 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. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

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.

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 the 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 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 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).

These Regulations amend regulation 12 of the principal Regulations to specify that collecting contact information from any person on premises to which the regulation relates is a “reasonable measure” that may be required to be taken. Contact information means information sufficient to enable the person to be contacted if they may have been exposed to coronavirus on the premises. Guidance will be issued under regulation 13 to supplement this and to specify those high risk premises where the Government considers that contact information must be obtained and retained.

The Regulations also widen the purpose for which reasonable measures must be taken, to include minimising the spread of coronavirus by those who have been at premises. Taken together with guidance, the new reasonable measure and purpose will form a lawful basis for the processing of data by those responsible for premises.

Section 45F(5)(a) of the Public Health (Control of Disease) Act 1984 makes clear that health protection regulations – such as the principal Regulations – may not create an offence punishable with imprisonment. The amendments to the principal Regulations introduced by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020¹ inadvertently included custodial sentences, in addition to fines, as a consequence of breaching of the requirements imposed by paragraph 3(1) of new Schedule 5 to the principal Regulations. The Regulations being made today remedy this.

The Regulations come into force at the beginning of Monday, 17 August 2020.

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 easing and adapting the restrictions by means of the amendments made to the principal Regulations are 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, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public

¹ Made by the Welsh Ministers on 7 August 2020

consultation in relation to these Regulations. HMCTS and the Judicial Office were notified of the error these Regulations correct on 10 August 2020 (the day the new provisions came into force).

The Welsh Government has consulted with the Information Commissioner on the draft proposals for data collection in accordance with Article 36 of the General Data Protection Regulation and their comments were considered in the drafting of regulation 2 of the Regulations. The Welsh Ministers are satisfied that these Regulations are compliant with the GDPR

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, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 31 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 7 August.

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.

A summary equalities impact assessment is being finalised for publication and will be available at: <https://gov.wales/equality-impact-assessments-coronavirus>.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

14 August 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 5) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 17 August 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 11 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the recall Plenary on Wednesday 26 August.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Interim review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

DATE 14 August 2020

BY Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimize the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions and their proportionality every 21 days. The last full review – the sixth – took place on 30 July and set out a phased approach for the next three-week cycle.

The scientific and medical advice shows that, overall, levels of coronavirus transmission in Wales are low. However, the situation in the rest of the UK, notably parts of England, and further afield is less encouraging.

As we move into the green phase in our traffic light system, with more and more premises, workplaces and venues now open, we need to make sure that people and businesses comply with the Regulations and adhere to guidance on operating in the ways we have agreed. One important element of the guidance for hospitality businesses and other higher risk premises has been the collection of contact details of customers and visitors. This is important to support contact tracers to reach people in the same venue as somebody who has contracted COVID-19 and minimize the risk of the infection spreading.

Many businesses and premises are collecting this information and we thank them for their efforts to keep Wales safe. Others unfortunately are not acting as responsibly. Nor do individuals always understand the importance of providing that information. Therefore, this week we will be clearer in the regulations that collection of contact

details for the purposes of contact tracing is a reasonable measure that we expect these higher-risk premises to take. Enforcement officers in local authorities will deal with any non-compliance using the strengthened enforcement measures announced last week.

I have also considered the latest evidence on face coverings. When it is necessary, we will require the use of face coverings in more settings as part of a planned response to any incident or outbreak. This change will be part of a package of measures we might introduce in an area and will be lifted when the situation improves and it is no longer proportionate on public health grounds. The position on supermarkets is unchanged and we positively recommend wearing face coverings in crowded settings where social distancing is difficult.

This week we have explored whether we can make changes to the rules about people meeting indoors. Given the increases in cases across the UK linked to this activity, and the resurgence of the virus internationally this is not something we are able to take forward this week.

However, I appreciate the pressures and difficulties that people are experiencing and from 22 August, subject to conditions remaining favourable, we will make some cautious changes. We intend to allow extended households to include up to four households as part of a single exclusive extended household. This will help address the difficult choices that some families have had to make, such as only having one set of grandparents in an extended household. We also intend to allow indoor meals for up to 30 people following a wedding, civil partnership, or funeral. This easement would enable up to 30 people to come together to mark these important life events.

Coronavirus has not gone away – we all have a shared and ongoing responsibility to keep Wales safe.

SL(5)589 – The Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020

Agenda Item 3.1

Background and Purpose

These Regulations make provision with respect to certain traffic orders made and notices given in Wales, under the Road Traffic Regulation Act 1984. The Explanatory Note states that they are being introduced as an emergency measure in response to the effects of coronavirus.

They amend the procedure for making traffic orders and giving notices by providing an alternative means of publicising orders in circumstances where it is not reasonably practicable to follow the current publicity requirements as a result of coronavirus. They also simplify the procedure for making temporary traffic orders that are made for purposes connected to coronavirus.

The Regulations amend—

- the Road Traffic (Temporary Restrictions) Procedure Regulations 1992.
- the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.
- the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument:-

Standing Order 21.2 (v) - that for any particular reason its form or meaning needs further explanation; and

Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 2 amends the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 ("the 1992 Regulations") which set out the procedure for the making of temporary traffic orders and the giving of notices. It inserts a new Part 7 into the 1992 Regulations (inserting new regulations 22 to 27). The new regulation 23 relates to the publicity requirements for traffic regulation orders and notices. It enables alternative arrangements to be used for publicising a notice relating to a traffic order, where it is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement.

New regulations 23 (3) (b) and 26 (1) (c) refer to requirements contained in regulation 13(4) of the 1992 Regulations (Procedure for issue of temporary notice by concessionaire) and purport to apply the alternative arrangements to temporary notices issued by concessionaires.

Regulation 2 of these regulations does not however apply new Part 7 to regulation 13 of the 1992 Regulations.



It does not appear that it is the intention of Welsh Government to apply new Part 7 to notices issued under regulation 13 of the 1992 regulations, as new regulation 23 refers only to “a traffic authority” rather than “a traffic authority or a concessionaire”.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 27 July 2020 that:

Due to the closure of public buildings and some newspapers moving to online publication only, which has been necessary to slow the spread of COVID-19, it is not currently possible to meet the legislative requirements to bring a road traffic regulation order into force. These Regulations amend the procedure for making traffic orders and giving notices by providing alternative means of publicising orders in circumstances where it is not reasonably practicable to follow the current publicity requirements as a result of COVID-19.

Not bringing the Regulations into force straight away will cause an increasing backlog of traffic orders waiting to be made, which would have impacts for road safety across the road network in Wales. It would also delay the use of new emergency procedures for temporary traffic orders necessary for purposes connected with coronavirus. Not adhering to the 21- day convention is thought necessary and justifiable in this case.

Given the easing of some Covid-19 restrictions, together with the fact that many public buildings have been closed since March 2020, it is unclear why the Regulations have had to come into force so urgently as to breach the 21-day rule.

Implications arising from exiting the European Union

None.

Government Response

Technical Scrutiny point : It is noted that new regulations 23 (3) (b) and 26 (1) (c) refer to requirements contained in regulation 13(4) of the 1992 Regulations (Procedure for issue of temporary notice by concessionaire) and purport to apply the alternative arrangements to temporary notices issued by concessionaires. It is accepted that regulation 2 of these regulations does not however apply new Part 7 to regulation 13 of the 1992 Regulations.

It is confirmed that it was not the intention of the Welsh Government to apply new Part 7 to notices issued under regulation 13 of the 1992 regulations.



In the particular circumstances of this instrument, it is not the intention of the Welsh Government to make amending regulations. In this regard, the Welsh Government is mindful that the references to regulation 13(4) of the 1992 regulations have no legal or practical effect and that there are no longer any concessionaires in Wales. The view is therefore taken that no harm will be caused by the Welsh Government not correcting the provisions in question. In addition, the Welsh Government notes that the 2020 regulations are temporary regulations and that the opportunity can be taken to make the necessary amendments if the current temporary regulations are extended by further regulations in 2021.

Merit Scrutiny point : The rationale for not adhering to the 21-day convention is as set out in the letter of 27 July 2020 referred to in the Committee's report. It is acknowledged that some Covid-19 restrictions had been eased by the time the regulations were made and that many public buildings had been closed since March 2020. Notwithstanding that, the practical difficulties in complying with the 1992 regulations continued to be evident notwithstanding the relaxation of some restrictions. The complexity of the amendments and the need for consultation meant that the regulations could not be made as quickly as the Welsh Government would have liked. By the time the Welsh Government was able to make the regulations, there was a large and increasing backlog of traffic orders needing to be made by traffic authorities in Wales. The view was therefore taken that not adhering to the 21-day convention was necessary and justifiable in this case.

Legal Advisers
Legislation, Justice and Constitution Committee
06 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 802 (W. 175)

ROAD TRAFFIC, WALES

**The Traffic Orders Procedure
(Amendment) (Wales)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to certain traffic orders made and notices given in Wales, under the Road Traffic Regulation Act 1984. They are being introduced as an emergency measure in response to the effects of coronavirus.

They amend the procedure for making traffic orders and giving notices by providing an alternative means of publicising orders in circumstances where it is not reasonably practicable to follow the current publicity requirements as a result of coronavirus. They also simplify the procedure for making temporary traffic orders that are made for purposes connected to coronavirus.

These Regulations amend—

- (a) the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (“the 1992 Regulations”);
- (b) the Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996 (“the 1996 Regulations”); and
- (c) the Secretary of State’s Traffic Orders (Procedure) (England and Wales) Regulations 1990 (“the 1990 Regulations”).

Regulation 2 amends the 1992 Regulations, which set out procedures in connection with the making of temporary traffic orders and the giving of notices by inserting a new Part 7 into those Regulations (inserting new regulations 22 to 27). The new regulation 23 relates to the publicity requirements for traffic regulation orders and notices. The amendments provide a traffic authority with the option of using alternative arrangements for publicising a notice relating to a traffic order, where it is not reasonably

practicable to publish in a newspaper circulating in the area, or to post notices on site, for reasons connected to the effects of coronavirus, including restrictions on movement.

The new regulation 24 relates to temporary traffic orders which are made for purposes connected to coronavirus. A simplified procedure applies to the making of orders that fall within this purpose.

Regulation 3 amends the 1996 Regulations, which set out procedures for making permanent and experimental traffic orders, by inserting a new Part 7 into those Regulations (inserting new regulations 30 to 33). The amendments provide an order making authority with the option of using alternative arrangements for publicising a notice relating to a traffic order, where it is not reasonably practicable to publish in a newspaper circulating in the area for reasons connected to the effects of coronavirus, including restrictions on movement. They also permit a traffic authority to use alternative means to make documents available to the public, where it is not reasonably practicable to make documents available for inspection at a specific address, for reasons connected to the effects of coronavirus.

Regulation 4 amends the 1990 Regulations, which set out procedures for certain traffic orders made by the Welsh Ministers in relation to trunk roads and countryside roads, and orders under the Welsh Ministers' reserve powers in Schedule 9 to the 1984 Act. These amendments are to the same effect as the amendments made to the 1996 Regulations.

The amendments made by these Regulations will cease to have effect at the end of 31 July 2021. These Regulations provide for transitional provisions to preserve continuity following the expiry of the amendments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A regulatory impact assessment has not been prepared for this instrument as the Regulations need to be put in place quickly to deal with an emergency associated with the effects of coronavirus.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 802 (W. 175)

ROAD TRAFFIC, WALES

**The Traffic Orders Procedure
(Amendment) (Wales)
(Coronavirus) Regulations 2020**

<i>Made</i>	<i>23 July 2020</i>
<i>Laid before Senedd Cymru</i>	<i>27 July 2020</i>
<i>Coming into force</i>	<i>31 July 2020</i>

The Welsh Ministers, in exercise of the powers conferred on them by sections 16(2) and (2A), 35C(3), (4) and (4A), 46A(3), (4) and (4A) and 124(1) of, and Part III of Schedule 9 to, the Road Traffic Regulation Act 1984(1) and after consultation with such representative organisations as were thought fit in accordance with section 134(10) of that Act, make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020 and they come into force on 31 July 2020.

(1) 1984 c. 27. Section 16(2) and (2A) was substituted by the Road Traffic (Temporary Restrictions) Act 1991 (c. 26), section 1(2); sections 35C and 46A were inserted by the Road Traffic Act 1991 (c. 40), sections 41 and 42; section 134(10) was inserted by the Wales Act 2017 (c. 4), section 69(1), Schedule 6, Part 3, paragraphs 43(1) and (3). In Schedule 9, paragraph 21 was amended by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 80 and Schedule 9; and paragraph 25 was amended by the New Roads and Street Works Act 1991, Schedule 8, paragraph 80. By virtue of S.I. 1999/672, and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), these powers are now exercisable by the Welsh Ministers in relation to Wales. The references to “national authority” in section 16(2) and (2A), and in Part III of Schedule 9 were inserted by the Scotland Act 2016, (c. 11) and the definition of “national authority” in section 142(1) was amended by the Wales Act 2017, Part 2, section 26(8) so that “national authority” in relation to Wales, means the Welsh Ministers.

(2) The Regulations apply in relation to Wales only.

Amendments to the Road Traffic (Temporary Restrictions) Procedure Regulations 1992

2.—(1) The Road Traffic (Temporary Restrictions) Procedure Regulations 1992⁽¹⁾ are amended as follows.

(2) In regulation 3 (procedure for making a temporary order), in paragraph (1) after “this Part” insert “and Part 7”.

(3) In regulation 4 (footpaths etc.), in paragraph (3) after “shall” insert “, subject to Part 7,”.

(4) In regulation 8 (revocation orders), in paragraph (3) after “shall” insert “, subject to Part 7,”.

(5) In regulation 9 (continuation of order by direction of the Secretary of State), in paragraph (2) after “shall” insert “, subject to Part 7,”.

(6) In regulation 10 (procedure for issue of temporary notice by a traffic authority), in paragraph (4) after “shall” insert “, subject to Part 7,”.

(7) In regulation 11 (footpaths etc.), after “shall” insert “, subject to Part 7,”.

(8) After Part VI insert—

“PART 7

**TEMPORARY PROVISIONS
APPLICABLE DURING THE
CORONAVIRUS PANDEMIC
(WALES)**

Interpretation

22. In this Part “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Alternative publication and inspection requirements

23.—(1) Subject to regulation 24, paragraph (2) applies where—

- (a) a traffic authority is required to publish a notice in one or more newspapers in accordance with regulation 3(2) or (5), 8(3) or 9(2); and
- (b) the traffic authority considers that it would not be reasonably practicable to

(1) S.I. 1992/1215, amended by S.I. 2006/1177. There are other amendments which are not relevant.

do so for reasons connected to the effects of coronavirus, including restrictions on movement.

(2) Where this paragraph applies, a notice under those regulations must be published using such alternative arrangements as the traffic authority considers appropriate for the purpose of informing persons likely to be affected by its provisions.

(3) Paragraph (4) applies where, in relation to a notice—

(a) a traffic authority is required by regulation 3(7) or 4(3) to comply with the requirements of Part I of the Schedule (display of notice of order); or

(b) a traffic authority is required by regulation 10(4), 11 or 13(4) to comply with the requirements of Part II of the Schedule (display of notice issued under section 14(2) of the 1984 Act),

and the traffic authority considers that it is not reasonably practicable to do so for reasons connected to the effects of coronavirus, including restrictions on movement.

(4) Where this paragraph applies, the traffic authority must use such alternative publicity arrangements as it considers appropriate for the purpose of informing persons likely to be affected by the provisions of the notice.

(5) Without prejudice to the generality of paragraphs (2) and (4), such alternative publicity arrangements may include—

(a) online publication, including websites, online newspapers, email communication or social media;

(b) leaflet distribution;

(c) letter delivery, by post or otherwise.

Procedure for temporary orders made for purposes connected to coronavirus

24.—(1) Paragraph (2) applies where a traffic authority is satisfied in accordance with section 14(1) of the 1984 Act that an order under that section should be made for purposes connected to coronavirus.

(2) Where this paragraph applies, regulation 3 has effect in relation to the order as if it read—

“Procedure for making a temporary order

3.—(1) Subject to the following provisions of this Part, this regulation makes provision for the procedure to be followed in connection with the making of an order under section 14 of the 1984 Act for purposes connected to coronavirus.

(2) Not less than 7 days before making an order, the traffic authority must publish notice of its intention to make the order using such arrangements as the traffic authority considers appropriate for the purpose of informing persons likely to be affected by its provisions.

(3) The notice mentioned in paragraph (2) must state—

- (a) the reason or purpose mentioned in section 14(1) of the 1984 Act for making the order;
- (b) the effect of the order and, where applicable, the alternative route or routes available for traffic;
- (c) the date on which the order would come into force and its maximum duration; and
- (d) that it is also necessary to make the order for purposes connected to coronavirus and what those additional purposes are.

(4) The traffic authority must, on or before the day on which the order is made, give notice of the order—

- (a) to the chief officer of police of any police area in which any road to which the order relates is situated;
- (b) to the chief officer of the fire authority for the area in which any road to which the order relates is situated; and
- (c) where the order would be likely to have direct effect on traffic, or any class of traffic, on any road for the maintenance of which another traffic authority is responsible, to that other traffic authority.

(5) Subject to paragraph (8), within 14 days after making the order the traffic authority must publish a notice of the

making of the order in one or more newspapers, whether in print or online, circulating in the area in which any road to which the order relates is situated.

(6) The notice mentioned in paragraph (5) must state—

- (a) the reason or purpose mentioned in section 14(1) of the 1984 Act for the making of the order;
- (b) the effect of the order and, where applicable the alternative route or routes available for traffic; and
- (c) the date on which the order will come into force and its maximum duration.

(7) If and to the extent that—

- (a) it appears to the traffic authority that it would be desirable in the interests of giving adequate publicity to the order; and
- (b) it is reasonably practicable to do so,

the authority must comply with the requirements of Part I of the Schedule (display of notice of order) in relation to each length of road to which the order relates.

(8) Where the traffic authority considers that it is not reasonably practicable to comply with paragraph (5) for reasons connected to the effects of coronavirus, including restrictions on movement, the traffic authority must publish a notice of the making of the order using such alternative arrangements as the traffic authority considers appropriate for the purpose of informing persons likely to be affected by its provisions.

(9) Without prejudice to the generality of paragraphs (2) and (8), such publishing arrangements may include—

- (a) in the case of paragraph (2), in one or more newspapers circulating in the area in which any road to which the order relates is situated;
- (b) online publication, including websites, online newspapers, email communication or social media;
- (c) leaflet distribution;

(d) letter delivery, by post or otherwise.

(10) When the order has been made, the traffic authority must comply with the requirements of Part III of the Schedule (traffic signs).”

(3) Where paragraph (2) applies and the order is one to which—

- (a) regulation 4 (footpaths, bridleways, cycle tracks and byways open to all traffic);
- (b) regulation 6 (orders to which no time limit applies); or
- (c) regulation 7 (continuation of restriction or prohibition imposed by notice),
applies, the references in regulation 4, 6 or 7, as applicable, to regulation 3 are to be read as references to regulation 3 as substituted by paragraph (2).

Expiry

25. Regulations 22 to 24 cease to have effect at the end of 31 July 2021.

Transitional provisions

26.—(1) Paragraph (2) applies where a notice is required to be—

- (a) published under regulation 3(2) or (5), 8(3) or 9(2);
- (b) displayed in accordance with the requirements of Part I of the Schedule, under regulation 3(7) or 4(3); or
- (c) displayed in accordance with the requirements of Part II of the Schedule under regulation 10(4), 11 or 13(4),

and the notice has been published or displayed by virtue of regulation 23 on or before 31 July 2021.

(2) Where this paragraph applies, the notice is to be treated after that date as having been published or displayed under those regulations as if they had not been modified by regulation 23.

27.—(1) Paragraph (2) applies where a notice is required to be—

- (a) published under regulation 3(2) or (5), as substituted by regulation 18; or

(b) displayed in accordance with the requirements of Part I of the Schedule under regulation 3(7), as substituted by regulation 24,

and a notice has been published or displayed by virtue of regulation 24 on or before 31 July 2021.

(2) Where this paragraph applies the notice is to be treated after that date as having been published or displayed under regulation 3 as if it had not been substituted by regulation 24.”

Amendments to the Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996

3.—(1) The Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996(1) are amended as follows.

(2) In regulation 4 (application of Regulations), in paragraph (1)—

(a) for “and IV” substitute “, IV and 7”, and

(b) for “Part V” substitute “Part V and Part 7”.

(3) In regulations 5 and 15 (preliminary) for “Part IV” substitute “Parts IV and 7”.

(4) In regulation 21 (consolidation and minor orders), in paragraph (4) after “shall” insert “, subject to Part 7,”.

(5) In regulation 22 (experimental orders), in paragraph (3) after “shall” insert “, subject to Part 7,”.

(6) In regulation 23 (orders giving permanent effect to experimental orders), in paragraph (3)(b) after “available for inspection” insert “, subject to Part 7,”.

(7) In regulation 25 (notices of variation), in paragraph (3) after “shall” insert “, subject to Part 7,”.

(8) After Part VI insert—

“PART 7

TEMPORARY PROVISIONS APPLICABLE DURING THE CORONAVIRUS PANDEMIC (WALES)

Interpretation

30. In this Part “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(1) S.I. 1996/2489. There are amendments which are not relevant.

Alternative publication and inspection requirements

31.—(1) Paragraph (2) applies where—

- (a) an order making authority is required to publish a notice in a newspaper in accordance with regulation 7(1)(a), 10(3)(a), 17(2)(a), 21(4)(a) or 25(3); and
- (b) the authority considers that it would not be reasonably practicable to do so for reasons connected to the effects of coronavirus, including restrictions on movement.

(2) Where this paragraph applies, a notice under those regulations must be published using such alternative arrangements as the authority considers appropriate for the purpose of informing persons likely to be affected by its provisions.

(3) Without prejudice to the generality of paragraph (2), such alternative publishing arrangements may include—

- (a) online publication, including websites, online newspapers, email communication or social media;
- (b) leaflet distribution;
- (c) letter delivery, by post or otherwise.

(4) Paragraph (5) applies where—

- (a) an order making authority is required by regulation 7(3), 21(4)(b), 22(3) or 23(3)(b) to comply with the requirements of Schedule 2 as to the making of deposited documents available for public inspection; and
- (b) the authority considers that it would not be reasonably practicable to comply with paragraph 1 of that Schedule (documents specified in paragraph 2 to be available for inspection at various locations) for reasons connected to the effects of coronavirus, including restrictions on movement.

(5) Where this paragraph applies, the order making authority must make appropriate alternative arrangements for making the documents specified in paragraph 2 of Schedule 2 and, as the case may be, documents specified in regulation 23(3)(c) and (e) available for public inspection.

Expiry

32. Regulations 30 and 31 cease to have effect at the end of 31 July 2021.

Transitional provisions

33.—(1) Paragraph (2) applies where—

- (a) a notice is required to be published under regulation 7(1)(a), 10(3)(a), (17)(2)(a), 21(4)(a) or 25(3); or
- (b) documents are required to be made available for inspection in compliance with the requirements of Schedule 2 under regulation 7(3), 21(4)(b), 22(3) or 23(3)(b),

and the notice has been published or the documents made available for inspection by virtue of regulation 31 on or before 31 July 2021.

(2) Where this paragraph applies the notice and documents are to be treated after that date as having been published, or made available for inspection, under those regulations as if they had not been modified by regulation 31.”

Amendments to the Secretary of State’s Traffic Orders (Procedure) (England and Wales) Regulations 1990

4.—(1) The Secretary of State’s Traffic Orders (Procedure) (England and Wales) Regulations 1990⁽¹⁾ are amended as follows.

(2) In regulations 4 and 12 (preliminary), after “particular orders” insert “and Part 7”.

(3) In regulation 19 (special provisions for orders giving permanent effect to experimental orders), in paragraph (3)(c) after “available for inspection” insert “, subject to Part 7.”

(4) After Part VI insert—

(1) S.I. 1990/1656. There are amendments which are not relevant.

“PART 7
TEMPORARY PROVISIONS
APPLICABLE DURING THE
CORONAVIRUS PANDEMIC
(WALES)

Interpretation

30. In this Part “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Alternative publication and inspection requirements

31.—(1) Paragraph (2) applies where—

- (a) the Welsh Ministers are required to publish a notice in a local newspaper in accordance with regulation 6(1)(a), 8(2)(a) or 14(1)(c); and
- (b) the Welsh Ministers consider that it would not be reasonably practicable to do so for reasons connected to the effects of coronavirus, including restrictions on movement.

(2) Where this paragraph applies, a notice under those regulations must be published using such alternative arrangements as the Welsh Ministers consider appropriate for the purpose of informing persons likely to be affected by its provisions.

(3) Without prejudice to the generality of paragraph (2), such alternative publishing arrangements may include—

- (a) online publication, including websites, online newspapers, email communication, or social media;
- (b) leaflet distribution;
- (c) letter delivery, by post or otherwise.

(4) Where a notice is published in accordance with paragraph (2), regulations 13 and 18, paragraph 3 of Part II of Schedule 2 and paragraph 3 of Schedule 3 have effect, in so far as they apply to the notice, as if “in a local newspaper” or, as the case may be, “in the local newspaper” were substituted with “in accordance with regulation 14(1)(c)”.

(5) Paragraph (6) applies—

- (a) where the Welsh Ministers are—
 - (i) required by regulation 6(1)(d) or 8(2)(e) to comply with the relevant requirements of Schedule 2 as to

the notices to be displayed in each road to which an order relates; or

(ii) required by regulation 6(1)(e), 8(2)(f), 14(1)(e) or 19(3)(c) to comply with the relevant requirements of Schedule 3 as to the availability of documents for inspection; and

(b) the Welsh Ministers consider that it would not be reasonably practicable to comply with paragraphs 1 or 2 of Part II of Schedule 2 or, as the case may be, paragraph 1 of Schedule 3, for reasons connected to the effects of coronavirus including restrictions on movement.

(6) Where this paragraph applies, the Welsh Ministers must make appropriate alternative arrangements for—

(a) displaying the required notices;

(b) making the documents specified in paragraph 1 of Schedule 3 and, as the case may be, documents specified in regulation 19(3)(b) and (d) available for public inspection.

Expiry

32. Regulations 30 and 31 cease to have effect at the end of 31 July 2021.

Transitional provisions

33.—(1) Paragraph (2) applies where a notice is required to be—

(a) published under regulation 6(1)(a), 8(2)(a) or 14(1)(c); or

(b) displayed in accordance with the requirements of Schedule 2 under regulation 6(1)(d) or 8(2)(e),

and the notice has been published or displayed by virtue of regulation 31 on or before 31 July 2021.

(2) Where this paragraph applies, the notice is to be treated after that date as having been published or displayed under those regulations as if they had not been modified by regulation 31.

34.—(1) Paragraph (2) applies where documents—

(a) are required to be available for inspection in compliance with the requirements of Schedule 3 under

regulation 6(1)(e), 8(2)(f), 14(1)(e) or 19(3)(c); and

(b) have been made so available by virtue of regulation 31 on or before 31 July 2021.

(2) Where this paragraph applies the documents are to be treated after that date as having been made available for inspection under those regulations as if they had not been modified by regulation 31.”

Ken Skates

Minister for Economy, Transport and North Wales,
one of the Welsh Ministers

23 July 2020

Explanatory Memorandum to the Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Economic Infrastructure 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 Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020**.

Ken Skates
Minister for Economy, Transport & North Wales

27 July 2020

1. Description

These Regulations make provision with respect to certain traffic orders made and notices given in Wales, under the Road Traffic Regulation Act 1984. They are being introduced as an emergency response to the effects of coronavirus.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

The Regulations are required to come into force as soon as possible, so adjustments to traffic order procedures can mitigate the effects of COVID-19.

Not bringing the Regulations into force straight away will cause an increasing backlog of traffic orders waiting to be made, which would have impacts for road safety across the road network in Wales. It would also delay the use of new emergency procedures for temporary traffic orders necessary for purposes connected with coronavirus. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative Background

The powers enabling this instrument to be made are under sections 16(2) and (2A), 35C(3), (4) and (4A), 46A(3), (4) and (4A) and 124(1) of, and Part III of Schedule 9 to, the Road Traffic Regulation Act 1984.

This instrument is to be made following the negative procedure.

4. Purpose and intended effect of the legislation

These Regulations amend the procedure for making traffic orders and giving notices by providing an alternative means of publicising orders in circumstances where it is not reasonably practicable to follow the current publicity requirements as a result of coronavirus. They also simplify the procedure for making temporary traffic orders that are made for purposes connected to coronavirus.

5. Consultation

In accordance with section 134(10) of the Road Traffic Regulation Act 1984 the views of representative organisations were sought between 05 June and 17 June 2020 (12 day period).

The list of consultees and summary of any responses is attached at Annex A.

7. REGULATORY IMPACT ASSESSMENT

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A regulatory impact assessment has not been prepared for this instrument as the Regulations need to be put in place quickly to deal with an emergency associated with the effects of coronavirus.

ANNEX A

SCHEDULE OF CONSULTATION

Organisation	Response
All Wales Local Authorities	Cardiff City Council raised a query in relation to 'café pavement' parking however there is no power for the Welsh Ministers to amend the notice provisions for 'café pavement' licences either under the Highways Act 1980 or the Public Health (Control of Diseases) Act 1984.
All Police Departments in Wales	No comment
All Fire & Rescue Departments in Wales	No comment
Welsh Ambulance Services NHS Trust	No comment
Road Haulage Association Ltd.	No comment
Freight Transport Association	No comment
Trafficmaster Travel	No comment
South Wales Trunk Road Agent Manager and North and Mid Wales Trunk Road Agent Manager	No comment
Ministry of Justice	No comment
HERE	No comment



Elin Jones MS
Llywydd
Senedd Cymru
Bae Caerdydd
Caerdydd
CF99 1SN

27 July 2020

Dear Elin,

**The Traffic Orders Procedure (Coronavirus) (Amendment) (Wales) Regulations 2020
("the Order")**

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this statutory instrument comes into force less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information.

Due to the closure of public buildings and some newspapers moving to online publication only, which has been necessary to slow the spread of COVID-19, it is not currently possible to meet the legislative requirements to bring a road traffic regulation order into force. These Regulations amend the procedure for making traffic orders and giving notices by providing alternative means of publicising orders in circumstances where it is not reasonably practicable to follow the current publicity requirements as a result of COVID-19.

These Regulations amend—

- (i) the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 ("the 1992 Regulations");
- (ii) the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the 1996 Regulations"); and
- (iii) the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990 ("the 1990 Regulations").

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Regulations are required to come into force as soon as possible to mitigate the effects of COVID-19 restrictions.

Not bringing the Regulations into force straight away will cause an increasing backlog of traffic orders waiting to be made, which would have impacts for road safety across the road network in Wales. It would also delay the use of new emergency procedures for temporary traffic orders necessary for purposes connected with coronavirus. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

In accordance with section 134(10) of the Road Traffic Regulation Act 1984 the views of representative organisations were sought between 05 June and 17 June 2020 (12 day period). Only one query was raised in relation to 'café pavement' parking however there is no power for the Welsh Ministers to amend the notice provisions for 'café pavement' licences either under the Highways Act 1980 or the Public Health (Control of Diseases) Act 1984.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A regulatory impact assessment has not been prepared for this instrument as the Regulations need to be put in place quickly to deal with an emergency associated with the effects of coronavirus however, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

The Department for Transport brought into force similar Regulations for England on 25 May 2020.

A copy of this letter goes to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a large initial 'R'.

Rebecca Evans MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Agenda Item 3.2

SL(5)590 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.3) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after being abroad. They include a requirement for persons arriving in Wales to isolate for a period of 14 days. The requirements are subject to exceptions, and persons entering Wales after being in one or more exempt countries and territories are not required to isolate.

The International Travel Regulations are amended as follows:

- Regulation 3 of these Regulations amends the International Travel Regulations to add Estonia, Latvia, Saint Vincent and the Grenadines, Slovakia and Slovenia to the Schedule 3 list of exempt countries and territories.
- Regulation 6 amends the International Travel Regulations to remove Luxembourg from the list of exempt countries and territories.
- Regulation 8 adds further events and fixtures to the list of sporting events in Schedule 4, which permit exceptions from isolation for those involved.
- Regulation 9 makes a technical amendment to correct the definition of a “sewerage licensee” in Schedule 2.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following four 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 of public policy likely to be of interest to the Senedd

These Regulations came into force on the day before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 30 July 2020 that:



It has been necessary to urgently remove Luxembourg from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 following advice which indicates the risk to public health of inbound travel from Luxembourg has risen. Therefore not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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

The Explanatory Memorandum explains that 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. 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.

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

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.

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

The Committee's report on the International Travel Regulations highlighted that the definition of "sewerage licensee" relied on a provision not yet in force. These Regulations amend the definition to rectify that position.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 817 (W. 179)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 3)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163); and
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person

are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 3 of these Regulations amends the International Travel Regulations to add Estonia, Latvia, Saint Vincent and the Grenadines, Slovakia and Slovenia to the Schedule 3 list of exempt countries and territories.

Regulations 4 and 5 make transitional provision in connection with the change in the countries’ status as exempt countries. These regulations address potential areas of doubt in terms of the effect of the amendments made by regulation 3 on the operation of requirements to isolate imposed by the International Travel Regulations.

Regulation 4 applies where a person is already in Wales and subject to an isolation requirement at the point the amendments in regulation 3 take effect.

In such a case, regulation 4 confirms that the addition of the countries listed in regulation 3 to Schedule 3 to the International Travel Regulations does not curtail the person’s isolation requirement; the person will still have to isolate until the end of the isolation period as initially determined when the person arrived in Wales.

Regulation 5 applies where a person arrives in Wales on or after 31 July 2020 after having been in one of the countries listed in regulation 3 in the 14 days prior to arriving in Wales.

In such a case, for the purpose of determining whether the person is subject to an isolation requirement under the International Travel Regulations, the question of whether the person arrived in Wales from, or having been in, a non-exempt country or territory is to be determined by reference to the status of the country when the person was there last.

This means that if a person leaves a country listed in regulation 3 before 31 July 2020, then arrives in Wales within 14 days (and on or after 31 July 2020), the person will, for the purposes of the International Travel Regulations, be treated as having arrived from, or having been in, a non-exempt country or territory.

Regulation 6 amends the International Travel Regulations to remove Luxembourg from the list of exempt countries and territories.

Regulation 7 makes transitional provision relating to Luxembourg’s change of status. If a person arrives in

Wales on or after 31 July 2020 having last been in Luxembourg before that date and within 14 days of arriving in Wales, the person is to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived from, or having been in, a non-exempt country or territory. The person may, therefore, be subject to isolation requirements under the International Travel Regulations.

Regulation 8 adds further events and fixtures to the list of sporting events in Schedule 4 to the International Travel Regulations.

In accordance with regulation 10(4) of the International Travel Regulations, a person that would otherwise be required to isolate in accordance with regulation 7 or 8 of those Regulations may leave the premises at which they are isolating in order to compete etc. at these sporting events.

Regulation 9 of these Regulations corrects the definition of a “sewerage licensee” in Schedule 2 to the International Travel Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 817 (W. 179)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 3)
Regulations 2020**

Made at 5.35 p.m. on 30 July 2020

Coming into
force at 11.59 p.m. on 30 July 2020

Laid before Senedd Cymru 31 July 2020

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020.

(2) These Regulations come into force at 11.59 p.m. on 30 July 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020⁽²⁾.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163) and S.I. 2020/804 (W. 177).

Amendments to the International Travel Regulations

2. The International Travel Regulations are amended in accordance with regulations 3, 6, 8 and 9.

Additions to the list of exempt countries and territories

3. In Part 1 of Schedule 3 (exempt countries and territories outside the common travel area), at the appropriate places insert—

“Estonia”

“Latvia”

“Saint Vincent and the Grenadines”

“Slovakia”

“Slovenia”.

Transitional provisions relating to regulation 3

4.—(1) Paragraph (2) applies where, immediately before 31 July 2020—

- (a) a person (“P”) was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in, a country listed in regulation 3, and
- (b) P’s last day of isolation is 31 July 2020 or a day after that day.

(2) The addition of the countries listed in regulation 3 to Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P’s last day of isolation is determined under the International Travel Regulations.

(3) In this regulation, “isolation requirement” has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P’s last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

5.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales on or after 31 July 2020, and
- (b) was in a country listed in regulation 3 within the period of 14 days ending with the day of P’s arrival in Wales.

(2) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a country listed in regulation 3, to be determined by reference to whether the country was a non-exempt

country when P was last there (and not by reference to the country's status upon P's arrival in Wales).

Removal of Luxembourg from the list of exempt countries and territories

6. In Part 1 of Schedule 3 (exempt countries and territories outside the common travel area), omit "Luxembourg".

Transitional provision relating to Luxembourg

7.—(1) Paragraph (2) applies where a person ("P")—

- (a) arrives in Wales on or after 31 July 2020, and
- (b) was last in Luxembourg—
 - (i) within the period of 14 days ending with the day of P's arrival in Wales, and
 - (ii) before 31 July 2020.

(2) P is, by virtue of having been in Luxembourg, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

Additions to the list of specified sporting events

8.—(1) Schedule 4 (specified sporting events) is amended as follows.

(2) In paragraph 2, for "— test matches." substitute—

"—

- (a) test matches;
- (b) one day international matches;
- (c) international T20 matches."

(3) In paragraph 4, for "— UEFA Champions League and Europa League fixtures." substitute—

"—

- (a) UEFA Champions League and Europa League fixtures;
- (b) international fixtures."

(4) In paragraph 5, at the end insert—

"(l) European Tour – Irish Challenge."

(5) In paragraph 6, at the end insert—

- "(e) St Leger Festival;
- (f) Dubai Future Champions Festival;
- (g) QIPCO British Champions Day;
- (h) The Showcase meeting, Cheltenham."

(6) In paragraph 9, for “— international fixtures.” substitute—

“—

- (a) international fixtures;
- (b) European Professional Club Rugby fixtures;
- (c) Guinness PRO14 fixtures.”

(7) At the end insert—

“**11.** Athletics — London Marathon.

12. Field hockey — FIH Pro League fixtures.

13. Tennis — ATP Tour Finals.”

Meaning of “sewerage licensee”

9. In Part 2 of Schedule 2 (persons not required to comply with regulations 7 or 8), in paragraph 17(2)(b), for “has the meaning given in section 17BA(6) and 219(1)” substitute “means a person who is the holder of a sewerage licence under section 17BA(1)”.

Mark Drakeford

The First Minister, one of the Welsh Ministers

At 5.35 p.m. on 30 July 2020

(1) Section 17BA was inserted by section 4(1) of the Water Act 2014 (c. 21).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) 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, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

31 July 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to self-isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These Regulations further amend the International Travel Regulations to implement changes identified in the statutory review carried out on 27 July 2020, as necessary for the protection of public health.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force on 30 July 2020, before they were laid on 31 July 2020.

Similar amending Regulations have also been introduced, on similar timeframes, amending the equivalent requirements for England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from COVID-19 via any imported infections from travellers.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious

disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 International Travel Regulations are kept under review. On 10 July 2020 the International Travel Regulations were amended to include a list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales; further changes have been made to that list on 11 July and 26 July 2020.

Since then, the following countries and territories have been identified for addition to the list of exempt countries:

- Estonia;
- Latvia;
- Slovakia;
- Slovenia; and
- St Vincent and the Grenadines.

The exemptions will come into effect for any travellers entering the Common Travel Area from those countries who departed from those countries on or after 31 July 2020. Travellers who departed those countries before the 31st July 2020 will still need to isolate for 14 days or the remainder of 14 days if they have travelled via an already exempt country.

Further, advice received from the Joint Biosecurity Council indicates the risk to public health of inbound travel from Luxembourg has risen. On the basis of this advice the Welsh Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from Luxembourg. The requirements will come into effect for any travellers entering the Common Travel Area from Luxembourg on or after 31 July 2020.

The Welsh Ministers consider that reintroducing the requirements imposed by the International Travel Regulations in respect of travellers from Luxembourg is proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

Minor changes are also made to the International Travel Regulations to:

- amend the definition of “sewerage licensee” to remove reliance on a provision not yet in force (paragraph 17(2)(b) of Schedule 2); and
- add to the list of sporting events for which those involved are excepted from isolation requirements.

None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments, particularly those relating to the countries on the list of exempt countries and territories, is 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.

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.



Ein cyf/Our ref: MA/FM/2492/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

30 July 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force before it is laid and as such not adhere to the usual 21 day convention. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to add the following countries and/or territories to the list of exempt countries:

- Latvia;
- Estonia;
- Slovakia;
- Slovenia; and
- St Vincent and the Grenadines.

Further, the Regulations remove Luxembourg from the list of exempt countries due to a rise in the risk to public health posed by arrivals from Luxembourg.

The Regulations also add to the list of sporting events in Schedule 4 which permit exceptions from isolation for those involved and make a further minor technical amendment to the definition of sewerage licensee.

It has been necessary to urgently remove Luxembourg from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 following advice which indicates the risk to public health of inbound travel from Luxembourg has risen. Therefore not adhering to

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the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No3) Regulations 2020**

DATE **30 July 2020**

BY **Vaughan Gething, Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

Since then these regulations have been kept under review and a number of changes have been made:

- on 10 July the Welsh Government amended the Regulations to introduce exemptions from the self-isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempt from or except from certain restrictions;
- on 11 July Serbia was removed from the list of exempt countries and territories because of concerns about the increased public health risk presented by travellers from that country entering the UK;
- subsequently on 26 July Spain and its islands was removed from the list of exempt countries and territories for the same reason.

A review of both the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (international travel and passenger information regulations) was undertaken on 27 July. I have decided that no changes are required to the passenger information regulations.

In light of the review, however, the Welsh Government intends to further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 by

adding to the list of sporting events in Schedule 4 which permit exceptions from isolation for those involved, make a further minor technical amendment to the definition of sewerage licensee and to add the following to the list of exempt countries and territories;

- i. Latvia
- ii. Estonia
- iii. Slovakia
- iv. Slovenia
- v. St Vincent and the Grenadines.

Earlier today I attended a meeting of ministers from all four UK countries to consider the public health risk posed by an increasing prevalence of COVID-19 in Luxembourg.

Having considered the evidence for the public health risk now posed by travellers who enter the UK from that country, the Welsh Government will also later today remove Luxembourg from the list of countries and territories exempt from our health measures at the border.

An urgent amendment will be introduced to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 which will come into effect from midnight tonight. This will mean that anyone who arrives from Luxembourg (or who has been in Luxembourg during the past 14 days) will be required to quarantine for 14 days as of tomorrow.

When the Regulations are laid the Minister for Finance and Trefnydd will write to the Llywydd, in accordance with the requirements of the Statutory Instruments Act 1946 and our usual practice.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)594 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020

Background and Purpose

These Regulations further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”), which impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the International Travel Regulations, currently 14 days beginning with the day on which the person was last in a non-exempt country or territory. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate.

Regulation 2 of these Regulations amends the International Travel Regulations to add Brunei and Malaysia to the list of exempt countries and territories.

Regulation 4 removes Andorra, the Bahamas, and Belgium from the list of exempt countries and territories.

Regulations 3 and 5 make transitional provision relating to these countries’ change of status. These regulations address potential areas of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

The following three 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 of public policy likely to be of interest to the Senedd

These Regulations came into force on the day before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 6 August 2020 that:



“The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries from the list of exempt countries and territories:

- *Belgium;*
- *The Bahamas;*
- *Andorra.*

The Regulations also add the following countries to the exempt countries and territories list:

- *Brunei;*
- *Malaysia.*

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries.

Not adhering to the 21 day convention and bringing into force before laying allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence of risk in relation to this disease this is considered necessary and justifiable in this case.”

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

The Explanatory Memorandum explains that 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. The Explanatory Memorandum also explains that 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.

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

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Welsh 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.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 840 (W. 185)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 4)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons

arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 2 of these Regulations amends the International Travel Regulations to add Brunei and Malaysia to the list of exempt countries and territories.

Regulation 4 removes Andorra, the Bahamas, and Belgium from the list of exempt countries and territories.

Regulations 3 and 5 make transitional provision relating to these countries’ change of status. These regulations address potential areas of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 840 (W. 185)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 4)
Regulations 2020**

Made at 8.38 p.m. on 6 August 2020

Coming into
force at 11.59 p.m. on 6 August 2020

Laid before Senedd Cymru 7 August 2020

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020.

(2) These Regulations come into force at 11.59 p.m. on 6 August 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020⁽²⁾.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177) and S.I. 2020/817 (W. 179).

Additions to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate places insert—

“Brunei”

“Malaysia”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before the 7 August 2020—

- (a) a person (“P”) was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in, a country listed in regulation 2, and
- (b) P’s last day of isolation is the 7 August 2020 or a day after that day.

(2) The addition of the countries listed in regulation 2 to Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P’s last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person (“P”)—

- (a) arrives in Wales on or after 7 August 2020, and
- (b) was in a country listed in regulation 2 within the period of 14 days ending with the day of P’s arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a country listed in regulation 2, to be determined by reference to whether the country was a non-exempt country when P was last there (and not by reference to the country’s status upon P’s arrival in Wales).

(5) In this regulation, “isolation requirement” has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P’s last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

Removal of countries from the list of exempt countries and territories

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

“Andorra”

“The Bahamas”

“Belgium”.

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales on or after 7 August 2020, and
- (b) was last in a country listed in regulation 4—
 - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
 - (ii) before 7 August 2020.

(2) P is, by virtue of having been in that country, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

Mark Drakeford

The First Minister, one of the Welsh Ministers

At 8.38 p.m. on 6 August 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) 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, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

7 August 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to self-isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries, as is necessary for the protection of public health.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force at 11.59 p.m. on 6 August (which is before they were laid).

Similar amending Regulations are being introduced in England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from COVID-19 via any imported infections from travellers.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions

or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 International Travel Regulations are kept under review. On 10 July 2020 the International Travel Regulations were amended to include a list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales; further changes have been made to that list on 11 July, 26 July 2020 and 31 July 2020.

Advice received from the Joint Biosecurity Centre indicates the risk to public health posed by the incidence and spread of coronavirus in Belgium, the Bahamas and Andorra has risen. On the basis of this advice the Welsh Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from these three countries. The requirements will come into effect for any travellers entering the Common Travel Area from Belgium, the Bahamas or Andorra on or after 7 August 2020.

Further, the Joint Biosecurity Centre has indicated that the risk to public health posed by the incidence and spread of coronavirus in Brunei and Malaysia has decreased. On this basis the Welsh Government considers that the isolation requirements in respect of persons arriving from these countries should be removed.

None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments 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.

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.



Ein cyf/Our ref: MA/FM/2574/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

6 August 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force before it is laid and as such not adhere to the usual 21 day convention. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries from the list of exempt countries and territories:

- Belgium;
- the Bahamas;
- Andorra.

The Regulations also add the following countries to the exempt countries and territories list:

- Brunei;
- Malaysia

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries.

Not adhering to the 21 day convention and bringing into force before laying allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No 4) Regulations 2020**

DATE **6 August 2020**

BY **Vaughan Gething, Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

On 10 July the Welsh Government amended the Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made:

- on 11 July Serbia was removed from the list;
- on 26 July Spain and its islands was removed from the list;
- on 30 July Latvia, Estonia, Slovakia, Slovenia and St Vincent and the Grenadines were added to the list

Yesterday I attended a meeting of ministers from all four UK countries to consider the public health risk posed by an increasing prevalence of COVID-19 in Andorra, the Bahamas and Belgium.

Having considered the evidence for the public health risk now posed by travellers who enter the UK from these places, the Welsh Government will later today remove Andorra, the Bahamas and Belgium from the list of countries and territories exempt from our health measures at the border.

Together with other UK ministers I have also considered the public health risk posed by a decreasing prevalence of COVID-19 in Brunei and Malaysia. As a consequence, the

Welsh Government will also later today add Brunei and Malaysia to the list of countries and territories exempt from our health measures at the border.

Urgent amendments will be introduced to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 which will come into effect from midnight tonight. These amendments will mean that anyone who arrives in Wales from Andorra, the Bahamas and Belgium or who has been in any of those countries or territories during the last 14 days will be required to isolate for 14 days as of tomorrow. Anyone who arrives in Wales from Brunei or Malaysia, on the other hand, from tomorrow will not be required to isolate for 14 days.

When the Regulations are laid the Minister for Finance and Trefnydd will write to the Llywydd, in accordance with the requirements of the Statutory Instruments Act 1946 and our usual practice.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Agenda Item 3.4

SI(5)598 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after being abroad. They include a requirement for persons arriving in Wales to isolate for a period of 14 days. The requirements are subject to exceptions, and persons entering Wales after being in one or more exempt countries and territories are not required to isolate.

These Regulations amend the International Travel Regulations as follows:

- Regulation 2 of these Regulations amends the International Travel Regulations to remove Aruba, France, Malta, Monaco, the Netherlands and the Turks and Caicos Islands from the list of exempt countries and territories.
- Regulation 3 makes transitional provision relating to these countries’ change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendment made by regulation 4 of these Regulations.
- Regulation 4 adds further events and fixtures to the list of sporting events in Schedule 4 to the International Travel Regulations.

Procedure

Negative.

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:

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

Breach of the 21-day rule

1. The 21-day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.



These Regulations were laid on 14 August 2020, and came into force the following day, 15 August 2020. We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 14 August 2020:

"The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these places. The Regulations also insert some additional sporting events into Schedule 4.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."

No public consultation or regulatory impact assessment

2. The Explanatory Memorandum to these Regulations explains that 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. The Explanatory Memorandum also explains that 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.

Human Rights

3. The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. The Welsh 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.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 868 (W. 190)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 5)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185).

The International Travel Regulations impose requirements on persons entering Wales after having

been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 2 of these Regulations amends the International Travel Regulations to remove Aruba, France, Malta, Monaco, the Netherlands and the Turks and Caicos Islands from the list of exempt countries and territories.

Regulation 3 makes transitional provision relating to these countries’ change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendment made by regulation 4 of these Regulations.

Regulation 4 adds further events and fixtures to the list of sporting events in Schedule 4 to the International Travel Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 868 (W. 190)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 5)
Regulations 2020**

Made at 3.05 p.m. on 14 August 2020

Laid before *Senedd*
Cymru at 5.50 p.m. on 14 August 2020

Coming into
force at 4.00 a.m. on 15 August 2020

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984(1), make the following Regulations.

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 15 August 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(2).

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179) and S.I. 2020/840 (W. 185).

Removal of countries from the list of exempt countries and territories

2.—(1) In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

“Aruba”
“France”
“Malta”
“Monaco”
“The Netherlands”.

(2) In Part 2 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

“The Turks and Caicos Islands”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales on or after 4.00 a.m. on 15 August 2020, and
- (b) was last in a country listed in regulation 2—
 - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
 - (ii) before 4.00 a.m. on 15 August 2020.

(2) P is, by virtue of having been in that country, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

Additions to the list of specified sporting events

4.—(1) Schedule 4 (specified sporting events) is amended as follows.

(2) In paragraph 5, at the end insert—

- “(m) Dubai Duty Free Irish Open Golf Tournament (European Tour);
- (n) The Northern Ireland Golf Open Tournament (European Challenge Tour supported by the R&A).”

(3) For paragraph 8, substitute—

- “8. Rugby football league—
 - (a) Betfred Super League fixtures;
 - (b) Rugby League Challenge Cup.”

(4) At the end insert—

“14. Boxing—

- (a) Matchroom Fight Camp - International Heavyweight Contest;
- (b) Matchroom Fight Camp - World Boxing Council World Heavy Title;
- (c) Matchroom Fight Camp - World Boxing Organisation World Female Light Title.”

Mark Drakeford

The First Minister, one of the Welsh Ministers

At 3.05 p.m. on 14 August 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) 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, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020

Mark Drakeford
First Minister

14 August 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health as well as adding a number of sporting events to the list at Schedule 4 of the International Travel Regulations.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations come into force less than 21 days after being laid before the Senedd.

Similar amending Regulations are being introduced in England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from COVID-19 via any imported infections from travellers.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 International Travel Regulations are kept under review. On 10 July 2020 the International Travel Regulations were amended to include a list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales; further changes have been made to that list on 11 July, 26 July, 31 July and 7 August 2020.

Advice received from the Joint Biosecurity Centre indicates the risk to public health posed by the incidence and spread of coronavirus in Aruba, France, Malta, Monaco, the Netherlands and Turks and Caicos has risen. On the basis of this advice the Welsh Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from these countries and territories. The requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 15 August 2020.

Minor changes are also made to the International Travel Regulations to add to the list of sporting events for which those involved are excepted from isolation requirements.

None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments 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.

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.



Ein cyf/Our ref: MA/FM/2667/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

14 August 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020

In accordance with sections 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries from the list of exempt countries and territories:

- Aruba
- France
- Malta
- Monaco
- the Netherlands, and
- Turks and Caicos

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these places. The Regulations also insert some additional sporting events into Schedule 4.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

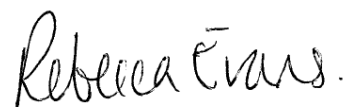
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No 5) Regulations 2020**

DATE **14 August 2020**

BY **Mark Drakeford, First Minister**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

On 10 July the Welsh Government amended the Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made. In relation to the list of countries and territories exempted from the quarantine requirements:

- on 11 July Serbia was removed;
- on 26 July Spain and its islands was removed;
- on 30 July Latvia, Estonia, Slovakia, Slovenia and St Vincent and the Grenadines were added;
- on 8 August Andorra, the Bahamas and Belgium were removed from list and Brunei and Malaysia were added.

Yesterday I attended a meeting of ministers from all four UK countries to consider the public health risk posed by an increasing prevalence of COVID-19 in Aruba, France, Malta, Monaco, the Netherlands and Turks and Caicos.

Having considered the evidence for the public health risk now posed by travellers who enter the UK from these places, the Welsh Government will later today remove Aruba, France, Malta, Monaco, the Netherlands and Turks and Caicos from the list of countries and territories exempt from our health measures at the border.

Urgent amendments will be introduced to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 which will come into effect from 04:00 hours Saturday 15 August. These amendments will mean that anyone who arrives in Wales from Aruba, France, Malta, Monaco, the Netherlands and Turks and Caicos or who has been in any of those countries or territories during the last 14 days will be required to isolate for 14 days as of 04:00 hours tomorrow.

When the Regulations are laid the Minister for Finance and Trefnydd will write to the Llywydd, in accordance with the requirements of the Statutory Instruments Act 1946 and our usual practice.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)592 – The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

Background and Purpose

These Regulations amend certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intended for marketing. This is to ensure that this material is practically free from Union regulated non-quarantine pests (“RNQPs”) at the place of production and that the presence of such pests does not exceed specified thresholds. These requirements complement and are in addition to those in existing plant health legislation, which introduced this new category of pests.

These Regulations transpose Commission Implementing Directive (EU) 2020/177, which makes amendments to certain marketing directives for seed and other propagating material as regards pests of plants on seeds and other plant reproductive material in relation to RNQPs (“the 2020 Directive”). These Regulations also amend regulations in order to ensure correct implementation of Council Directives 2008/72/EC and 2008/90/EC and correct formatting errors in the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016.

Procedure

Negative.

Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v): that for any particular reason its form of meaning needs further explanation

1. Correction of formatting

The preamble to, and Explanatory Notes accompanying, these Regulations explain that the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016 (“the 2016 Regulations”) are amended to correct formatting issues. Although the changes in the table can generally be linked to a need to correct the formatting and increase clarity, there are two sets of changes which might be interpreted as being more substantive. It is noted that the collective group tolerances (column 4) for “Group VI” in the table contained in Part 2 and “Group V” in the table contained in Part 3 have been amended from “-” to “)”, which appears to change the tolerance from nil to 6%. The same issue arises in relation to the Welsh version of these Regulations.

Standing Order 21.2(vii): that there appear to be inconsistencies between the meaning of its English and Welsh texts

2. English used in the Welsh version



In the Welsh text, in the first table inserted by regulation 5(4)(c), for Group VI, the text entry in the second column, 'Nil', is in English.

Merits Scrutiny

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

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

3. Choice of procedure

These Regulations are made in exercise of powers under sections 16(1), (1A), (3), (4) and 36 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") and section 2(2) of the European Communities Act 1972 ("the 1972 Act"). The 1964 Act provides for regulations to be made under the negative procedure and the 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply.

The Explanatory Memorandum states that:

"The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure."

The Committee accepts that the choice of negative procedure is appropriate given these reasons.

4. Timeframe for transposition

Article 11 (Transposition) of the 2020 Directive requires Member States to transpose the 2020 Directive into their law by 31 May 2020. Although there has been a delay in transposing the 2020 Directive, it is acknowledged that the United Kingdom is no longer a Member State of the European Union and that there are exceptional circumstances surrounding the Coronavirus pandemic.

5. Ambulatory amendments

Regulations 5(2) and 6(3) of these Regulations insert amendments which seek to update the definition of "Directive 2014/98/EU". The reason for this amendment is explained in the respective footnotes to those regulations (footnote (2) on page 10 and footnote (1) on page 18) by reference to section 26 of the Legislation (Wales) Act 2019 ("the 2019 Act"). The footnotes which include reference to section 26 of the 2019 Act are inserted alongside the amendments made by these Regulations.

It is noted that the "Guidance for preparing Welsh legislation - Parts 2 and 3 of the Legislation (Wales) Act 2019" states:

"Welsh legislation may also need to amend legislation to which Part 2 of the 2019 Act does not apply (such as an Act of the UK Parliament, UK subordinate legislation, or any Welsh legislation enacted before 2020). In that case:

- *Part 2 of the 2019 Act will apply to the provisions of the amending legislation, but*



- *the 1978 Act [the Interpretation Act 1978] will apply to any material that is inserted into the other legislation.”*

As such, it appears that the reference to section 26 of the 2019 Act should instead refer to section 20A of the Interpretation Act 1978, which applies to subordinate legislation by virtue of section 23 of the Interpretation Act 1978.

6. Cross-references in Welsh text

In the Welsh text of these Regulations, the cross-references in regulations 5(5)(b)(i) and (ii), which amend the 2016 Regulations, do not seem to reference the correct paragraphs in the Welsh text of those 2016 Regulations as published on the legislation.gov website.

Implications arising from exiting the European Union

These Regulations are required to assist the UK to meet its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the implementation period (31 December 2020). These Regulations will form part of retained EU law after the implementation period.

Government Response

A Welsh Government response is required in relation to both Technical Points (1 and 2) and Merits Points 5 and 6.

Legal Advisers

Legislation, Justice and Constitution Committee

17 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 833 (W. 182)

PLANT HEALTH, WALES

SEEDS, WALES

**The Marketing of Seed, Plant and
Propagating Material (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Implementing Directive (EU) 2020/177 amending Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/55/EC, 2002/56/EC and 2002/57/EC, Commission Directives 93/49/EEC and 93/61/EEC and Implementing Directives 2014/21/EU and 2014/98/EU as regards pests of plants on seeds and other plant reproductive material (OJ No. L 41, 13.2.2020, p. 1).

These Regulations, which apply in relation to Wales, amend the following Regulations (“the Marketing Regulations”)—

- the Marketing of Vegetable Plant Material Regulations 1995 (S.I. 1995/2652) (“the 1995 Regulations”),
- the Marketing of Ornamental Plant Propagating Material Regulations 1999 (S.I. 1999/1801) (“the 1999 Regulations”),
- the Seed Marketing (Wales) Regulations 2012 (S.I. 2012/245) (W. 39) (“the 2012 Regulations”),
- the Seed Potatoes (Wales) Regulations 2016 (S.I. 2016/106) (W. 52) (“the 2016 Regulations”), and
- the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 (S.I. 2017/691) (W. 163) (“the 2017 Regulations”).

The 1995 Regulations implement Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed (OJ No. L 205,

1.8.2008, p. 28) (“Council Directive 2008/72/EC”) and Commission Directive 93/61/EEC setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Directive 92/33/EEC (OJ No. L 250, 7.10.1993, p. 19).

The 1999 Regulations implement Council Directive 98/56/EC on the marketing of propagating material of ornamental plants (OJ No. L 226, 13.8.1998, p. 16) and Commission Directive 93/49/EEC setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC (OJ No. L 250, 7.10.1993, p. 9).

The 2012 Regulations implement various EU instruments, in particular Council Directive 66/401/EEC on the marketing of fodder plant seed (OJ No. L 125, 11.7.1966, p. 2298), Council Directive 66/402/EEC on the marketing of cereal seed (OJ No. L 125, 11.7.1966, p. 2309), Council Directive 2002/55/EC on the marketing of vegetable seed (OJ No. L 193, 20.7.2002, p. 33) and Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants (OJ No. L 193, 20.7.2002, p. 74).

The 2016 Regulations implement various EU instruments, in particular Council Directive 2002/56/EC on the marketing of seed potatoes (OJ No. L 193, 20.7.2002, p. 60) and Commission Implementing Directive 2014/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes (OJ No. L 38, 7.2.2014, p. 39).

The 2017 Regulations implement various EU instruments, in particular Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No. L 267, 8.10.2008, p. 8) (“Council Directive 2008/90/EC”) and Commission Implementing Directive 2014/98/EU implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No. L 298, 16.10.2014, p. 22).

These Regulations amend provisions in the Marketing Regulations to require seed, plants and plant propagating material (“plant material”) intended for marketing in Wales to be practically free from regulated non-quarantine pests at the place of production and for the presence of such pests on plant material not to exceed specified thresholds.

Regulation 2(4) also amends the 1995 Regulations to ensure correct implementation of Council Directive 2008/72/EC.

Regulation 5(4) also amends the 2016 Regulations to correct formatting errors in the tables in Parts 2 and 3 of Schedule 3 to the 2016 Regulations.

Regulation 6(4) also amends the 2017 Regulations to ensure correct implementation of Council Directive 2008/90/EC.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 833 (W. 182)

PLANT HEALTH, WALES

SEEDS, WALES

**The Marketing of Seed, Plant and
Propagating Material (Wales)
Regulations 2020**

Made 4 August 2020

Laid before Senedd Cymru 6 August 2020

Coming into force 29 August 2020

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to the common agricultural policy⁽²⁾.

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- (1) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2010/2690, which is prospectively revoked by S.I. 2018/1011 from IP completion day.

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 16(1), (1A), (3), (4) and 36 of the Plant Varieties and Seeds Act 1964(1) and section 2(2) of the European Communities Act 1972.

The Welsh Ministers have consulted representatives of such interests as appear to them to be concerned in accordance with section 16(1) of the Plant Varieties and Seeds Act 1964.

Title, application and commencement

1. The title of these Regulations is the Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020, they apply in relation to Wales and come into force on 29 August 2020.

The Marketing of Vegetable Plant Material Regulations 1995

2.—(1) The Marketing of Vegetable Plant Material Regulations 1995(2) are amended as follows.

(2) In regulation 2(1), after the definition of “Directive 2008/72/EC” insert—

““EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants(3);”.

(3) In regulation 5—

- (a) the existing text becomes paragraph (1);
- (b) in paragraph (1), for sub-paragraph (a) substitute—

“(a) at the place of production it was found, at least on visual inspection, to be practically free from all pests listed in relation to that plant material in the Annex to Directive 93/61/EEC;

(1) 1964 c. 14. Section 16(1A) was inserted by section 4 of, and paragraph 5 of Schedule 4 to, the European Communities Act 1972. See section 38(1) for a definition of “the Minister”. In accordance with article 2(1) of, and Schedule 1 to, the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272) the functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties and Seeds Act 1964 were, so far as exercisable in relation to Wales, transferred to the Secretary of State. In accordance with article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions transferred to the Secretary of State by the 1978 Order were transferred to the National Assembly for Wales. By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) those functions are now exercisable by the Welsh Ministers.

(2) S.I. 1995/2652, amended by S.I. 2007/2190 (W. 174), 2014/519 (W. 61), 2018/1216 (W. 249), 2020/206 (W. 48); there are other amending instruments but none are relevant.

(3) OJ No. L 317, 23.11.2016, p. 4.

- (ab) the quantity of any RNQP present on the plant material does not, at least on visual inspection, exceed the threshold set out in respect of that RNQP in the Annex to Directive 93/61/EEC;
 - (ac) it is found, at least on visual inspection, to be practically free from any pests which reduce its usefulness and quality as plant material, other than those pests listed in the Annex to Directive 93/61/EEC in relation to that plant material;
 - (ad) it complies with the requirements concerning Union quarantine pests, protected zone quarantine pests and RNQPs set out in the EU Plant Health Regulation and in the implementing acts adopted pursuant to that Regulation, including measures adopted pursuant to Article 30(1) of that Regulation;”;
- (c) after paragraph (1) insert—
- “(2) In this regulation—
- “protected zone quarantine pest” means a pest within the meaning given by Article 32(1) of the EU Plant Health Regulation;
- “RNQP” means a Union regulated non-quarantine pest within the meaning given by Article 36 of the EU Plant Health Regulation;
- “Union quarantine pest” means a pest within the meaning given by Article 4 of the EU Plant Health Regulation.”
- (4) For regulation 6 substitute—
- “**6.**—(1) A producer must—
- (a) report to an inspector any plant material that fails to comply with the requirements of regulation 5(1)(a) or (ab);
 - (b) immediately report to an inspector any plant material that shows the presence of a plant pest of a description specified in Annex 2 or 3 to the Phytosanitary Conditions Regulation and carry out any measures laid down by the inspector; and
 - (c) keep plant material in lots of homogenous composition and origin during growing and lifting or removal from parent material.
- (2) In this regulation—

“the Phytosanitary Conditions Regulation” means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants⁽¹⁾.”

(5) Omit regulations 7 and 8(5).

(6) In regulation 9(4)(c), for “harmful organisms referred to in regulation 5(a)” substitute “pests referred to in regulations 5(1)(a), (ab) and 6(1)(b)”.

(7) In regulation 11(4), for “5(a)” substitute “5(1)(a) to (ac)”.

The Marketing of Ornamental Plant Propagating Material Regulations 1999

3.—(1) The Marketing of Ornamental Plant Propagating Material Regulations 1999⁽²⁾ are amended as follows.

(2) In regulation 2(1), before the definition of “Directive 98/56/EC” insert—

““Directive 93/49/EEC” means Commission Directive 93/49/EEC setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC⁽³⁾.”.

(3) In regulation 4—

(a) the existing text becomes paragraph (1);

(b) in paragraph (1), after sub-paragraph (a) insert—

“(ab) have been found at the place of production to be practically free, at least on visual inspection, from all pests listed in the Annex to Directive 93/49/EEC in relation to that propagating material;

(ac) be free, at least on visual inspection, from any RNQP in a quantity exceeding the thresholds set out in the Annex to Directive 93/49/EEC for the presence of that RNQP;

(ad) be, at least on visual inspection, practically free from, and from any

(1) OJ No. L 319, 10.12.2019, p. 1.

(2) S.I. 1999/1801, relevant amending instruments are S.I. 2018/974, 2018/1216 (W. 249), 2020/206 (W. 48). S.I. 1999/1801 is amended prospectively by S.I. 2019/131.

(3) OJ No. L 250, 7.10.1993, p. 9, as last amended by Commission Implementing Directive (EU) 2020/177 (OJ No. L 41, 13.2.2020, p. 1).

signs or symptoms of, any pests which reduce its usefulness or quality as propagating material, other than the pests listed in the Annex to Directive 93/49/EEC with regard to the respective propagating material;

(ae) comply with the requirements concerning Union quarantine pests, protected zone quarantine pests and RNQPs set out in the implementing acts adopted pursuant to the EU Plant Health Regulation, and measures adopted pursuant to Article 30(1) of that Regulation;”;

(c) after paragraph (1) insert—

“(2) In this regulation—

“protected zone quarantine pest” means a pest within the meaning given by Article 32(1) of the EU Plant Health Regulation;

“RNQP” means a Union regulated non-quarantine pest within the meaning given by Article 36 of the EU Plant Health Regulation;

“Union quarantine pest” means a pest within the meaning given by Article 4 of the EU Plant Health Regulation.”

(4) Omit regulation 6A.

The Seed Marketing (Wales) Regulations 2012

4.—(1) The Seed Marketing (Wales) Regulations 2012(1) are amended as follows.

(2) In Schedule 2—

(a) before Part 1 insert—

“Part A1

Introduction

Interpretation

A1. In this Schedule—

“EU Plant Health Regulation” (*“Rheoliad Iechyd Planhigion yr UE”*) means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;

(1) S.I. 2012/245 (W. 39). There are amending instruments but none are relevant. S.I. 2012/245 (W. 39) is prospectively amended by S.I. 2019/368 (W. 90).

“protected zone quarantine pest” (“*pla cwarantin parth gwarchodedig*”) means a pest within the meaning given by Article 32(1) of the EU Plant Health Regulation;

“RNQP” (“*PRHG*”) means a Union regulated non-quarantine pest within the meaning given by Article 36 of the EU Plant Health Regulation;

“Union quarantine pest” (“*pla cwarantin yr Undeb*”) means a pest within the meaning given by Article 4 of the EU Plant Health Regulation.”;

(b) for paragraph 15(4) substitute—

“(4) The crop and the seed produced by the crop must be practically free from any pests which reduce the usefulness and quality of the seed.

(5) The crop and the seed produced by the crop must comply with the requirements concerning Union quarantine pests, protected zone quarantine pests and RNQPs set out in implementing acts adopted pursuant to the EU Plant Health Regulation, and measures adopted pursuant to Article 30(1) of that Regulation.”;

(c) in paragraphs 28 and 42, for sub-paragraph (3) in each case substitute—

“(3) The crop and the seed produced by the crop must be practically free from any pests which reduce the usefulness and quality of the seed.

(4) The crop and seed produced by the crop must comply with the requirements concerning Union quarantine pests, protected zone quarantine pests and RNQPs set out in implementing acts adopted pursuant to the EU Plant Health Regulation, and measures adopted pursuant to Article 30(1) of that Regulation.”;

(d) for paragraph 50(4) substitute—

“(4) The crop and seed produced by the crop must be practically free from any pests which reduce the usefulness and quality of the seed.

(4A) The crop and seed produced by the crop must comply with the requirements concerning Union quarantine pests, protected zone quarantine pests and RNQPs set out in implementing acts adopted pursuant to the EU Plant Health Regulation, and measures adopted pursuant to Article 30(1) of that Regulation.”

The Seed Potatoes (Wales) Regulations 2016

5.—(1) The Seed Potatoes (Wales) Regulations 2016⁽¹⁾ are amended as follows.

(2) In regulation 3, for the definition of “Directive 2014/21/EU” substitute—

““Directive 2014/21/EU” (“*Cyfarwyddeb 2014/21/EU*”) means Commission Implementing Directive 2014/21/EU determining minimum conditions and Union Grades for pre-basic seed potatoes⁽²⁾”.

(3) In Schedule 1—

(a) in paragraph 3(c), for paragraphs (vi) and (vii) substitute—

“(vi) Colorado Beetle (*Leptinotarsa decemlineata* (Say));

(vii) Potato Tuber Eelworm (*Ditylenchus destructor* (Thorne));

(viii) *Candidatus* Liberibacter *solanacearum* Liefing et al.; and

(ix) *Candidatus* Phytoplasma *solani* Quaglino et al.”;

(b) in paragraph 8, in the words after sub-paragraph (b)(iii), omit “prevalent in Europe”;

(c) in paragraph 10, in the words after sub-paragraph (b)(ii), omit “prevalent in Europe”.

(4) In Schedule 3—

(a) in the table in Part 1, in column 1—

(i) under the heading “Group II”, for the words from “Blackleg” to “et al or both” substitute “Blackleg (*Dickeya* Samson et al. spp. or *Pectobacterium* Waldee emend. Hauben et al. spp. or both)”;

(ii) under the heading “Group IV”, for “Black Scurf (*Rhizoctonia solani* Kuhn)” substitute “Black scurf as caused by *Thanatephorus cucumeris* (A.B. Frank) Donk”;

(b) in the table in Part 1, under the heading “Group 1”, after the entry “Colorado Beetle” insert—

(1) S.I. 2016/106 (W. 52), relevant amending instruments are S.I. 2018/1216 (W. 249), 2020/206 (W. 48). S.I. 2016/106 (W. 52) is amended prospectively by S.I. 2019/738 (W. 141).

(2) Last amended by Commission Implementing Directive (EU) 2020/177 amending Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/55/EC, 2002/56/EC and 2002/57/EC, Commission Directives 93/49/EEC and 93/61/EEC and Implementing Directives 2014/21/EU and 2014/98/EU as regards pests of plants on seeds and other plant reproductive material (OJ No. L 41, 13.2.2020, p. 1). See section 26 of the Legislation (Wales) Act 2019 (anaw 4).

<i>“Candidatus Liberibacter solanacearum</i> Liefing et al	Nil
<i>Candidatus Phytoplasma solani</i> Quaglino et al	Nil”;

(c) for Parts 2 and 3 substitute—

“PART 2

Pre-basic seed potatoes of Union grade PB produced in Wales

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Specified diseases or pests, damage and defects</i>	<i>Individual tolerances</i>	<i>Group tolerances</i>	<i>Collective group tolerances</i>
Group I			
Wart Disease (<i>Synchytrium endobioticum</i> (Schlib) Perc)	Nil	-	-
Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne)	Nil	-	-
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil	-	-
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp <i>sepedonicus</i> (Spieck & Kotth) Davis et al)	Nil	-	-
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil	-	-
Potato Spindle Tuber Viroid	Nil	-	-
Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil	-	-
<i>Candidatus</i> Liberibacter <i>solanacearum</i> Liefting et al	Nil	-	-
<i>Candidatus</i> Phytoplasma <i>solani</i> Quaglino et al	Nil	-	-
Group II			
Blight (<i>Phytophthora infestans</i> (Mont) de Bary)	0.2%))
Blackleg (<i>Dickeya</i> Samson et al. spp. or <i>Pectobacterium</i> Waldee emend. Hauben et al. spp. or both)	0.2%))
Soft Rots including: Watery Wound Rot (<i>Pythium ultimum</i> Trow)	0.2%))
Pink Rot (<i>Phytophthora erythroseptica</i> Pethybridge) and Pit Rot	0.2%) 0.2%)
Dry Rot (<i>Fusarium</i> species)	0.2%))
Gangrene (<i>Phoma</i> species)	0.2%))
Frost damaged tubers	0.2%))
Group III			
Skin spot (<i>Polyscytalum pustulans</i> (Owen & Wake-field)) M B Ellis	0.2%)) 6.0%

<p>Group IV</p> <p>Black scurf as caused by <i>Thanatephorus cucumeris</i> (A.B. Frank) Donk Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease</p> <p>Common Scab (<i>Streptomyces</i> species) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-third of whose surface area has been affected are deemed to be unaffected by the disease</p>	1.0%) 5.0%)
<p>Group V</p> <p>Powdery scab (<i>Spongospora subterranea</i> (Wallr) Legerh) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease</p>	1.0%))
<p>Group VI</p> <p>External blemishes including damaged tubers or tubers other than diseased tubers whose shape is atypical for the variety</p> <p>Superficial necrosis caused by potato virus Y</p> <p>Shrivelled tubers due to excessive dehydration or dehydration caused by silver scurf (<i>Helminthosporium solani</i>)</p>	3.0%))
	Nil) 3.0%)
	0.5%))
<p>Group VII</p> <p>Dirt or other extraneous matter</p>	1.0%	-	-

PART 3

Basic seed potatoes and certified seed potatoes produced in Wales

Column 1	Column 2	Column 3	Column 4
<i>Specified diseases or pests, damage and defects</i>	<i>Individual tolerances</i>	<i>Group tolerances</i>	<i>Collective group tolerances</i>
<p>Group I</p> <p>Wart Disease (<i>Synchytrium endobioticum</i> (Schlib) Perc)</p>	Nil	-	-

Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne)	Nil	-	-
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil	-	-
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp <i>sepedonicus</i> (Spieck & Koth) Davis et al)	Nil	-	-
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil	-	-
Potato Spindle Tuber Viroid	Nil	-	-
Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil	-	-
<i>Candidatus</i> Liberibacter <i>solanacearum</i> Liefiting et al	Nil	-	-
<i>Candidatus</i> Phytoplasma <i>solani</i> Quaglino et al	Nil	-	-
Group II			
Blight (<i>Phytophthora infestans</i> (Mont) de Bary)	0.5%))
Blackleg (<i>Dickeya</i> Samson et al. spp. or <i>Pectobacterium</i> Waldee emend. Hauben et al. spp. or both)	0.5%))
Soft Rots including Watery Wound Rot (<i>Pythium ultimum</i> Trow)	0.5%))
Pink Rot (<i>Phytophthora erythroseptica</i> Pethybridge) and Pit Rot	0.5%) 0.5%)
Dry Rot (<i>Fusarium</i> species)	0.5%))
Gangrene (<i>Phoma</i> species)	0.5%))
Frost damaged tubers	0.5%))
Any of these Group II defects that present as a wet rot symptom	0.2%))6.0% for basic seed potatoes and 8.0% for certified seed potatoes

<p>Group III</p> <p>Skin spot (<i>Polyscytalum pustulans</i> (Owen & Wakefield) M B Ellis)</p> <p>Powdery scab (<i>Spongospora subterranea</i> (Wallr) Legerh) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease (except where powdery scab takes its cankerous form)</p>	<p>0.5% except Union grade E, Union grade A and Union grade B grades; 2.0% for Union grade E, Union grade A and Union grade B grades only</p> <p>3.0%</p>	<p>))</p> <p>) 5.0%)</p>	
<p>Group IV</p> <p>Black scurf as caused by <i>Thanatephorus cucumeris</i> (A.B. Frank) Donk Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease</p> <p>Common Scab (<i>Streptomyces</i> species) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-third of whose surface area has been affected are deemed to be unaffected by the disease</p>	<p>5.0%</p> <p>5.0%</p>	<p>))</p> <p>))</p>	
<p>Group V</p> <p>External blemishes including damaged tubers or tubers other than diseased tubers whose shape is atypical for the variety</p> <p>Shrivelled tubers due to excessive dehydration or dehydration caused by silver scurf (<i>Helminthosporium solani</i>)</p> <p>Superficial necrosis caused by strains of potato virus Y</p>	<p>3.0%</p> <p>1.0%</p> <p>0.1%</p>	<p>))</p> <p>) 3.0%)</p> <p>))</p>	

Group VI			
Dirt or other extraneous matter	1.0%	-	-”;

- (d) in the table in Part 4, after the entry for “Colorado Beetle” insert—

<i>Candidatus</i> Liberibacter <i>solanacearum</i> Liefiting et al	Nil	-
<i>Candidatus</i> Phytoplasma <i>solani</i> Quaglino et al	Nil	-”.

- (5) In Part 1 of Schedule 4, in table 1—

- (a) in the entry for Union grade “PBTC”, in the second column—
- (i) in paragraph (1)(a)(i), after “*Dickeya* spp.,” insert “*Candidatus* Liberibacter *solanacearum*, *Candidatus* Phytoplasma *solani*, Potato spindle tuber viroid,”;
- (ii) in paragraph (1)(b)(i), at the beginning insert “*Candidatus* Liberibacter *solanacearum*, *Candidatus* Phytoplasma *solani*, Potato spindle tuber viroid,”;
- (b) in the entry for Union grade “PB”, in the second column—
- (i) in paragraph (1)(a)(ii), after “*Dickeya* spp.,” insert “*Candidatus* Liberibacter *solanacearum*, *Candidatus* Phytoplasma *solani*, Potato spindle tuber viroid,”;
- (ii) in paragraph (2)(i), at the beginning insert “*Candidatus* Liberibacter *solanacearum*, *Candidatus* Phytoplasma *solani*, Potato spindle tuber viroid,”.

- (6) In Schedule 5, in paragraph 3(f)(ii), omit “prevalent in Europe”.

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

6.—(1) The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017(1) are amended as follows.

- (2) In regulation 2, at the appropriate place insert—
- ““RNQP” (“PRHG”) means a Union regulated non-quarantine pest within the meaning given by Article 36 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;”.

(1) S.I. 2017/691 (W. 163), amended by S.I. 2020/206 (W. 48); there are other amending instruments but none are relevant. S.I. 2017/691 (W. 163) is amended prospectively by S.I. 2019/368 (W. 90).

(3) In regulation 3(1), for the definition of “Directive 2014/98/EU” substitute—

““Directive 2014/98/EU” (“*Cyfarwyddeb 2014/98/EU*”) means Commission Implementing Directive 2014/98/EU implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections(1).”

(4) After regulation 14 insert—

“Suppliers: notification requirements

14A.—(1) A supplier must immediately report to an inspector—

- (a) plant material that shows the presence of any RNQP listed in Annex 1 or 2 to Directive 2014/98/EU;
- (b) the presence in the soil of any RNQP listed in Annex 3 to Directive 2014/98/EU;
- (c) the presence of any RNQP at the production site at a level greater than the tolerance specified for such organism in Annex 4 to Directive 2014/98/EU; or
- (d) plant material that shows the presence of any pest listed in Annex 2 or 3 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants.

(2) Where a supplier has reported to an inspector plant material referred to in paragraph (1)(d), the supplier must carry out any measures laid down by the inspector.”

(5) In regulation 15(1)(g)—

- (a) in paragraph (i), omit “Part A of”;
- (b) omit paragraph (ii) and the “and” after it;

(1) Last amended by Commission Implementing Directive (EU) 2020/177 amending Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/55/EC, 2002/56/EC and 2002/57/EC, Commission Directives 93/49/EEC and 93/61/EEC and Implementing Directives 2014/21/EU and 2014/98/EU as regards pests of plants on seeds and other plant reproductive material (OJ No. L 41, 13.2.2020, p. 1). See section 26 of the Legislation (Wales) Act 2019 (anaw 4).

- (c) in paragraph (iii), for “Annex 2, 3 or 4” substitute “Annex 2 or 3”;
- (d) after paragraph (iii) insert—
 - “(iv) any RNQP listed in Annex 3 to Directive 2014/98/EU, where present in the soil; and
 - (v) any RNQP at a level greater than the tolerance specified for that RNQP in Annex 4 to Directive 2014/98/EU.”

(6) In Schedule 1—

- (a) in paragraph 1(2), for paragraphs (c) and (d) substitute—
 - “(c) complies with health requirements in paragraph 4;
 - (d) complies with requirements concerning defects in paragraph 5; and
 - (e) complies with production site requirements in paragraph 6.”;
- (b) in paragraph 2(2), for paragraphs (b) and (c) substitute—
 - “(b) complies with health requirements in paragraph 4;
 - (c) complies with requirements concerning defects in paragraph 5; and
 - (d) complies with production site requirements in paragraph 6.”;
- (c) in paragraph 4, for sub-paragraphs (1) to (5) substitute—
 - “(1) CAC material must be found, on visual inspection by the supplier at the stage of production, to be practically free from the RNQPs listed in Annex 1 or 2 to Directive 2014/98/EU in relation to the genus or species concerned, unless stated otherwise in Annex 4 to that Directive.
 - (2) The supplier must sample and test the identified source of material or CAC material—
 - (a) in cases of doubt as to the presence of any RNQP listed in Annex 1 to Directive 2014/98/EU, for such pests;
 - (b) for the RNQPs listed in Annex 2 to Directive 2014/98/EU, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.
 - (3) CAC material must be found after production, on visual inspection by the supplier, to be free from signs or symptoms of any RNQP listed in Annex 1 or 2 to Directive 2014/98/EU.

(4) Visual inspections and sampling and testing must be conducted in accordance with the requirements specified in Annex 4 to Directive 2014/98/EU in relation to the genus or species concerned, and category.

(5) But sub-paragraphs (1) to (3) do not apply to CAC material during cryopreservation.”;

(d) after paragraph 5 insert—

“Requirements concerning production site

6. CAC material must be produced in accordance with the requirements for the production site, place of production or area set out in Annex 4 to Directive 2014/98/EU and specified in relation to the genus or species concerned.”

(7) In Schedule 5—

(a) in paragraphs 3(2) and 4(2), after paragraph (f) in each case, insert—

“(g) complies with the production site requirements in paragraph 12A.”;

(b) in paragraphs 5(1)(a) and 6, for “12” substitute “12A”;

(c) in paragraph 10—

(i) for sub-paragraphs (1) and (2) substitute—

“(1) A pre-basic mother plant or pre-basic material must be found to be free from any RNQP listed in Annex 1 or 2 to Directive 2014/98/EU in relation to the genus or species concerned, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.

(2) An inspector and, where appropriate, the supplier must sample and test the pre-basic mother plant or pre-basic material—

(a) in cases of doubt as to the presence of any RNQP listed in Annex 1 to Directive 2014/98/EU, for such pests;

(b) for the RNQPs listed in Annex 2 to Directive 2014/98/EU, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.”;

(ii) for sub-paragraph (4) substitute—

“(4) Compliance with sub-paragraph (1) is established by visual inspection by an inspector and, where appropriate, the supplier.”;

(d) after paragraph 12 insert—

“Requirements concerning production site

12A. Pre-basic mother plants and pre-basic material must be produced in accordance with the requirements for the production site, place of production or area set out in Annex 4 to Directive 2014/98/EU and specified in relation to the genus or species concerned.”;

- (e) in paragraphs 14(2) and 15(2), for paragraphs (g) and (h) substitute—

- “(g) has been maintained in accordance with paragraph 18;

- (h) where appropriate, has been multiplied in accordance with paragraph 19; and

- (i) has been produced in accordance with the production site requirements in paragraph 12A.”;

- (f) in paragraph 14(3), for “(h)” substitute “(i)”;

- (g) in paragraph 16—

- (i) for sub-paragraphs (1) and (2) substitute—

- “(1) A basic mother plant or basic material must be found to be free from any RNQP listed in Annex 1 or 2 to Directive 2014/98/EU in relation to the genus or species concerned, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.

- (2) An inspector and, where appropriate the supplier, must sample and test the basic mother plant or basic material—

- (a) in cases of doubt as to the presence of any RNQP listed in Annex 1 to Directive 2014/98/EU, for such pests;

- (b) for the RNQPs listed in Annex 2 to Directive 2014/98/EU, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.”;

- (ii) for sub-paragraph (4) substitute—

- “(4) Compliance with sub-paragraph (1) is established by visual inspection by an inspector and, where appropriate, the supplier.”;

- (h) in paragraph 20—

- (i) in sub-paragraph (2), for paragraphs (e) and (f) substitute—

- “(e) complies with the health requirements in paragraph 22;

- (f) is grown in soil that is found by sampling and testing to comply with paragraph 23; and

- (g) complies with the production site requirements in paragraph 12A.”;
- (ii) in sub-paragraph (4), in the words before paragraph (a), for “(f)” substitute “(g)”;
- (i) in paragraph 22—
 - (i) for sub-paragraphs (1) and (2) substitute—

“(1) A certified mother plant or certified material must be found to be free from any RNQP listed in Annex 1 or 2 to Directive 2014/98/EU in relation to the genus or species concerned, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.

(2) An inspector and, where appropriate, the supplier must sample and test the certified mother plant or certified material—

 - (a) in cases of doubt as to the presence of any RNQP listed in Annex 1 to Directive 2014/98/EU, for such pests;
 - (b) for the RNQPs listed in Annex 2 to Directive 2014/98/EU, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.”;
 - (ii) in sub-paragraph (4), for the words from “sub-paragraphs (1)” to the end substitute “sub-paragraph (1) by visual inspection”;
- (j) in paragraph 23(4)(a), at the beginning insert “unless otherwise stated.”.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
4 August 2020

Explanatory Memorandum to The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department 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 Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
6 August 2020

PART 1

1. Description

These Regulations amend certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intending for marketing. This is to ensure that this material is practically free from Union regulated non-quarantine pests (“RNQPs”) at the place of production and that the presence of such pests does not exceed specified thresholds. These requirements complement and are in addition to those in existing plant health legislation, which introduced this new category of pests

These Regulations are required to assist the UK to meet its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the Implementation Period (31 December 2020). These Regulations transpose Commission Implementing Directive (EU) 2020/177 which makes amendments to certain marketing directives for seed and other propagating material as regards pests of plants on seeds and other plant reproductive material (OJ No L. 41, 13.2.2020, p. 1) (“the 2020 Directive”) in relation to RNQPs.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure.

3. Legislative background

These Regulations amend:

- the Marketing of Vegetable Plant Material Regulations 1995 (SI 1995/2652) (“the 1995 Regulations”);
- the Marketing of Ornamental Plant Propagating Material Regulations 1999 (SI 1999/1801) (“the 1999 Regulations”);
- the Seed Marketing (Wales) Regulations 2012 (SI 2012/245) (W. 39) (“the 2012 Regulations”);
- the Seed Potatoes (Wales) Regulations 2016 (SI 2016/106) (W. 52) (“the 2016 Regulations”); and
- the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 (SI 2017/691) (W. 163) (“the 2017 Regulations”).

Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions as regards protective measures against pests of plants (OJ No L.

319, 10.12.2019, p. 1) (“the Phytosanitary Conditions Regulation”) implements Regulation (EU) 2016/2031 as regards protective measures against pests of plants (OJ No L. 317, 23.11.2016, p. 4) (“the Plant Health Regulation”). The Plant Health Regulation and the Phytosanitary Conditions Regulation have applied to the UK since December 2019 and introduce a revised plant health import and movement regime including a new category of pests known as RNQPs. They are part of the wider EU Smarter Rules for Safer Food package of regulations which modernises the existing health and safety standards of the agri-food chain.

The 2020 Directive amends the pest and disease requirements and standards found in the EU marketing directives (listed below) to provide requirements concerned with RNQPs that complement and are in addition to those in the Phytosanitary Conditions Regulation.

The EU marketing directives (“the Marketing Directives”) have been transposed into domestic legislation as follows:

- The 1995 Regulations implement:
 - Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed (OJ No. L 205, 1.8.2008, p. 28); and
 - Commission Directive 93/61/EEC setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 2008/72/EC (OJ No. L 250, 7.10.1993, p. 19).
- The 1999 Regulations implement:
 - Council Directive 98/56/EC on the marketing of propagating material of ornamental plants (OJ No. L 226, 13.8.1998, p. 16); and
 - Commission Directive 93/49/EEC setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 93/682/EEC (OJ No. L 250, 7.10.1993, p. 9).
- The 2012 Regulations implement:
 - Council Directive 66/401/EEC on the marketing of fodder plant seed (OJ No. L 125, 11.7.1966, p. 2298);
 - Council Directive 66/402/EEC on the marketing of cereal seed (OJ No. L 125, 11.7.1966, p. 2309);
 - Council Directive 2002/55/EC on the marketing of vegetable seed (OJ No. L 193, 20.7.2002, p. 33); and
 - Council Directive 2002/57/EC on the marketing of seed of oil and fibre (OJ No. L 193, 20.7.2002, p. 74).
- The 2016 Regulations implement:
 - Council Directive 2002/56/EC on the marketing of seed potatoes (OJ No. L 193, 20.7.2002, p. 60); and
 - Commission Implementing Directive 2014/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes (OJ No. L 38, 7.2.2014, p. 39).
- The 2017 Regulations implement:

- Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No. L 267, 8.10.2008, p. 8); and
- Commission Implementing Directive 2014/98/EC implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No. L 298, 16.10.2014, p. 22).

The 1995 and 1999 Regulations apply to Great Britain, similar legislation operates in Northern Ireland. The 2012, 2016 and 2017 Regulations apply to Wales only, similar legislation operates in Scotland, England and Northern Ireland.

Council Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine (OJ No. L 93, 17.4.1968, p. 15) is also amended by the 2020 Directive, however the UK is derogated from the requirement to transpose and implement legislation concerned with vine propagating material.

These Regulations amend the domestic legislation listed above to transpose amendments made by the 2020 Directive to the Marketing Directives. In addition, amendment is made to the 1995 and 2017 Regulations to transpose notification requirements in Council Directives 2008/72/EC and 2008/90/EC for a producer or supplier of vegetable propagating material or fruit plant propagating material to report to an inspector the presence of a regulated pest of plants, including RNQPs.

The marketing of the following types of plant reproductive material is regulated at EU level by the Marketing Directives:

- fodder seed;
- cereal seed;
- propagating material of ornamental plants;
- vegetable seed;
- vegetable propagating and planting material;
- seed potatoes;
- seed of oil and fibre; and
- fruit plant propagating material and fruit plants intended for fruit production.

The Marketing Directives establish a regime to ensure that purchasers throughout the European Union receive seeds, plants and other plant propagating material (“plant material”) which is healthy and of good quality. They set quality standards to be met by species of plant material when marketed and prescribe conditions to be satisfied by suppliers of plant material.

The Phytosanitary Conditions Regulation establishes uniform conditions for the implementation of the Plant Health Regulation. This includes an update to the phytosanitary status of pests found in the Marketing Directives following a review of pests carried out by the European and Mediterranean Plant

Protection Organisation (“EPPO”). Certain pests, some of which are listed in the Marketing Directives, fulfil the conditions provided for in the Plant Health Regulation to be included in the list of RNQPs.

The Phytosanitary Conditions Regulation lists the RNQPs relating to specific plants for planting, categories and thresholds. It also provides the measures to be taken to prevent the presence of RNQPs on those specific plants for planting.

The 2020 Directive makes consequential amendments to the Marketing Directives to take account of the updated pest status of the pests listed in those directives and updates the measures to determine the presence of pests. It also introduces pests that were quarantine pests but are now assessed, following the review carried out by EPPO, as RNQPs or new pests for regulation as an RNQP. The amendments align with the directly applicable Phytosanitary Conditions Regulation.

These Regulations adapt or remove provisions concerning pest and disease standards regulated in the marketing regulations listed above which have been re-classified as RNQPs. These Regulations transpose the requirement for the crop and seed produced by the crop to comply with the conditions of the Phytosanitary Conditions Regulation as a condition of certification in the 2012 Regulations.

Council Directives 2008/72/EC and 2008/90/EC contain provisions for reporting the presence of pests on vegetable propagating and planting material and fruit plant propagating material and fruit plants intended for fruit production. These Regulations transpose those requirements in full and make clear that a reporting requirement exists for all pests, including the reclassified RNQPs.

These Regulations also correct a formatting error in the potato disease tolerance tables in Schedule 3 to the 2016 Regulations. The formatting error relates to incorrect linear box markings in the disease tolerance tables in parts 2 and 3 of Schedule 3 to the 2016 Regulations which confuse the interpretation of group tolerances.

The amendments made by these Regulations do not amount to changes in policy and will not have a substantive impact on current practices, because the underlying processes are unchanged.

5. Consultation

The Welsh Government has not undertaken a full public consultation on these Regulations, but has carried out a targeted consultation with organisations including the British Society of Plant Breeders, the Agricultural Industries Confederation, the Agriculture and Horticulture Development Board, the National Association of Agricultural Contractors, Horticulture Wales and the National Farmers Union Cymru and Farmers Union of Wales. These industry organisations represent the businesses directly affected by the amendments

across Great Britain and Wales and have raised no concerns with the Welsh Government's approach.

6. Regulatory Impact Assessment (RIA)

These Regulations make technical amendments which are consequential to the already directly applicable Phytosanitary Conditions Regulations and no major policy impact is anticipated. The Regulations are not expected to have a significant impact on businesses, charities or the public sector in Wales.

As such, no RIA has been prepared. This is in line with the Welsh Ministers' RIA Code.

SL(5)596 – The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

The Regulations are made under the powers conferred on the Welsh Ministers by sections 551 and 569(4) and (5) of the Education Act 1996.

These Regulations amend the Education (School Day and School Year)(Wales) Regulations 2003 (“the 2003 Regulations”). The 2003 Regulations set out the minimum number of half-day sessions for which maintained schools must meet within a school year. The minimum number is 380 sessions (190 days).

These Regulations amend the 2003 Regulations in two ways:

- 1) To allow schools in Conwy, Pembrokeshire and Powys, which opened for an additional week at the end of the summer term of the 2019-2020 school year to hold at least 370 sessions during the 2020-2021 school year instead of at least 380 sessions.
- 2) To allow for up to 4 sessions to count as sessions on which the school met if they were devoted to the preparation of schools and planning required to enable schools to open to all learners following a reduction in operations as a result of the incidence and transmission of Coronavirus. These sessions would be held during the first two weeks of the 2020-2021 school year.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following point is 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 issue of public policy likely to be of interest to the Senedd.

The Explanatory Memorandum notes that the Welsh Government consulted with “*local authorities and the Welsh Local Government Association*”. Local authority directors were issued with a letter on 29 July 2020 setting out the intentions, and “*local authorities were invited [to] raise any concerns in response.*” The Explanatory Memorandum does not explain whether or not local authorities did respond with any concerns.

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 (“the 2019 Regulations”) came into force on 1 September 2019, allowing schools one additional INSET day for each of the next three years. An eight week public consultation on the policy approach took place, and 899 responses were received. The Explanatory Memorandum issued by the Welsh Government in relation to the 2019 Regulations explained that a wide audience of key stakeholders were consulted, “*including*



Headteachers, schools, Regional Consortia, Teacher Unions, Local Authorities, and Estyn. The consultation was also publicised on social media."

Given the number of responses and the range of key stakeholders consulted in relation to the 2019 Regulations, clarification is sought as to why a wider range of stakeholders were not consulted in respect of these Regulations. It would be helpful to learn whether or not those consulted raised any concerns, in particular those local authorities where schools will be closed for an additional week, where families will need to ensure childcare arrangements for a week outside the usual school holidays period.

The Explanatory Memorandum further provides that an Equality Impact Assessment was undertaken which found that *"disadvantaged and vulnerable groups could be adversely affected by an extended half term break and by the two planning and preparation days at the start of term. Families who live in poverty or those whose income is reliant on actual hours worked may struggle with childcare for these extra days."*

What steps has the Welsh Government undertaken to comply with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (2011/1064)? What steps has the Welsh Government taken to mitigate the impact on those groups and families identified in the Equality Impact Assessment as being adversely affected by an extended half term break?

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

18 August 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 848 (W. 187)

EDUCATION, WALES

**The Education (School Day and
School Year) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Education (School Day and School Year) (Wales) Regulations 2003 (“the 2003 Regulations”) apply to schools maintained by local authorities and to special schools whether or not so maintained. They make provision, among other things, for a school day which is ordinarily to be divided into two sessions with a break in the middle, and for schools (other than nursery schools) to meet for at least 380 sessions during any school year.

These Regulations amend the 2003 Regulations in two ways:

(1) To allow schools which opened for an additional week at the end of the summer term of the 2019-2020 school year to hold at least 370 sessions during the 2020-2021 school year instead of at least 380 sessions.

(2) To allow for up to four sessions to count as sessions on which the school met if they were devoted to the preparation of schools and planning by teachers following a reduction in operations as a result of the incidence and transmission of Coronavirus during the 2019-2020 school year. These sessions will be held during the first two weeks of the first term of the 2020-2021 school year.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the School Governance, School Organisation and Admissions Branch, the Schools Effectiveness Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 848 (W. 187)

EDUCATION, WALES

**The Education (School Day and
School Year) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

Made 10 August 2020

Laid before Senedd Cymru 11 August 2020

Coming into force 1 September 2020

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 551 and 569(4) and (5) of the Education Act 1996(1), and now vested in them(2) make the following Regulations.

Title and commencement

1. The title of these Regulations is the Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020 and they come into force on 1 September 2020.

Amendment of the Education (School Day and School Year) (Wales) Regulations 2003

2. The Education (School Day and School Year) (Wales) Regulations 2003(3) are amended as follows.

3. In regulation 4(2), at the beginning insert “Subject to paragraph (2A),”.

-
- (1) 1996 c. 56. Section 551(1A) was inserted by paragraph 39 of Schedule 7 to the Education Act 1997 (c. 44), and section 551(2) was amended by paragraph 166 of Schedule 30 and Schedule 31 to the School Standards and Framework Act 1998 (c. 31). For the meaning of “regulations” and “prescribed” see section 579(1).
- (2) The functions of the Secretary of State were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) S.I. 2003/3231 (W. 311), amended by S.I. 2006/1262 (W. 119), S.I. 2008/1739 (W. 171), S.I. 2011/149 (W. 33), S.I. 2012/248 (W. 41) and S.I. 2019/1131 (W. 196).

4. After regulation 4(2) insert—

“(2A) At least 370 sessions must be held at a school listed in paragraph (2B) during the school year 2020-2021 save that nothing in this paragraph is to require a nursery class at those schools to meet for that number of sessions.

(2B) All maintained schools in the following local authority areas—

- (i) Conwy;
- (ii) Pembrokeshire except for Ysgol y Preseli, Crymych, Pembrokeshire, SA41 3QH;
- (iii) Powys.”

5. After regulation 5 insert—

“6.—(1) This paragraph applies to any school session falling within the school year 2020-2021 which is devoted (wholly or mainly) to the preparation of schools and planning by teachers following the reduction in operations due to circumstances relating to the incidence or transmission of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(2) Paragraph (1) is to have effect in relation to no more than four school sessions in the first two weeks of the first term of that school year.

(3) Where paragraph (1) applies, that session is to be regarded for the purposes of regulation 4 as a session on which the school has met.”

Kirsty Williams

Minister for Education, one of the Welsh Ministers

10 August 2020

Explanatory Memorandum to The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of 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 Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020.

Kirsty Williams
Minister for Education
11 August 2020

1. Description

The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020 amend The Education (School Day and School Year) (Wales) Regulations 2003.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The Education (School Day and School Year) (Wales) Regulations 2003 were made under sections 551 and 569(4) and (5) of the Education Act 1996 and came into force on 31 December 2003.

Regulation 4(1) provides that every day on which a school meets is to be divided into two sessions which are to be separated by a break in the middle of the day unless exceptional circumstances make this undesirable. Regulation 4(2) provides that at least 380 school sessions are required during any school year. This excludes nursery schools.

Regulation 4(3) allows for sessions where a school is prevented from meeting to be treated as if it had met as intended.

Regulation 5 provides for the number of additional school training days permitted and this is periodically amended to account for changes to the education system such as training for the new curriculum.

4. Purpose & intended effect of the legislation

Schools in three local authorities – Conwy, Pembrokeshire and Powys – opened for an additional week at the end of summer term. In lieu of this extra week these schools will close for an additional week at the autumn half term break. Without these Regulations, these schools will not meet the required number of sessions during the 2020/21 school year.

On 9 July 2020, the Minister for Education announced ‘back to school’ plans for September. Schools are expected to welcome learners back to the classroom from 1 September 2020.

Many schools are holding planning and preparation days during the first week of the new autumn term. These are in addition to planned INSET training days. As such, without these Regulations, schools will not meet the required number of sessions during the 2020/21 school year.

Therefore, these Regulations amend the 2003 Regulations in two ways:

- i.) To allow schools which opened for an additional week at the end of the summer term of the 2019-2020 school year to hold at least 370 sessions during the 2020-2021 school year instead of at least 380 sessions.
- ii.) To allow for up to 4 sessions to count as sessions on which the school met if they were devoted to the preparation of schools and planning required to enable schools to open to all learners following a reduction in operations as a result of the incidence and transmission of Coronavirus. These sessions would be held during the first two weeks of the 2020-2021 school year.

The remaining requirements as set out in the 2003 Regulations are unaffected.

5. Consultation

During the period leading up to the laying of these Regulations, we have engaged with local authorities and the Welsh Local Government Association. In addition a letter from the Director of Education was issued to local authority directors on 29 July 2020. This set out the intentions and local authorities were invited raise any concerns in response.

6. Regulatory Impact Assessment

An Integrated Impact Assessment has been carried out in the making of the 2020 Amendment Regulations. The Impact Assessment and the Regulations will be kept under review during the period they are in force.

There are no costs or savings resulting from this amendment, therefore a Regulatory Impact Assessment has not been completed. No impact on business, charities or voluntary bodies is foreseen and the 2020 Amendment Regulations only have effect for the 2020/21 academic year.

The impact on the public sector is on the state-funded schools sector including local authorities and school governing bodies to the extent that these bodies are responsible for the delivery of school sessions. As a result of these amending regulations, schools that opened for an additional week in the summer term 2019/20 will not be penalised for taking an extended half term break in the autumn term of 2020/21. In addition schools will be given the flexibility at the start of the new academic year to hold up to two planning and preparation days to help prepare to welcome all learners back to school.

Welsh Language

There are no positive or adverse impacts specific to the Welsh Language.

Children's Rights

We have undertaken a Children's Rights Impact Assessment.

Children and young people have a right to education (article 28 of the UNCRC). It could be argued that a further week's loss of schooling as a result of a longer autumn half-term break for some schools could have a detrimental effect on learners. This has been to some extent mitigated by the extra week those schools would have been open at the end of this year's summer term and may be lessened further by the accelerated learning programme 'Recruit, Recover, Raise Standards'.

Equality and Human Rights

We have undertaken an Equality Impact Assessment.

Disadvantaged and vulnerable groups could be adversely affected by an extended half term break and by the two planning and preparation days at the start of term. Families who live in poverty or those whose income is reliant on actual hours worked may struggle with childcare for these extra days.

Privacy

The provisions in the General Data Protection Regulation 2016 are not affected by extending the amendment to these Regulations.

Justice Impact Assessment (JIA)

Whilst no formal JIA has been undertaken, no impacts have been identified when considering these Regulations.

SL(5)591 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the 1984 Act 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) in Wales which causes the disease known as COVID-19 or “coronavirus”.

These Regulations amend the principal Regulations as follows—

- (a) permit restaurants, cafés, bars and public houses to open indoors (although measures must be taken to minimise the risk of exposure to coronavirus on the premises);
- (b) permit bingo halls, bowling alleys and auction houses to open (but again measures must be taken to minimise the risk of exposure to coronavirus);
- (c) relax the restriction on gatherings, so that any outdoor gathering of no more than 30 people is permitted (whether or not it involves organised outdoor activities).

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 of public policy likely to be of interest to the Senedd**



The Explanatory Memorandum explains that 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. Further, the Explanatory Memorandum states:

“The First Minister signalled in his press conference of 9 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 31 July.”

The Explanatory Memorandum explains also that 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. However, it is noted that:

“A summary equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.”

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

13 August 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Pack Page 128

Legislation, Justice and Constitution Committee

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 820 (W. 180)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 3) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020. The amendments—

- (a) permit restaurants, cafés, bars and public houses to open indoors (although measures must be taken to minimise the risk of exposure to coronavirus on the premises);
- (b) permit bingo halls, bowling alleys and auction houses to open (but again measures must be taken to minimise the risk of exposure to coronavirus);
- (c) relax the restriction on gatherings, so that any outdoor gathering of no more than 30 people

is permitted (whether or not it involves organised outdoor activities).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 820 (W. 180)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 3) Regulations
2020**

Made at 12.00 p.m. on 31 July 2020

Laid before Senedd Cymru

at 4.00 p.m. on 31 July 2020

Coming into force 3 August 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency,

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 and they come into force on 3 August 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) Omit regulation 6.

(3) In regulation 7—

(a) in the heading, for “other” substitute “certain”;

(b) in paragraph (2)(a), omit “4,”.

(4) In regulation 9, omit “6(1) or” in both places it occurs.

(5) In regulation 12—

(a) in paragraph (2)(a)(ii), in the Welsh language text, after “gynnal” insert “rhyngddynt”;

(b) in paragraph (3), omit sub-paragraph (d).

(6) In regulation 14—

(a) in paragraph (1), omit sub-paragraph (a);

(b) for the heading substitute—

“Restriction on indoor gatherings”.

(7) After regulation 14 insert—

“Restriction on outdoor gatherings

14A.—(1) No person may, without a reasonable excuse, participate in a gathering outdoors that consists of more than 30 people.

(2) A reasonable excuse includes the need to do the following—

(a) work or provide voluntary or charitable services;

(1) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)).

- (b) where the person is an elite athlete, train or compete;
 - (c) meet a legal obligation;
 - (d) access or receive public services;
 - (e) access childcare or participate in supervised activities for children.”
- (8) Omit regulation 15.
- (9) In regulation 17(2), omit “6(1),”.
- (10) In regulation 18—
- (a) in paragraph (1), omit “6(1),”;
 - (b) in paragraphs (4) and (6), after “14(1)” insert “or 14A(1)”.
- (11) In regulation 20(1)—
- (a) in sub-paragraph (a), omit “6(1),”;
 - (b) in sub-paragraph (b), after “14(1)” insert “or 14A(1)”.
- (12) In regulation 20(11), in the Welsh language text, for “gronfeydd y” substitute “asedau’r”.
- (13) Omit Schedule 1.
- (14) In Schedule 2—
- (a) for paragraph 3 substitute—

“3. Venues where live or recorded music is provided for members of the public or members of the venue to dance.

3A. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982(1)).”;
 - (b) omit paragraph 4;
 - (c) in paragraph 13 omit “Bowling alleys and”;
 - (d) omit paragraph 18.
- (15) In Schedule 4, after paragraph 35 insert—
- “36. Restaurants and cafés (including workplace canteens and dining rooms in members’ clubs).**
 - 37. Bars (including bars in members’ clubs).**
 - 38. Public houses.**
 - 39. Bingo halls.**
 - 40. Bowling alleys.**
 - 41. Auction houses.”**

(1) 1982 c. 30. Paragraph 2A of Schedule 3 was inserted by section 27(3) of the Policing and Crime Act 2009 (c. 26).

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Mark Drakeford

The First Minister, one of the Welsh Ministers

At 12:00 p.m. on 31 July 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) 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. 3) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
31 July 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. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

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.

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 easing of the restrictions 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 the 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 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”.

The amendments to the principal Regulations will come into force at the beginning of 3 August, and will –

- allow outdoor gatherings of up to 30 people

Outdoor gatherings have been prohibited in Wales save where a person has a reasonable excuse since the inception of the original Health Protection (Coronavirus Restrictions) (Wales) Regulations in March. The circumstances have developed over time, and immediately prior to these changes such gatherings were permitted between members of a household (or extended household) and members of one other household or extended household. Specific provision was also made allowing organised outdoor activities for up to 30 people.

Under the amendments in these Regulations, these restrictions will be replaced by a provision allowing outdoor gatherings of up to 30 people (with only very limited exceptions where it could be reasonable for more people to gather). This means that gatherings of 30 or fewer people do not need to be organised and are not limited to members of particular households, nor do they need to be for any particular purposes. Guidance will continue to emphasise the strong recommendation that people over the age of 11 should socially distance from anyone outside their household or extended household.

- re-open indoor hospitality being provided in pubs, bars, cafes and restaurants

From 13 July pubs, bars, cafes and restaurants have been permitted to open outdoors. Circumstances have developed sufficiently over time particularly with the re-opening of outdoor services to allow a further relaxation of the requirements and permit indoor hospitality (with the exception of dancing). Venues where live or recorded music is played for dancing, and sexual entertainment venues, will remain closed.

- re-open bowling alleys, bingo halls and auction houses.

Again work with sector representative bodies and others on safe opening practices and new guidance, supports the further relaxation of requirements and the reopening of these businesses.

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 easing and adapting the restrictions by means of the amendments made to the principal Regulations are 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, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. 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, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 9 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 31 July.

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 equalities impact assessment has been prepared and will be published¹. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.

¹ To be available at: <https://gov.wales/equality-impact-assessments-coronavirus>



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

31 July 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.3) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 3) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 3 August 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 11 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the recall Plenary on Wednesday 26 August.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**

DATE **31 July 2020**

BY **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimise the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions and their proportionality every 21 days. The most recent review – the sixth – took place this week.

The scientific and medical advice shows that, overall, levels of coronavirus transmission in Wales are low. We are closely monitoring an outbreak in Wrexham, centred on the Maelor Hospital, which appears to be under control.

The UK's Scientific Advisory Group for Emergencies (SAGE) and the Welsh Government's Technical Advisory Cell (TAC) has advised that every change made to relax the lockdown measures – the coronavirus regulations – has a cumulative effect. We are therefore taking a step-by-step approach towards unlocking these measures; closely monitoring the impact of each change; learning from the changes we make and moving forward carefully.

In the last three-week review cycle, we made a number of changes to open up our leisure, retail, tourism and hospitality sectors. After monitoring the impact of these changes and reviewing the wider evidence and indicators about the transmission of the virus in Wales and around the world, we have concluded there is headroom to make some further changes over the coming three-week cycle.

These will once again be phased in over the three weeks and will focus on re-opening parts of the indoor economy, which have so far remained closed and on providing families and friends with more opportunity to meet each other outdoors.

We will also use this cycle to explore the options for enabling more people to meet indoors, if conditions allow.

In the first week, from 3 August, pubs, bars, restaurants and cafes will be able to re-open indoors, as will indoor bowling alleys, auction houses and bingo halls.

We will relax the restrictions on meeting outdoors to enable up to 30 people to meet outdoors. But it is very important that people maintain social distancing at all times.

A consequence of these changes is that premises licensed to carry out marriages and civil ceremonies will be able to re-open. Small, socially-distanced receptions will be allowed outdoors but indoor receptions will not be allowed at this time, until the rules on gatherings indoors are re-visited.

As the scientific evidence shows the risk of transmission is lower in children, we will update the guidance to relax the position on children under 11 maintaining a 2m distance from each other and from adults. However it is very important that older children and young adults continue to maintain social distancing as the level of risk is different in these age groups.

In the second week, if conditions allow, from 10 August, swimming pools, indoor fitness studios, gyms, spas and leisure centres and children's indoor play areas will be able to re-open.

For the third week, we are exploring whether we can make changes to the rules about people meeting indoors. This is one of the most difficult areas from a public health perspective because of the increased risk of transmission. We have seen the resurgence of the virus in places across the world linked to the re-opening of indoor spaces and gatherings of people indoors – in Melbourne and in the southern US states, for example.

The current rules on indoor gatherings will remain in place for the time being. If the scientific evidence and advice from the Chief Medical Officer for Wales supports a relaxation of the rules, we will aim to bring changes into force on 15 August. If we are able to change the rules on gatherings indoors, this will include options to allow small social events, such as wedding receptions to take place.

At present, the rules only allow people to meet indoors with others from the same household or extended household. This means that, from Monday, people will only be able to visit indoor areas of restaurants, pubs, for example with members of their

own household or extended household.

We are moving into the green phase in our traffic light system and as we do, guidance is increasingly important in setting out all the measures and steps we need to take to protect us from coronavirus.

It is vitally important we all follow these new ways of working and behaving and that people and businesses comply with the guidance to help reduce the spread of the virus and to protect people, ensuring we can go on lifting restrictions in the future.

For the small minority who are not following the guidance, we will take action and use the legal powers that we, and others, have.

We will sharpen powers to intervene and manage enforcement wherever necessary and we will act on intelligence reported to the Wales TUC and its affiliated unions.

Coronavirus has not gone away – we all have a shared and ongoing responsibility to keep Wales safe.

Agenda Item 3.8

SL(5)595 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020

Background and Purpose

These Regulations set out the latest amendments to the coronavirus restrictions in Wales. The Regulations:

- Permit community centres, swimming pools, fitness studios, gyms, spas, leisure centres and indoor play areas to open; but measures must be taken to minimise the risk of exposure to coronavirus on the premises.
- Confer new powers on local authority enforcement officers to ensure that measures are taken to minimise the risk of exposure to coronavirus at workplaces and other premises that are open. An officer may issue a “premises improvement notice” requiring the person responsible for the premises to take specified measures, and if those measures are not taken an officer may issue a “premises closure notice” requiring the premises to close. Where necessary, an officer may also issue a premises closure notice without having previously issued a premises improvement notice. Provision is made for appeals against notices, for publicising notices, and for breach of the terms of either type of notice to be an offence.

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: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

The Regulations create new offences relating to premises closure notices, punishable by up to 6 months' imprisonment or a fine. However, the Public Health (Control of Disease) Act 1984 provides that such offences cannot be punishable by imprisonment.

We note that the Welsh Government has already addressed this in the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.5) Regulations 2020, by making it clear that such offences are punishable only by a fine.



The provision relating to imprisonment was in force between 10 August 2020 and 17 August 2020. We would be grateful if the Welsh Government could confirm that the provision had no practical effect during that time.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

New regulation 18(7A) says that an enforcement officer may:

- (a) require any person to give any information or answer any question that the enforcement officer considers to be relevant to the enforcement power,
- (b) require the production of, inspect and take copies of any documents or electronic records.

New regulation 18(9B) says that no information or answer given under regulation 18(7A)(a) may be used as evidence against that person (or the person's spouse or civil partner) in proceedings under any enactment other than these Regulations.

Could the Welsh Government confirm:

- (i) the reason for regulation 18(7A)(a) being expressly limited to information and answers that the enforcement officer considers to be relevant to the exercise of the enforcement power, while regulation 18(7A)(b) is not similarly expressly limited,
- (ii) whether information or answers provided by a person under regulation 18(7A)(a) can be used against a person in any proceedings that are not brought under an enactment,
- (iii) whether documents or electronic records referred to in regulation 18(7A)(b) can be used against a person in any proceedings (in other words, why does regulation 18(9B) refer only to regulation 18(7A)(a)).

Merits Scrutiny

The following two 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 of public policy likely to be of interest to the Senedd

The circumstances surrounding the coronavirus pandemic are constantly changing. One consequence of this is that the legislation setting out the restrictions that apply to individuals and businesses in Wales has now been made / amended 17 times to reflect those changing circumstances. This naturally makes it difficult for individuals and businesses to keep up to speed with the changes and what they are required to do. In turn, this raises question as to how the restrictions have been enforced.

With regard to enforcement of the coronavirus restrictions in Wales, could the Welsh Government:

- (i) broadly set out how it works with the various enforcement agencies in Wales,



- (ii) confirm whether the pace of change of the restrictions has any impact on the approach to enforcement (for example, does it lend itself to a regime that focuses only on the more serious breaches, and how much additional burden does it put on the various enforcement agencies).

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

These Regulations introduce enforcement measures to ensure that workplaces and other premises comply with the requirement to minimise the risk of exposure to coronavirus. The enforcement powers are given to local authority officers.

The Explanatory Memorandum does not refer to any discussions between the Welsh Government and Welsh local authorities in relation to these new enforcement powers.

Can the Welsh Government confirm what discussions it has had regarding the new enforcement powers, in particular regarding the resources required to carry out the enforcement powers. For example, if a business receives a premises closure notice and the business rectifies the issues immediately, how long might it be before an enforcement officer will return to the premises to terminate the premises closure notice and allow the business to open again?

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response to the points raised in this report is required.

Legal Advisers
Legislation, Justice and Constitution Committee
18 August 2020



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 843 (W. 186)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 4) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

The amendments permit community centres, swimming pools, fitness studios, gyms, spas, leisure centres and indoor play areas to open; but measures must be taken to minimise the risk of exposure to coronavirus on the premises.

The amendments also confer new powers on local authority enforcement officers to ensure that measures are taken (in accordance with regulation 12 of the principal Regulations) to minimise the risk of exposure to coronavirus at workplaces and other premises that

are open. An officer may issue a “premises improvement notice” requiring the person responsible for the premises to take specified measures, and if those measures are not taken an officer may issue a “premises closure notice” requiring the premises to close. Where necessary, an officer may also issue a premises closure notice without having previously issued a premises improvement notice. Provision is made for appeals against notices, for publicising notices, and for breach of the terms of either type of notice to be an offence.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 843 (W. 186)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 4) Regulations
2020**

Made at 12.30 p.m. on 7 August 2020

*Laid before Senedd
Cymru at 6.00 p.m. on 7 August 2020*

Coming into force 10 August 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 and they come into force on 10 August 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 7(2)(a), for “, 6 or 12” substitute “or 6”.

(3) Omit regulation 10.

(4) In regulation 12—

(a) after paragraph (2) insert—

“(2A) Measures that may be taken under paragraph (2) for the purposes of minimising the risk of exposure to coronavirus at the premises also include—

(a) ceasing to carry out certain activities;

(b) closing a part of the premises.”

(b) in paragraph (3)(h), omit “permitted to open by virtue of regulation 10(4)”.

(5) In regulation 14(2), after sub-paragraph (o) insert—

“(p) exercise with others, in a gathering of no more than 30 people, at a fitness studio, gym, swimming pool, other indoor leisure centre or facility or any other open premises.”

(6) In regulation 17—

(a) before paragraph (1) insert—

“(A1) In regulation 17A and Schedule 5, an “enforcement officer” means a person designated by a local authority for the purposes of these Regulations.”;

(b) in paragraph (1)(c), for “regulations 18 to 21” substitute “these Regulations”;

(1) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)).

- (c) in paragraph (2), for “10(4), 11(4) or 12(2)” substitute “11(4) or 12(2) or Schedule 5”.

(7) After regulation 17 insert—

“Enforcement of regulation 12(2)

17A. Schedules 5 and 6 make provision for and in connection with conferring functions on enforcement officers for the purpose of enforcing regulation 12(2).”

(8) In regulation 18—

- (a) in paragraph (1), omit “, 10(4), 12(2)”;

(b) after paragraph (7) insert—

“(7A) An enforcement officer may, to facilitate the exercise of a power conferred on the officer by Schedule 5—

- (a) require any person to give any information or answer any question the officer considers to be relevant to the exercise of the power;

- (b) require the production of, inspect and take copies of, any documents or electronic records.”;

- (c) in paragraph (8), for “or regulation 19” substitute “, regulation 19 or Schedule 5”;

(d) after paragraph (9) insert—

“(9A) A person may not be required under paragraph (7A) to provide a document, record or other information in respect of which a claim for legal professional privilege could be maintained in legal proceedings.

(9B) No information or answer given by a person in response to a requirement imposed under paragraph (7A)(a) is admissible in evidence against that person, or the person’s spouse or civil partner, in proceedings under any enactment other than these Regulations.”

(9) In regulation 19(1)(a), after “imposed by” insert “or under”.

(10) In regulation 20—

- (a) in paragraph (1)(a), omit “10(4),” and “or 12(2)”;

(b) after paragraph (2) insert—

“(2A) A person who—

- (a) without reasonable excuse, contravenes paragraph 3(1) of Schedule 5,

- (b) contravenes paragraph 3(2) of that Schedule, or

- (c) without reasonable excuse, removes, obscures or damages a notice or sign

required to be displayed under paragraph 7(2) of that Schedule,

commits an offence.”;

(c) after paragraph (3) insert—

“(3A) A person who commits an offence under paragraph (2A)(a) is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine, or to both.”;

(d) in paragraph (4), for “An” substitute “Any other”.

(11) In regulation 21(1)(a), after “these Regulations” insert “(except an offence under regulation 20(2A)(a))”.

(12) In regulation 22(1), at the end insert “, except that proceedings for an offence under regulation 20(2A) may also be brought by a local authority”.

(13) In Schedule 2—

(a) in paragraph 3, after “Venues” insert “authorised to be used for the supply of alcohol by a premises licence or club premises certificate (within the meaning given by the Licensing Act 2003(1))”;

(b) omit paragraphs 11 to 13.

(14) In Schedule 4, after paragraph 41 insert—

42. Swimming pools.

43. Indoor fitness studios, gyms, spas and other indoor leisure centres and facilities.

44. Indoor play areas.”

(15) After Schedule 4 insert the Schedules 5 and 6 set out in Schedules 1 and 2 to these Regulations.

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Mark Drakeford

The First Minister, one of the Welsh Ministers

At 12.30 p.m. on 7 August 2020

(1) 2003 c.17.

SCHEDULE 1 Regulation 2
New Schedule 5 to the Health Protection
(Coronavirus Restrictions) (No. 2)
(Wales) Regulations 2020

“SCHEDULE 5 Regulation 17A
Enforcement of regulation 12(2)

Premises improvement notice

1.—(1) An enforcement officer may issue a notice (a “premises improvement notice”) to a person responsible for premises referred to in regulation 12(1) if the officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 12(2), and
- (b) the measures specified in the notice are necessary and proportionate in order to ensure that the person complies with those obligations.

(2) A premises improvement notice must—

- (a) specify the premises to which it relates;
- (b) specify the measures it requires to be taken in order to ensure that the person complies with the obligations imposed by regulation 12(2);
- (c) specify a time limit within which the measures must be taken (which must not be less than 48 hours beginning with the time the notice is issued);
- (d) give details of the right of appeal conferred by paragraph 5.

Premises closure notice

2.—(1) If either condition 1 or condition 2 is satisfied, an enforcement officer may issue a notice (a “premises closure notice”) to a person responsible for premises referred to in regulation 12(1) requiring the premises, or part of the premises, to be closed.

(2) Condition 1 is—

- (a) a premises improvement notice has been issued to the person,
- (b) the enforcement officer considers that the person has failed to take the measures specified in the premises improvement notice within the specified time limit, and

- (c) the officer considers that the closure of the premises, or part of the premises, is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(3) Condition 2 is that the enforcement officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 12(2), and
- (b) the closure of the premises, or part of the premises, (without a premises improvement notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(4) A premises closure notice must—

- (a) contain a description of the premises to be closed,
- (b) where a premises improvement notice has been issued, set out the measures that the enforcement officer considers—
 - (i) have not been taken, and
 - (ii) must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 12(2),
- (c) where a premises improvement notice has not been issued, set out the reasons why the enforcement officer considers that the person is not complying with the obligations imposed by regulation 12(2),
- (d) in either case, set out the reasons why the enforcement officer considers that closure of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus,
- (e) specify the period for which the notice has effect, and
- (f) give details of the right of appeal conferred by paragraph 5.

(5) The period specified under sub-paragraph (4)(e) may not be more than 336 hours (14 days) beginning with the time the notice is issued.

(6) A premises closure notice has effect from the time at which it is issued or from a later time specified in the notice.

(7) A premises closure notice may not be issued in relation to premises which form part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services.

Effect of premises closure notice

3.—(1) As soon as is reasonably practicable after a premises closure notice takes effect, the person to whom it is issued must ensure that—

- (a) the premises to which the notice relates are closed, and
- (b) no business is carried on or service is provided on, or from, the premises.

(2) No person may enter, or be on, premises closed under sub-paragraph (1) without a reasonable excuse.

(3) For the purposes of sub-paragraph (2), the circumstances in which a person has a reasonable excuse include where—

- (a) the person lives on the premises;
- (b) the person is carrying out essential maintenance or repairs;
- (c) the person is doing things necessary to ensure that regulation 12(2) can be complied with when the premises are allowed to be open;
- (d) the person is an enforcement officer or a person assisting an enforcement officer;
- (e) it is necessary for the person to be on the premises to avoid injury or illness or escape a risk of harm.

Termination of premises improvement or closure notice

4.—(1) An enforcement officer may issue a notice terminating a premises improvement notice or a premises closure notice if satisfied that—

- (a) the measures specified in the premises improvement notice (if one was issued) have been taken, or
- (b) other measures have been taken to ensure that regulation 12(2) can be complied with at the premises in question.

(2) A premises improvement notice or premises closure notice ceases to have effect at the time notice of the termination is issued.

Appeals

5.—(1) A person to whom a premises improvement notice or premises closure notice is issued may appeal to a magistrates' court against the notice.

(2) An appeal must be made—

- (a) by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980⁽¹⁾, and
- (b) within 7 days after the day the notice is issued.

(3) But a magistrates' court may allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2)(b) if satisfied that there is a good reason for the failure to appeal before the expiry of that period (and for any delay in applying for permission to appeal out of time).

(4) A magistrates' court may suspend the effect of a premises improvement notice or premises closure notice pending the determination of an appeal.

(5) On an appeal against a premises improvement notice or premises closure notice, a magistrates' court may—

- (a) confirm the decision to issue the notice;
- (b) direct that the notice is to cease to have effect;
- (c) modify the notice;
- (d) make such other order as the court considers appropriate.

(6) If the magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to compensate the person responsible for the premises for loss suffered as the result of the issue of the notice.

(7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.

(8) On an appeal to the Crown Court, the Court may—

- (a) confirm, vary or reverse the decision of the magistrates court;

(1) 1980 c. 43.

- (b) remit the case to the magistrates' court to dispose of in accordance with directions given by the Crown Court.

Issuing premises improvement and closure notices and terminations

6.—(1) A premises improvement notice, premises closure notice or a termination of either of those types of notice is issued to a person by giving a copy of it in writing to that person.

(2) But where the person responsible for the premises to which the notice or termination relates is not on the premises when it is to be issued, the notice is to be treated as having been issued to that person if—

- (a) a copy of it is given to any other person on the premises who appears to be responsible for any business or service being carried out on the premises, or
- (b) if there is no such person on the premises when the notice is to be issued, a copy of the notice is placed in a conspicuous position on the premises.

Publicising premises improvement and closure notices

7.—(1) This regulation applies where an enforcement officer has issued a premises improvement notice or a premises closure notice.

(2) As soon as reasonably practicable after issuing the notice, the enforcement officer must—

- (a) display a copy of the notice, and a sign in the form set out in Schedule 6, in a prominent place near every entrance to the premises;
- (b) arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

(3) A notice or sign displayed under sub-paragraph (2)(a) must be at least A4 size.

(4) A notice required to be displayed and published under sub-paragraph (2) must continue to be displayed and published, and a sign required to be displayed under that sub-paragraph must continue to be displayed, for as long as the notice has effect.”

SCHEDULE 2

Regulation 2

New Schedule 6 to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

“SCHEDULE 6




Regulation 17A

Form of sign to accompany premises improvement notice or premises closure notice

Sign to be displayed with premises improvement notice

1.—(1) A sign displayed with a premises improvement notice under paragraph 7(2)(a) of Schedule 5 must be in the form set out below.




(2) The colours used in the sign must be white, black and amber C0 M60 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>	<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>		
<p>ANGEN GWELLA</p>			
<p>IMPROVEMENT NEEDED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>	<p>Together we'll keep Wales safe</p>		
<p><small>© Crown Copyright 2020. Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government WG41123</small></p>			

Sign to be displayed with premises closure notice

2.—(1) A sign displayed with a premises closure notice under paragraph 7(2)(a) of Schedule 5 must be in the form set out below.

(2) The colours used in the sign must be white, black and red C15 M100 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>		<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>	
<p>CAEWDYD Y FANGRE HON</p>			
<p>PREMISES CLOSED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>		<p>Together we'll keep Wales safe</p>	
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Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) 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. 4) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

7 August 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. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

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.

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 easing of the restrictions 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 the 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 the coronavirus, taking into account the scientific evidence.

The new provisions allowing enforcement officers to issue premises improvement notices and premises closure notices, whilst engaging Article 1 of the First Protocol, insofar as they constitute interference with property, are justified as being in pursuit of protecting public health, balancing the right to carry out businesses with the threat to public health if those business do not take any or adequate reasonable measures to minimise the risk of exposure to coronavirus. If those responsible for premises do open the premises, but do not comply with the duties to take reasonable measures, the need to be able to serve improvement notices is an important step in ensuring

the safety of those who enter the premises. Where measures identified in the notice are not taken, or where the duties under regulation 12 have not been complied with, the ability to issue a closure notice is necessary to ensure public health is safeguarded. Additionally, to order closure, the officer must consider that closure is necessary and proportionate for the purpose of minimising the risk of exposure to the virus. Any improvement notice must allow at least 48 hours for measures to be taken, and a closure notice cannot have effect for more than 336 hours (or 14 days) from the time of issuing. Both improvement and closure notices are subject to appeal to the magistrates enabling determination of a person's civil rights and obligations in compliance with Article 6 ECHR. Further if a court determines that the notice should cease to have effect or be modified, it may order compensation to be paid for any loss suffered as a result of the notice having been given.

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".

The amendments to the principal Regulations will come into force at the beginning of 10 August, and will –

- a) permit swimming pools, fitness studios, spas (to the extent they are not already open), leisure centres and indoor play areas to reopen.

Work has been undertaken with the sector on preparations to allow full re-opening of indoor facilities aimed at providing exercise and fitness. Some parts of the sector, particularly spas, partially re-opened on 27 July when businesses providing close contact services (beauty treatments, etc.) were permitted to re-start. However where such businesses were open they were not permitted to reopen exercise (including swimming) facilities.

Gathering indoors (in a group of 30 people or less) for the purpose of exercise is now permitted under the Regulations. This recognises the significant physical and mental benefits to be accrued from exercise. Facilities providing these services must take all reasonable measures to limit the transmission of coronavirus.

Indoor play areas and centres are indoor playgrounds specifically designed for children to play in. As well as specific centres created for the purpose of indoor play, facilities such as these are often found in a range of buildings and services used by parents including pubs, shopping centres and some of the larger tourist attractions. Those settings have previously re-opened, but until now any indoor play area element had to remain closed.

Play and exercise for children provides well-being, resilience and development benefits for children, and indoor play centres are now permitted to reopen to provide children with increased access to these benefits.

- b) permit community centres to open, this will enable them to may provide public services (other than at the request of local authorities or the Welsh Ministers) and other activities on their premises insofar as permitted under the Regulations. This could include, for example, exercise and fitness classes.

The Regulations will also confer new powers on local authority enforcement officers. Although a number of existing enforcement regimes exist that authorities could utilise to close premises that present a health risk, they do not provide a bespoke enforcement regime capable of supporting compliance with obligations stemming from the Regulations, notably regulation 12. That is, the obligation to take all reasonable measures to maintain a distance of 2m between persons on the premises and persons waiting to enter and to take other reasonable measures to minimise the risk of exposure to coronavirus.

Local authority enforcement officers may issue a “premises improvement notice” requiring the person responsible for the premises or business to take specified remedial measures within a specified timeframe (being not less than 48 hours). If the improvement measures are not taken an officer may issue a “premises closure notice”. This can do more than simply close premises, it can be used to prohibit activities, insofar as undertaken in any part of the premises which is specifically closed. A notice would have immediate effect and could only be used if considered proportionate and necessary to prevent, control or provide a public health response to an incidence of coronavirus. If the enforcement officer considers that the requirements under regulation 12 have not been complied with, a premises closure notice can be issued without being preceded by a premises improvement notice. In order to issue a closure notice an enforcement officer must consider that it is

necessary and proportionate to the purpose of minimising risk of exposure to coronavirus.

It is an offence to fail to comply with a premises improvement notice or premises closure notice. Responsible persons have a right of appeal to a magistrates' court.

The Regulations will also specify signs which will require to be affixed alongside an improvement notice or closure notice, to be displayed at a prominent place near to any entrance to the premises. This will enable people to understand whether or not businesses have taken reasonable measures to minimise risk of exposure to coronavirus. This will enable members of the public to take an informed choice about those premises they wish to enter and enable them to determine the level of risks they are willing to accept.

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 easing and adapting the restrictions by means of the amendments made to the principal Regulations are 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, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. 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, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 31 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 7 August.

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 equalities impact assessment has been prepared and will be published¹. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.

¹ To be available at: <https://gov.wales/equality-impact-assessments-coronavirus>



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

7 August 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 10 August 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 11 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the recall Plenary on Wednesday 26 August.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Interim Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

DATE 7 August 2020

BY Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimise the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions and their proportionality every 21 days. The last full review – the sixth – took place on 30 July and set out a phased approach for the next three-week cycle.

The scientific and medical advice shows that, overall, levels of coronavirus transmission in Wales are low. The outbreak in Wrexham, centred on the Maelor Hospital, now appears to be under control. We have therefore concluded that there is headroom to re-open further parts of our society and economy.

From the 10th August we will re-open swimming pools, indoor fitness studios, spas, gyms and leisure centres as well as children's indoor play areas.

As we move into the green phase in our traffic light system, with more and more premises, workplaces and venues now open, we need to make sure that that people and businesses comply with the Regulations and adhere to guidance on operating in a Covid secure way.

The vast majority are doing so, but for those that are not, this week we are strengthening the provisions on enforcement in the Regulations. This would enable enforcement officers in local authorities identify non-compliance, seek to remedy the situation and then if necessary issue a premises improvement notice to highlight

breaches and specify measures that need be taken on any premises to comply with the law. Where a Premises Improvement Notice is not complied with, or where a breach is sufficiently serious, premises can be closed by issuing a Premises Closure Notice. Where notices are issued signs will be displayed in a prominent place to inform the public that improvement is needed on a premises or that a premises has had to close.

We continue to explore whether we can make changes to the rules about people meeting indoors and will provide more detail on this next week. Given the resurgence of the virus elsewhere in the UK and across the world, and the increased risk of transmission from meetings indoors, we continue to take a cautious approach. If conditions in Wales worsen we may have to reverse these or other easements.

Coronavirus has not gone away – we all have a shared and ongoing responsibility to keep Wales safe.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)573 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020

Background and Purpose

These Regulations are the latest amendments made by the Welsh Ministers to the coronavirus restrictions that apply in Wales.

The amendments:

- enable members of a household to agree with one other household to form an extended household,
- revoke the requirement not to leave the area local to the place where a person is living without a reasonable excuse,
- clarify that indoor visitor attractions are required to be closed,
- clarify that it is a reasonable excuse to gather with others to participate in activities organised at outdoor visitor attractions, but only in accordance with the physical distancing requirements.

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: (i) dissolved, or (ii) 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 four 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 of public policy likely to be of interest to the Senedd

Human rights

Despite the continued easing of coronavirus restrictions, there are still restrictions in place that impact upon the daily lives of people in Wales. Where those restrictions interfere with human rights, the interference still needs to be justified.

Regarding justification, we note the approach taken by the courts regarding judicial review of coronavirus regulations in England. Although the England coronavirus regulations are different from the Wales coronavirus regulations, the underlying principles are largely the same.



In *Dolan v Secretary of State [2020] EWHC 1786 (Admin)*, the High Court decided that restrictions in England did **not breach** the following articles of the European Convention on Human Rights (the Convention): Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 11 (freedom of assembly and association), Article 1 of Protocol 1 (protection of property).

In reaching its decision, the court:

- referred to the coronavirus pandemic as presenting “truly exceptional circumstances”,
- said that the restrictions had a clear legitimate aim, “namely the reduction of the incidence and spread of coronavirus”,
- emphasised the importance that the restrictions: (i) were time-limited to 6 months, (ii) must be reviewed regularly, and (iii) must end as soon as they are no longer necessary to meet the public health threat,
- decided that any interference with human rights was proportionate.

As noted above, these underlying principles are also broadly applicable to the Wales restrictions. Nevertheless, we raise the following questions:

- (1) Regarding Article 5, it appears to us that the court did not consider that there was any deprivation of liberty and therefore there was no need to consider the exceptions to Article 5.

The Explanatory Memorandum to the Regulations says that Article 5 is engaged. Can the Welsh Government set out which restrictions engage Article 5?

- (2) The court dealt individually with each human right that was in play, using separate headings for discussion about each human right and, where relevant, setting out the various competing considerations that arose. See, for example, paragraphs 76 to 78 of the judgment, which discuss Article 8.

Does the Welsh Government believe there would be advantage in adopting a similar approach in Explanatory Memorandums, particularly for legislation that has a significant impact on human rights, such as the coronavirus restrictions?

- (3) The court did not come to a conclusion as to whether the England restrictions breached Article 9 of the Convention (freedom of thought, conscience and religion). The court adjourned its consideration of Article 9, but nevertheless noted the potential for the England restrictions to engage Article 9.

The Explanatory Memorandum to the Regulations lists various human rights that are engaged by the Wales restrictions, but it does not include Article 9. Given that restrictions still apply to, for example, prayer that forms part of communal worship in Wales, does the Welsh Government believe that Article 9 is engaged?



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

Equality

In a [webinar](#) organised by Swansea University School of Law on 18 June 2020, Jeremy Miles MS, Counsel General, said that: "Covid is exacerbating pre-existing inequalities in our society"¹ and, with regard to the measures the Welsh Government could potentially take in response to the pandemic, the Welsh Government will always "evaluate the potential steps against an equality lens".²

The Wales restrictions have now been made / amended seven times, but we can find no reference to equality in any of the seven Explanatory Memorandums laid before the Senedd.

Public bodies, including the Welsh Ministers, have a duty under regulation 8 of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 to assess and monitor the impact of its policies on equality. In particular, the Welsh Ministers must make such arrangements as they consider appropriate to publish reports of the equality impact assessments they have carried out.

With regard to the making and amending of the Wales restrictions, can the Welsh Government outline what steps it has taken to comply with the duties in regulation 8 of the 2011 Regulations, in particular the duty to publish reports under regulation 8(1)(d)?

We raise this point at a time when equality matters more than ever – from global Black Lives Matter issues to local issues raised by the Older People's Commissioner for Wales in her report "[A snapshot of life in care homes in Wales during Covid-19](#)".

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

Cross-border issues

The Welsh Government "[Guidance on extended households: coronavirus](#)" states:

"Extended households can be cross-border – for example, a household in Wales can join with a household in England – but the arrangements will need to comply with the rules in both countries."

As set out in the Public Health (Control of Disease) Act 1984, the Wales restrictions apply "as respects Wales", and the England restrictions apply "as respects England".

The Wales restrictions do not make express reference to cross-border issues. Can the Welsh Government clarify how the Wales restrictions relating to extended households can capture households in England? In effect, this is a call for clarity on the meaning of "as respects Wales".

¹ At 1:20:45

² At 1:21:25



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

Welsh Government Guidance

On 8 June 2020, Vaughan Gething MS, Minister for Health and Social Care, gave evidence to us on the Wales restrictions. He said: "We actually want to have something that helps the public to understand how they can follow the rules, and that's why the guidance is really important as well".

However, we note that (at the time of writing, 9 July 2020) the Welsh Government guidance "**Coronavirus: what does the law in Wales say?**" refers to law that is no longer in force. For example, the guidance says that people are still required to stay at home. But this has not been a legal requirement since 1 June 2020.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is required to the four merits points raised in this report.

Committee Consideration

The Committee considered the instrument at its meeting on 13 July 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee noted that the instrument has been revoked by The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (WALES) (AMENDMENT) (NO. 7) REGULATIONS 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 9 July 2020.
2. The Committee is asked to note that subsequent to their Report the Welsh Ministers have revoked the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020¹.

Technical scrutiny points:

3. No matters arising.

Merits scrutiny points:

Human rights

4. This draft Report raises three points relating to human rights –
 - a. Which restrictions in the Regulations engage Article 5;
 - b. Whether Explanatory Memorandums to Statutory Instruments which engage human rights should set out each engaged right separately together with the relevant information (in a similar approach to the High Court in its judgment on *Dolan v Secretary of State*²)
 - c. Whether Article 9 is engaged by these Regulations.
5. The Government considers
 - a. The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020 (“the amendment Regulations”) relax restrictions, which when taken in combination, had the potential to engage a number of Convention Rights, including Article 5. The principal Regulations³ constituted a restriction on the ability of people to go about their daily lives and to travel, which could involve some form of detention for the prevention of the spreading of infectious diseases. Over time these restrictions have been eased. The relaxations made under the amendment Regulations enabled people to leave the area local to where they were living without reasonable excuse. This saw people being more able to travel wherever they wished, which by itself could provide greater liberty.
 - b. As indicated above, the amendment Regulations led to a relaxation of the restrictions imposed by the principal Regulations. The Government considers

¹ See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

² [2020] EWHC 1786 Admin

³ The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

that the Regulations lead to greater freedoms in respect of the following Articles (though the precise engagement of the Articles will be dependent on individual circumstances):

- i. Formation of extended households – Article 8 (right to respect for private and family life);
 - ii. Enabling people to leave the locality of the place they were living without reasonable excuse – Articles 5 (right to liberty), 8 and 11 (freedom of assembly and association);
 - iii. Ongoing closure of indoor visitor attractions – Article 1 of the First Protocol (right to peaceful enjoyment of possessions);
 - iv. Enabling outdoor organised gatherings – Articles 8 and 11.
- c. The approach taken by the court in *Dolan* was to respond to specific issues raised by the claimant. The court was required to respond to each of those issues individually. Under the enabling powers set out in Part 2A of the Public Health (Control of Disease) Act 1984, the Welsh Ministers are required to remove restrictions or requirements when they consider that they are no longer proportionate to what is sought to be achieved as a public health response to the coronavirus pandemic. This, in many ways, overlaps with the considerations of Convention Rights. The Government has sought to achieve this in a timely manner and considers that the lifting of restrictions has demonstrated compliance with Convention rights. Whilst the Government has considered provisions on an individual basis, it is also mindful of the wider interrelation between the various restrictions and requirements and the engagement of Convention rights both individually and collectively.
- d. The Government has considered the potential of restrictions engaging individuals' rights under Article 9 (freedom of conscience and religion). This has ensured (in part) that funerals have been able to continue during the pandemic (albeit subject to health related safeguards being in place). Subsequent to the making of the amendment Regulations, the Government has lifted the more general closure of places of worship. By themselves, however, the Government considers that the provisions made specifically by the amendment Regulations did not engage Article 9, but accepts more widely that Article 9 has been engaged by the 'lockdown' and has considered this as part of its response to easing restrictions over time.

Equality

6. The Welsh Government is asked to outline the steps taken to comply with duties in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (in particular regulation 8(1)(d)).

7. The Government has undertaken equality impact assessments, and these have been published on the GOV.wales site – see <https://gov.wales/equality-impact-assessments-coronavirus>

Cross border issues and extended households

8. The draft Report refers to Guidance⁴ and seeks clarification on the meaning “as respects of Wales” in the context of the amendment Regulations.
9. The Government consider that the Welsh Ministers’ power to make regulations “as respects Wales” under Part 2A of the Public Health (Control of Disease) Act 1984 to be a power to make regulations with territorial application to Wales. The nature of the powers conferred by that Part (principally sections 45B and 45C) and the words of clarification words in section 45T(6)(b) support that interpretation.
10. What that means in practice depends on the nature of the provisions in the Regulations. The territorial application means that the restriction in question must be imposed in Wales but the way in which it operates may have effect beyond Wales.
11. There is therefore nothing in the Regulations to prevent two households who live anywhere in world from joining together as an extended household for the purposes the Regulations. By doing it would mean that whenever persons from those two households were physically in Wales they would be treated as being from a single household for the purposes of the Regulations.
12. For example, a household from Cardiff could form an extended household with a household living in Bristol. When in Wales, they would be treated as an extended household under the Regulations. So, where the Regulations provide that you must not meet indoors with anyone other than a member of your household or extended household. That means indoors in Wales but it does not matter if the people from the extended household come from outside Wales. When outside Wales, the law applicable to where they are would be relevant.
13. When on the other hand the Regulations provided that anyone living in Wales had to stay local to the place where they are living, this still applied outside Wales (as they were not local to the place where they are living). That less stringent law applied in England did not matter.

Welsh Government guidance

14. The draft Report refers to a page on the Government website titled “Coronavirus: what does the law in Wales say?” noting that at the time of writing (9 July) it referred to law no longer in force.

⁴ Specifically [Guidance on extended households: coronavirus](#)

15. The Government notes the comment of the Committee, and confirms that this page has been removed.

SL(5)579 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulation 2020

Background and Purpose

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the Regulations”) are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 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 which causes the disease known as COVID-19 or “coronavirus”.

The Regulations revoke the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and all the regulations which have amended them (together the “Original Regulations”).

The Regulations:

- restate certain provisions of the Original Regulations, such as the requirement to keep certain businesses, premises, facilities, footpaths and land closed, albeit the list of place which must remain closed is not as extensive as required by the Original Regulations. Places which are now permitted to open include businesses which sell food for consumption on the business’ outdoor premises, hair salons and barbers, self-contained accommodation; places of worship and outdoor cinemas;
- require certain steps to be taken by those businesses which are permitted to open, in order to minimise the risk of transmission of the coronavirus. These steps include the continuation of the requirements to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, and where persons are required to wait to enter the premises, that a distance of 2 metres is maintained. Additionally, the Regulations now also require a range of other reasonable measures intended to minimise exposure to the virus, for example measures which limit close face to face interaction and maintain hygiene. The Welsh Ministers may issue guidance on taking measures to minimise the risk of exposure to coronavirus to which persons responsible for taking reasonable measures under the Regulations must have regard.; and
- restrict gatherings, but with changes to some of the restrictions which were set out in the Original Regulations. These Regulations now also provide that individuals, including members of a household (extended or otherwise), may also gather with other individuals if they are participating in an organised outdoor activity, providing that no more than 30 individuals in total are involved in that activity. The Explanatory Memorandum states that the intended effect of this provision is that people may join together outside to take part in an activity, for example sport or perhaps a tour of an outdoor attraction, where there is an organiser of the event who has undertaken appropriate risk assessments and during the activity takes all reasonable measures to minimise the risk of exposure to coronavirus for the participants.

The Regulations are subject to review on or before 30 July 2020 and thereafter at least every 21 days. The Regulations expire on 8 January 2021.



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

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(iv): that it appears to have retrospective effect where the authorising enactment does not give express authority for this

The Regulations are expressed to come into force in accordance with regulations 1(3) and 1(4).

Regulation 1(3) sets out a list of individual Regulations which Regulation 1(3) purports to have brought into force on 11 July 2020. The list includes:

- Regulation 2, which sets out the meaning of certain words and phrases used in the Regulations;
- Regulation 3, which revokes the Original Regulations, but only insofar as revoking the provisions relating to the closure of certain businesses, premises and holiday accommodation and contravention of those provisions;
- Regulation 8, which requires the closure of holiday accommodation except for self contained accommodation, caravan pitches and certain other businesses;
- Regulation 9, which deals with businesses which form part of other businesses, but only insofar as it applies to Regulation 8;
- Regulations 12 (reasonable measures to minimise the risk of exposure to coronavirus) and 13 (guidance on minimising exposure), insofar as they apply to people responsible for holiday accommodation; and
- Regulations 17 to 22, which deal with the enforcement of restrictions and requirements, but only insofar as they apply to Regulation 8.

Regulation 1(4) states that for all other purposes the remainder of the Regulations which are not listed in Regulation 1(3) came into force on 13 July 2020.

The list of Regulations which Regulation 1(3) seeks to bring into force on 11 July 2020 does not include Regulation 1 itself. Therefore, pursuant to Regulation 1(4), the whole of Regulation 1 came into force on 13 July 2020.

The effect of this is that when Regulation 1 came into force on 13 July 2020, it retrospectively brought into force all of the Regulations listed in Regulation 1(3) with effect from 11 July 2020. Sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 do not give express authority for the Regulations to have retrospective effect.

In addition, under Regulations 17 to 22, which also came into force retrospectively insofar as they apply to Regulation 8, any failure to comply with Regulation 8 is a criminal offence punishable by a fine. Article 7 of the European Convention of Human Rights states that "No one shall be held guilty of any criminal



offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed". In essence, this means that criminal law must not come into force retrospectively.

A Welsh Government explanation is required to deal with the matters raised in this reporting point.

2. Standing Order 21.2(vi): that its drafting appears to be defective or it fails to fulfil statutory requirements

The Regulations are expressed to come into force in accordance with regulations 1(3) and 1(4). Regulation 1(3) sets out a list of individual Regulations which Regulation 1(3) purports to have brought into force on 11 July 2020. This list does not include Regulation 1 itself. Regulation 1(4) states that for all other purposes the remainder of the Regulations, which includes Regulation 1 itself, came into force on 13 July 2020. This means that Regulation 1(3), which purports to have brought some of the Regulations into force on 11 July 2020, did not itself come into force until after this date on 13 July 2020. A response is required from the Welsh Government to fully explain this drafting irregularity.

3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

- a) There are some typographical errors in the explanatory note to the Regulations. The fifth paragraph uses 'pebaent' instead of 'pe baent', and the sixth paragraph (penultimate word) has spelt 'fynd' incorrectly. However whilst saying this, in relation to the last few words of the sixth paragraph, we consider the meaning of "and land accessible by the public" is better reflected in the Welsh text as "a thir sy'n hygyrch i'r cyhoedd" (as was used in SI 2020/353 (W. 80)) rather than "a thir y gall y cyhoedd fynd iddynt".
- b) In the italicised text before the Preamble in the Welsh text, the date the Regulations were laid before Senedd Cymru is incomplete.
- c) There are also typographical errors in the body of the Regulations – regulation 8(4)(a)(iii) should say 'wedi' instead of 'wed'; there seems to be a rogue 'y' in "neu y 8(1)" in regulation 9; and regulation 12(3)(d) should say 'iddi' instead of 'iddit'.
- d) A number of cross references in the Welsh text are not included but instead say "Error! Reference source not found." This happens in regulations 9, 12(3)(g), 12(3)(h) and 20(1)(a).
- e) In regulation 11(2)(a) we do not consider the meaning of "to be liable to large numbers of people congregating" is accurately reflected in the Welsh text. The Welsh text says "eu bod yn debygol o ddenu niferoedd mawr o bobl yn ymgynnull" which translates as "likely to attract large numbers of people congregating". We consider the meaning is better reflected as "sydd â thuedd i niferoedd mawr o bobl yn ymgynnull arnynt" (which was the approach taken in SI 2020/334 (W. 76)).
- f) The English text of regulation 12(2)(a)(ii) refers to persons waiting to enter premises and says "a distance of 2 metres is maintained **between them**" (emphasis added) whilst the Welsh text translates as "a distance of 2 metres is maintained".
- g) The Welsh text in regulation 20(6) refers to paragraph 20(1) whilst the English text refers to paragraph (1).



- h) Regulation 20(11) talks about Partnership **assets**, whilst regulation 20(12) talks about an unincorporated association's **funds** (emphasis added). The Welsh text uses 'gronfeydd' for both 'assets' and 'funds', but we consider 'asedau' better reflects the English word 'assets'.
- i) The meaning of 'fixed penalty notice' in the Welsh text at regulation 21(2) appears to be written in the wrong order. It translates as "A notice is a fixed penalty notice offering the person to whom it is issued..." whilst the English text, which seems to make more sense, is "A fixed penalty notice is a notice offering the person to whom it is issued..."

Merits Scrutiny

The following six 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 of public policy likely to be of interest to the Senedd

Human Rights

The Explanatory Memorandum makes reference to the impact that the Regulations have on human rights. It is stated that the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. The Explanatory Memorandum goes on to list the rights which are engaged as 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). All of these are references to Articles in the European Convention of Human Rights ("ECHR") and no further reference is made to the European Charter of Fundamental Rights. The Explanatory Memorandum does not elaborate on how each of the rights under the ECHR that it mentions are engaged, but states that:

"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 easing of the restrictions made under the original Regulations by these Regulations, is a proportionate response. 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 avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence."

The explanation as to how these rights are qualified and how interference is justified in respect of Articles 5, 8, 9 and 11 is welcomed. However, in order to provide a fuller understanding of the position regarding human rights, the Welsh Government is asked to provide:

- a) a more specific analysis as to how Articles 5, 8, 9 and 11 and Article 1 of the First Protocol to the ECHR are engaged by the Regulations;
- b) details of any justification for interference with the protection of property under Article 1 of the First Protocol to the ECHR, as justification for interference in respect of this right differs from the others cited in the Explanatory Memorandum – such interference is only permitted if it is in the public interest and in accordance with the general principles of international law; and



c) further information as to what rights under the European Charter of Fundamental Rights it considers are engaged and in what way, and how interference with such rights is justified.

In addition, we refer further to the issue of retrospectively effective criminal law, as referenced in technical reporting point 1. Under Regulations 17 to 22, which came into force retrospectively insofar as they apply to Regulation 8, any failure to comply with Regulation 8 is a criminal offence punishable by a fine. Article 7 of the European Convention of Human Rights states that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed". In essence, this means that criminal law must not come into force retrospectively.

Confirmation is required from the Welsh Government as to whether it considers that Article 7 of the ECHR is engaged by the drafting issues raised regarding Regulation 1 and, if so, how it proposes to rectify this.

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

Cross-border issues

The Explanatory Memorandum makes specific reference to preservation of the concept of 'extended households' in the Regulations, where two households are permitted to form a single household and be able to meet indoors and have physical contact.

The Explanatory Memorandum states that "The two households may not necessarily both reside in Wales but in that situation they will be treated as single household as far as these Regulations are concerned and if one of the households sought to form an extended household with a third household outside of Wales that would not be permitted under these Regulations, even if it were to be permitted under the law applicable in the other territory where the third household resided." (our emphasis)

As the Public Health (Control of Disease) Act 1984 states that the Wales restrictions apply "as respects Wales", can the Welsh Government provide a practical explanation as to how this works in the context of the underlined wording in the preceding paragraph?

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

Regulation 8 permits self-contained accommodation to open, as long as (amongst other requirements) it is only let to members of the same household. Regulation 2(4) confirms that for the purposes of the Regulations, references to "households" would include extended households, the creation of which is permitted. Failure to comply with Regulation 8 is an offence which is punishable by the imposition of a fine. However, it is not clear from the Regulations what the owner of any self-contained accommodation must do in order to satisfy themselves that they are actually letting the property to members of the same household, whether extended or not. For example, will it be enough to simply ask a person at the time of booking whether they are booking it for members of the same household, or will the owner need to request some form of evidence in order to protect themselves against a fine, should it transpire that the person(s) letting the property are not doing so for members of the same household? Clarification is requested from the Welsh Government as to how it envisages that the requirement to let to members of



the same household, whether extended or not, is to be applied in practice by the owner of self-contained accommodation so that they can protect themselves against a potential fine.

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

Inconsistency between the Regulations and the Explanatory Memorandum

Regulation 5(1) states that these Regulations expire at the end of the day on 8 January 2021. It is stated on page 5 of the Explanatory Memorandum that the Regulations expire on 9 January 2021. Although this may be a typographical error, given the gravity and far-reaching extent of these Regulations, the expiry date is likely to be an important point for many people in Wales and care must be taken to ensure that it is accurately reflected, especially in explanatory documents which are intended to assist understanding of the Regulations.

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

These points were highlighted in a note prepared for Members of the Senedd dated 15 April 2020 in relation to the Health Protection (Coronavirus Restrictions)(Wales) Regulations 2020. The Welsh Government responded to other matters raised in that note on 28 April 2020 but was not specifically required to respond to these points and so did not, nor have these points been addressed in these Regulations. They are therefore repeated here in the context of these Regulations.

Power of entry

A person exercising a power of entry under regulation 19 of these Regulations is required to provide evidence of their identity and outline the purpose for which they power is exercised. Although this may imply that the person must provide evidence of their authority to exercise the power of entry (particularly when they are a person designated by the Welsh Ministers, a local authority, a National Park authority in Wales or Natural Resources Wales), it is not clear that the evidence of identity expressly includes evidence of authority to exercise the power. A requirement to provide evidence of authority is common when exercising powers of this nature.

Further, although providing an outline of the purpose for which the power is exercised may also require a person to provide the reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, it would be reasonable to expressly set out a requirement to provide that information.

Although the omission of express wording does not materially adversely affect these Regulations, inclusion of appropriate express wording would provide additional protections, and greater clarity, for those that are subjected to the power of entry.

Fixed Penalty Notice

The following points are noted by the Committee in relation to fixed penalty notices under these Regulations:

- a notice must specify the local authority, or person designated by the Welsh Ministers to receive payment, to whom a fixed penalty must be paid, but in relation to a contravention of regulation 11(4) of these Regulations in a National Park, it is not clear whether payment of a fixed penalty



would be made to the National Park authority or the county or county borough council in which that National Park is located;

- regulation 21(9) of these Regulations provides each authority with discretion to offer a discount for early payment under a fixed penalty notice – this could create inequality between areas in Wales in some authorities adopt the discount but others do not;
- it is unclear if it will be possible to identify whether a person has already received a fixed penalty notice under these Regulations for the purposes of imposing a higher fixed penalty under regulation 21(10) of these Regulations – as it is possible for at least 30 organisations to be administering fixed penalty notices, there is potential for inequality of treatment of offenders across Wales; and
- the only method of payment of a fixed penalty notice expressly required under the Regulations is by way of payment by post addressed to the local authority in question, even though many local authorities in Wales may have limited staff working at their offices – although authorities can, and most likely will, offer payment by telephone or online, those would be helpful options to be expressly referenced in these Regulations.

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

Equality

The Committee notes that its previous comments regarding the failure to address equality in any of the Explanatory Memoranda to the Original Regulations have been taken into account. The inclusion in the Explanatory Memorandum for these Regulations of a summary of the equalities impact assessment undertaken in respect of the Regulations is welcomed.

Implications arising from exiting the European Union

None

Government Response

A Welsh Government response is required to all points save for the final merits reporting point (number 6).

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 2) (WALES) REGULATIONS 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 27 July 2020.

Technical scrutiny points:

Points 1 and 2: Apparent retrospective effect and apparent drafting irregularity

2. The draft Report indicates that regulation 1(3) did not come into force until 13 July 2020, but purported to bring other provisions of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the No. 2 Regulations”) into force on 11 July 2020, meaning that when regulation 1(3) came into force it applied retrospectively.
3. The Government agrees that an error was made in the sequencing of bringing provisions into force under regulation 1. In regulation 1(3), the list of provisions that came into force on 11 July 2020 should have included regulation 1 itself. The drafting implies that the provision bringing parts of the instrument into force on 11 July 2020 did not come into force until 13 July 2020.
4. Nevertheless, the Government considers that the intended effect of regulation 1 was obvious and that it should be read in a way that avoids the error. In other words, regulation 1(3) should be read as having come into force on 11 July 2020 as was clearly intended. The Committee’s comments about the legal issues to which retrospective provisions would give rise provide further reasons to read the No. 2 Regulations in this way.
5. Even if it were not possible to read the No. 2 Regulations in this way, the Government does not agree with the suggestion that the apparent retrospectivity of regulation 1(3) might give rise to a breach of Article 7 of the European Convention on Human Rights.
6. The provisions of the No. 2 Regulations that came into force on 11 July 2020 were regulation 8 and provisions that were required to make regulation 8 work. Their effect was to remove an existing prohibition on opening hotels and holiday accommodation in certain cases. Regulation 4(4) of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, which came into force on 26 March 2020, had required those premises to be closed (and regulation 12 had made contravening that requirement without a reasonable excuse an offence). Regulation 8 of the new (No. 2) Regulations re-imposed the requirement but with exceptions allowing self-contained accommodation to be provided. Its practical effect was therefore not to criminalise acts or omissions, but to authorise activities that had previously constituted a criminal offence.
7. The dates specified in regulation 1(3) and (4) have now passed, and regulation 8 and the provisions that referred to it were later revoked by regulation 2 of the Health Protection (Coronavirus Restrictions) (Wales) (No. 2) (Amendment) (No. 2) Regulations 2020 on 25

July 2020. In these circumstances, the Government does not intend to take any further action, but will take care to avoid repeating the issue identified by the Committee.

Point 3: Inconsistencies between English and Welsh texts

8. The draft Report notes potential typographical errors in the Explanatory Note of the Welsh language text of the No. 2 Regulations. We will seek to remedy this through discussions with The National Archives.
9. The draft Report identifies that the date of laying is incomplete in the Welsh language text of the No. 2 Regulations. The Government agrees and will seek to add the date via the correction slip process.
10. On the typographical errors identified in the Welsh language text of regulation 8, no further action will be taken as this provision has subsequently been revoked. We will seek a correction slip in respect of regulation 12(3)(d).
11. The draft Report also identifies a number of apparent cross reference errors in the Welsh language text. The Queen’s Printer version of the Statutory Instrument does not include these and therefore no further action is required.
12. The draft Report sets out a number of areas where the Committee considers that the meanings of the Welsh language text and the English language text differ.
 - a. In respect of regulation 11(2)(a), the Government notes the views of the Committee but considers that the wording in the Welsh language text is satisfactory and will not be taking any further action.
 - b. The Government agrees with the draft Report on regulation 12(2)(a)(ii). The English language text better reflects the intended meaning, so the Government has amended the Welsh language text to add the word “rhyngddynt” (corresponding to “between them” in English)¹.
 - c. On the point regarding the Welsh language text of regulation 20(6) the Government will seek to correct this via a correction slip.
 - d. In regulation 20(11), the Government considers that the reference to “partnership assets” in the English language text better reflects the intended meaning, and has amended² the Welsh language text to refer to “asedau’r bartneriaeth”.

¹ See regulation 2(5)(a) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020

² See regulation 2(12) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020

- e. On the meaning of “fixed penalty notice” in regulation 21(2), the Government considers that the wording in the Welsh language text is satisfactory and will not be taking any further action.

Merits scrutiny points:

Human rights

13. This draft Report seeks:

- a. specific analysis as to how Articles 5, 8, 9 and 11 and Article 1 to the First Protocol are engaged;
- b. details of any justification for interference with the protection of property under Article 1 to the First Protocol;
- c. further information as to what rights under the ECFR are engaged and in what way and how interference with such rights is justified;
- d. confirmation as to whether Article 7 is engaged and how this could be rectified.

14. To the extent that the No. 2 Regulations revoke and remake provisions set out in the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended), the Welsh Government was already satisfied that those provisions were compliant with the Convention Rights. The purpose of revoking and remaking the Regulations was to ensure clarity of and accessibility to the law as the original Regulations had been amended seven times. The No. 2 Regulations made new provision which permitted gatherings of up to 30 people outdoors where organised by a “responsible person”, the reopening of a number of businesses, including barber and hairdressing salons, and places of worship. They also imposed new duties on those responsible for premises to take reasonable measures to minimise the risk of exposure to coronavirus (in addition to the ongoing duty to take all reasonable measures to ensure 2 metres distance is kept between persons on premises).

15. All of the regulations made imposing restrictions in response to the coronavirus engage, or have the potential to engage, a number of Articles of the European Convention on Human Rights. These were identified as Articles 5, 8, 9 and 11 and Article 1 of the First Protocol. The No. 2 Regulations continue to impose restrictions on the gathering of more than two households outdoors and gatherings indoors without a reasonable excuse. However, the provisions made are considered necessary and proportionate to what is sought to be achieved by imposing them as a public health response to the coronavirus pandemic. The Committee will be aware that the coronavirus remains a severe threat to the health and lives of people in Wales and should transmission rates increase, as has been seen elsewhere, could see the National Health Service overwhelmed with cases and unable to respond. Indeed, the Government is also mindful of Article 2 (right to life) in taking action to ensure the health and safety of people. The Government has sought to balance the rights of individuals and businesses

with the need to ensure an appropriate response to the pandemic. A number of restrictions have been relaxed, though others have been retained in the No. 2 Regulations.

16. In so far as the restrictions on gatherings are concerned, the Government is satisfied that the ongoing restrictions are proportionate in light of the prevailing scientific evidence, that they have been made in accordance with the law and that they are necessary for the protection of health. This consideration is applicable insofar as rights under Articles 8, 9 and 11 are engaged. The No.2 Regulations saw provision allowing outdoor, organised gatherings of up to 30 people. The Government considered this to be a proportionate response when set against requirements for a person to be responsible for the gathering, and for that person to carry out a risk assessment and take reasonable measures to minimise risk of exposure. The Regulations continued to allow for travel beyond the locality of a place where a person was living which means that Article 5 is less likely to be engaged; but to the extent that anyone may claim that their liberty continues to be infringed by ongoing restrictions, the Government considers that any interference is justified for preventing the spread of infectious diseases.
17. With respect to the ongoing closure of businesses as set out in Schedule 2, these are all considered to be of a higher risk category where the possibility of transmission of the virus is greater. This is because they are types of premises where activities take place which are more likely to cause exertion, because of the length of time people will spend together, because of the close physical face to face proximity in which people find themselves or because of the nature and environment of the premises. Accordingly their continuing closure can be justified under Article 1 of the First Protocol on the basis that the provisions serve a legitimate aim in the public interest (public health) and are proportionate. As indicated, the Government has considered businesses by sector, for example, opening outdoor hospitality but continuing the closure of indoor hospitality businesses under regulation 6. However, set against this is a further relaxation of the types of businesses which have been allowed to open, albeit with new duties to take measures to minimise the risk of exposure to coronavirus. This balances the rights to enjoyment of possessions with the need to act in a safe manner and is a proportionate response to the public health crisis.
18. In addition to the provisions within the enabling powers in the 1984 Act, regulation 4 requires the Welsh Ministers to review the need for, and the proportionality of, the restrictions and requirements set out in the Regulations every 21 days, the first review having fallen due on 30 July.

Cross border issues

19. The draft Report refers to the Explanatory Memorandum to the No. 2 Regulations, in the context of extended households, and seeks a practical explanation of the effect of “as respects Wales” in the context of the Regulations.

20. The Committee is referred to the Government's response to the draft report on the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020.

Owners of self-contained holiday accommodation

21. The draft Report seeks clarification on how the requirement to let to members of the same household (extended or not) is to be applied in practice by owners of self-contained accommodation.
22. This question relates to regulation 8 of the No. 2 Regulations, which has now been revoked. As stated in the draft report, contravention of regulation 8 would have been an offence in the absence of a reasonable excuse for the contravention. The responsible person would therefore have to show that the action they took to avoid contravention was objectively reasonable in the particular circumstances.

Inconsistency between the Regulations and Explanatory Memorandum

23. The draft Report notes the No. 2 Regulations expire at the end of the day on 8 January 2021, but that the Explanatory Memorandum refers to the Regulations expiring on 9 January 2021. Technically both are correct in that the end of the day of 8 January amounts to the same thing as "on 9 January" because that would be taken to mean at the very beginning of that day. Nevertheless we appreciate that the inconsistency in approach is unhelpful and care will be taken on future reports to avoid this.

Power of entry and Fixed Penalty Notice

24. The draft Report raises two aspects of the No. 2 Regulations which it previously noted, but did not require response on, in relation to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020. The Committee are now seeking comment on these matters.
25. The draft Report sets out the case for specifying in more detail that a person exercising the power of entry must, if requested, show evidence of authority to exercise the power and explain the grounds for exercising the power. However the Government considers that this is necessarily implied by regulation 19(3)(a). The requirement to show evidence of the officer's identity is clearly a reference to the officer acting in that capacity. Equally the Government does not consider that an officer acting reasonably and proportionately could explain the purpose for which the power of entry is being exercised without explaining the grounds the officer has for suspecting that a requirement has been, or is about to be, contravened.
26. On fixed penalty notices, addressing the points in the draft Report in turn—
- a. A fixed penalty issued in relation to a contravention of regulation 11(4) in a National Park area is to be paid to the county or council borough council in whose area the contravention take place (i.e. the council area in which the part

of the National Park where the contravention took place is situated) in accordance with regulation 21(2)(a) and (5) – but the Welsh Ministers may, as an alternative, designate a National Park authority to receive payments under regulation 21(2)(b). To date such a designation has not been made.

- b. Enforcing authorities are subject to public law principles of reasonableness and proportionality – as a result, any divergence in the exercise of the power in regulation 21(9) would need to be objectively justified in the circumstances.
- c. The Government has worked with the police forces and other organisations in Wales with powers to issue fixed penalty notices, to enable them to understand the requirements of the Regulations. North Wales, Gwent and South Wales Police are “NICHE” forces so all alleged offenders would have been linked to an individual occurrence via Niche RMS. This means that they are in a position to identify repeat offenders and indeed those who have had previous contact with police and been provided with suitable advice. This enabled local policing teams to identify hot spots and persistent offenders, and to encourage engagement and information sharing with the relevant local authority coordination cells. In addition ACRO also maintained records to assist all police forces in identifying repeat offenders so that they could administer the correct FPN in line with the escalating fine tariff linked to repeat offences.
- d. Under regulation 21(7)(e) the enforcing authority has discretion to specify methods of payment and must set them out on the face of the fixed penalty notice. Regulation 21(12) merely ensures that a person required to pay is not restricted to paying by particular methods that the person may not have access to, hence the requirement to allow payment by sending cash or some other form of payment by post. Given that the notice itself must set out the payment methods there would be nothing to be gained by listing them expressly in the Regulations and further limiting an enforcement authority’s discretion.

Agenda Item 4.3

SI(5)584 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the principal Regulations").

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") 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".

Specifically, these Regulations:

- allow the re-opening of funfairs, playgrounds and outdoor gyms (but those responsible for the premises must take all reasonable measures under regulation 12 of the principal Regulations to minimise the risk of exposure to coronavirus on the premises); and
- clarify that persons who attend a place of worship have a reasonable excuse to gather (in accordance with the requirements of regulation 12 of the principal Regulations).

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:

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 Assembly.

1. The footnote to regulation 2(1) refers to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 but appears to cite the wrong SI number. We assume it should be "S.I. 2020/725 (W.162)" [*emphasis added*] and not "S.I. 2020/725 (W.163)".

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the reference could be updated to reflect the correct regulations.



2. There appears to be wording missing from the beginning of first paragraph of the Explanatory Note, as it currently begins "sAct 1984". We assume that the paragraph should begin with the words "Part 2A of the Public Health (Control of Disease) Act 1984..." (which it does in the Welsh version of these Regulations).

3. The Explanatory Memorandum contains four references to "the original Regulations". The term is not defined, but it appears to be referring to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020.

Given that "the original Regulations" is used to define the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 in the Explanatory Memorandum to the principal Regulations, we consider that it would assist the reader if the same definition is used in the Explanatory Memorandum to these Regulations.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.



THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 2) (WALES) (AMENDMENT) REGULATIONS 2020

Merits scrutiny points:

Footnote

1. This draft Report identifies that the footnote to regulation 2(1) refers to SI 2020/725 (W.162) rather than (W.163). Although the Government agrees that the full reference should be to “(W.163)” it considers that the use of the SI title and unique identifier as part of the UK SI Series ensures the user could find the Regulations in question, and also concurs with the Report’s observation that the footnote does not form part of the law.

Explanatory Note

2. The Government agrees with the draft Report’s observation that wording is missing from the first paragraph of the Explanatory Note to the English text of the Regulations. We will seek to remedy this through discussions with The National Archives.

Explanatory Memorandum

3. The draft Report notes the Explanatory Memorandum uses the term “original Regulations” without defining this term. The Government agrees the term should have been defined.

SL(5)585 – The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations temporarily extend from three months to six months the notice periods that landlords must give tenants under section 8(4A) or (4B) of the Housing Act 1998 (“the 1998 Act”) (notice of proceedings for possession: assured tenancies), and under section 21(1) or (4) of the 1998 Act (recovery of possession on expiry of assured shorthold tenancy). These notice periods had already been extended to three months by Schedule 29 to the Coronavirus Act 2020.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following three 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 of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 23 July 2020 that:

There is an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible, so as to continue with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need and therefore come into force on the day after the day on which they are made.

Whilst we recognise that a number of measures have had to be put in place urgently during the Coronavirus pandemic, we are not clear why these Regulations in particular had to come into force so urgently as to breach the 21-day rule when the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the Coronavirus Act 2020 was passed).

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

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). A1P1 states:



Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The Regulations increase, in certain cases, the notice period that a landlord must give a tenant from three months to six months. The effect of the amendments therefore is to restrict a landlord's use and enjoyment of their property for an additional three months. A1P1 is a qualified right and so controlling the landlord's use of their property is permitted if it is deemed necessary in the general interest.

In considering whether an interference is justified, the State must show that the regulations have a legitimate aim sufficient to justify the limitation of landlords' rights, that the regulations are rationally connected to that aim, that a less intrusive measure couldn't be used, and that there is a reasonable relationship of proportionality between the means employed to achieve that aim, and the aim pursued.

It is concerning that there is no analysis in the Explanatory Memorandum ("EM") of landlords' A1P1 rights and how interference with these rights is justified. In the absence of such justification these Regulations run the real risk of breaching A1P1 rights. The timing of the introduction of these Regulations, coupled with the fact that restrictions are being eased in other parts of the housing sector is a real concern. Whilst the aims behind these Regulations can be ascertained from the EM (containing and slowing the virus, easing the burden on frontline staff and supporting people), the Welsh Government is asked to justify how these Regulations are proportionate to achieving those aims.

In particular, how does the Welsh Government justify interfering with landlords' A1P1 rights when:

1. they have had the power to put these measures in place since 25 March 2020, but did not do so when the incidence and spread of coronavirus was much higher;
2. other restrictions that were put in place to deal with the Coronavirus pandemic are being eased; and
3. restrictions are being lifted in the housing market allowing estate agents to open and for house viewings and house sales to take place, which seems at odds with the policy pursued in these Regulations?

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

Whilst the Welsh Government have not been able to carry out a quantified regulatory impact assessment, the EM provides an assessment of the likely qualitative impacts of the Regulations. However, these Regulations were laid late on 23 July 2020 and came into force on 24 July 2020 giving landlords only a matter of hours notice of this substantive change to the law and their rights. The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment further undermines any justification that these Regulations represent a proportionate response by the Welsh Government.



Implications arising from exiting the European Union

No implications are identified for reporting.

Government Response

A Welsh Government response is required to the three merits points raised.

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.



The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

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

Welsh Government response:

Whilst the Welsh Ministers have had the power to make these regulations for some time, there would have been relatively little to gain from doing so whilst the current stay on possession proceedings is in place. It is only with the stay coming to an end on 23 August (a decision over which the Welsh Ministers have no power) that these regulations have become necessary. In order to reduce the number of possession proceedings in the weeks and months immediately after the stay has been lifted, the Welsh Ministers concluded that it was imperative to act swiftly to increase notice periods. Requiring notice periods of six months will help to flatten any wave of evictions and provide more time for evictions to be avoided, either through landlords and tenants reaching an agreed alternative solution, or through tenants finding an alternative suitable home.

Had the Welsh Ministers decided to wait 21 days before the coming into force of the regulations, it would have allowed a significant additional period in which notices with only three-month notice periods could have been issued. Indeed, giving significant advance warning of the change to notice periods could itself have precipitated an increase in the number of notices issued immediately prior to the regulations coming into force. This would have potentially significantly undermined the purpose of making the regulations.

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

Welsh Government response:

We consider that the provisions are compatible with the European Convention on Human Rights.

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

Welsh Government response:

The Regulations represent a relatively short-term response to significant issues that have only crystallised in recent weeks. The importance of lessening a potential wave of possession claims once the current stay on proceedings is lifted, has only become apparent now that it is clear that the stay on court proceedings is unlikely to be extended further. The Welsh Ministers have had to act swiftly to address this emerging situation. This left insufficient time to undertake a regulatory impact assessment or conduct consultation with stakeholders. In addition, consultation with landlords and their representative bodies could potentially have resulted in an increase in the service of notices ahead of any change. As discussed above, the Welsh Ministers needed to act quickly to ensure that the purpose of the regulations was not undermined.

Agenda Item 4.5

SL(5)587 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) 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 made by regulation 2 of these Regulations (which came into force on 25 July 2020) consist of provision-

- permitting underground visitor attractions to open (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- removing the requirement to close holiday accommodation that is not self-contained (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- removing the requirement imposed on individuals to work from home where reasonably practicable; and
- clarifying that a reasonable excuse for gathering with other persons may include accessing any public services and childcare, as well as taking part in supervised children’s recreation.

The amendments made by regulation 3 of these Regulations (which came into force on 27 July 2020) consist of provision-

- permitting the opening of crematoriums (in all circumstances), indoor cinemas, nail and beauty salons, massage parlours, establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture, amusement arcades, museums, galleries and archive services (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- requiring passengers travelling on public transport services to wear a face covering (subject to certain exceptions); and
- relaxing the restriction on gatherings to allow a wider range of activities relating to the sale and letting of residential property, such as viewings of occupied properties.

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:

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

1. Regulation 3(12)(ii) of these Regulations amends regulation 20(1)(a) of the principal Regulations so that it reads:

“(a) without reasonable excuse, contravenes a requirement in regulation 6(1), 7(1), 10(4), 11(4) or 12(2) or 12A(1),” *[emphasis added]*

The amendment creates polysyndeton (the conjunction is repeated unnecessarily). Although this does not result in defective drafting, we consider that it would assist the reader if unusual sentence structures are avoided so far as possible.

2. No public consultation or regulatory impact assessment has been carried out in respect of these Regulations. The Explanatory Memorandum to these Regulations explains that this is due to the need to put these Regulations in place urgently to deal with the serious and imminent threat to public health arising from coronavirus.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is required in relation to the first merits reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 2) (WALES) (AMENDMENT) (NO.2) REGULATIONS 2020

Merits scrutiny points:

Polysyndeton

1. The Government notes the comments in the draft report on polysyndeton.

Agenda Item 5

The legislative response by the Welsh Ministers to the coronavirus pandemic

Background

The Coronavirus Act 2020 ('the 2020 Act') was passed by the UK Parliament earlier this year providing the UK Government and devolved administrations additional powers to respond to the Covid-19 pandemic. The measures in the 2020 Act primarily fall into five categories:

1. **Increasing the available health and social care workforce** – for example, by allowing the temporary registration of suitable NHS staff and social workers, allowing retired staff with the right skills to return to the NHS without a negative impact on their pension and providing additional indemnity cover to key workers as necessary.
2. **Easing and reacting to the burden on frontline staff** – for example, by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork.
3. **Containing and slowing the virus** – by providing Public Health Officers with powers to help control the spread of coronavirus in the UK and powers in relation to limiting events and gatherings.
4. **Managing the deceased with respect and dignity** – by enabling the death management system to deal with potential increased demand for its services.
5. **Supporting people** – for example, by allowing individuals to receive Statutory Sick Pay, and supporting businesses, for example by providing powers that will ensure the governments of the UK are able to support the food industry to maintain supplies.

The provisions in the UK 2020 Act were the result of significant and collaborative work between all four nations, and cover a range of matters including specific powers for Wales to be exercised by the Welsh Ministers. While there is no statutory obligation on the Welsh Ministers to report on the use of these powers, the Minister for Health and Social Services gave an undertaking to the Senedd to do so.

Alongside the powers in the 2020 Act, a wide range of coronavirus-related legislation has been made using pre-existing powers.

Written statements have been issued to inform Members of the making of key coronavirus-related legislation, for example the making of and subsequent amending of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020.

To help improve the accessibility of Welsh law relating to coronavirus, subordinate legislation made by the Welsh Ministers in response to the pandemic has been published on a single page¹ on the GOV.wales website and statutory instruments also continue to be published on the legislation.gov.uk website.

Coronavirus-related legislation

This report covers the period 04/02/2020 to 10/08/2020 and includes all subordinate legislation relating to coronavirus made by or on behalf of the Welsh Ministers, not just legislation which originates from the 2020 Act.

The table below outlines:

- the use of powers under the 2020 Act (or confirmation none have been used);
- the principal restriction-related Regulations, including those related to travel, made under the Public Health (Control of Diseases) Act 1984;
- all other relevant subordinate legislation made.

¹ <https://gov.wales/coronavirus-legislation-and-guidance-law#Welshlegislationimposingcoronavirusrestrictions>

Welsh Minister powers under the 2020 Act

Provision of 2020 Act	Type of power	Description of provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Section 3 Schedule 2	Regulation	Power to amend Schedule 2 in respect of the emergency arrangements concerning medical practitioners in Wales.	Not required	Not required
Section 15 Schedule 12	Guidance	Power for the Welsh Ministers (paragraph 35) to issue guidance for local authorities on how to undertake the prioritisation of services within the emergency period, and the power to direct some or all local authorities to comply with the guidance.	Not required	Not required
Section 33	Notices	Power to issue notices to modify requirements relating to DBS checks for work in regulated health and social care services;	Not required	Not required
Section 37 and Part 1 of Schedule 16	Direction Guidance	Power to give a “temporary closure” direction to responsible bodies including proprietors and governing bodies of institutions, in respect of schools, registered childcare providers and higher and further education institutions in England or Wales. Also includes a power to issue guidance.	Not required	Not required
Section 38 and Paragraphs 1 and 2 of Schedule 17	Direction Notice Guidance	Power to make directions in connection with the running of the education, training and registered childcare systems in Wales (“a temporary continuity direction”).	23/06/20:Disapplication of Curriculum Requirements in Wales Notice 2020 25/06/20:Disapplication of Changing School Session	Notices remain in force

		Also includes a power to issue notices and guidance.	Times Requirements (Wales) Notice 2020 25/06/20: Modification of School Organisation Code (Wales) Notice 2020 25/06/20: Modification of section 3 of the Education Act 1996 (Wales) Notice 2020	
Section 51 and Schedule 21	Declaration Designation of public health officers Guidance to public health officers	Power to make declarations of serious and imminent threat in respect of Wales and to designate public health officers to exercise powers in Wales.	Declaration made on the 17 March 2020 https://www.thegazette.co.uk/notice/3546514 Currently no designations of public health officers No guidance	Declaration remains in force
Section 52 and Schedule 22	Direction	Powers to give directions relating to events, gatherings and premises	Not required	Not required
Section 58 and Schedule 28	Direction	Power to give directions to address lack of capacity in respect of the transport, storage and disposal of dead bodies.	Not required	Not required
Sections 65 to 68	Regulation	Power to postpone local authority elections in Wales and to make further supplementary etc. provision;	Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020	SI remains in force
Section 78	Regulation	power in relation to meetings of specified local authorities	Local Authorities (Coronavirus) (Meetings)	SI remains in force

			(Wales) Regulations 2020/442 (W. 100). Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020 S.I. 2020/653 (W. 150)	
Section 81 and Schedule 29	Regulation	power to amend Schedule 29 and any enactment for supplementary etc. provision relating to protection from eviction	Not required	Not required
Section 82	Regulation	power to alter the relevant period for the purpose of business tenancies protection from forfeiture provision under the Act.	Not required	Not required
Sections 87 to 93	Regulation	powers in relation to commencement, powers to suspend or revive provisions, powers to alter the expiry date of provisions and other powers to make consequential amendments.	The Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020 Made: 26 March In force: s 10, Part 1 of Schedule 8, paras 11, 12 and 13 of Schedule 8 and Section 15 and Part 2 of Schedule 12 for Wales	SI remains in force

Coronavirus Act Status

This table sets out the status of provisions in the Coronavirus Act 2020.

Further explanations about the purpose and effect of the 2020 Act can be found on the relevant part of the UK Parliament website – <https://services.parliament.uk/Bills/2019-21/coronavirus.html>.

The 2020 Act also makes provision, in Part 2, for enabling the “switching off” of Part 1 provisions when they are not needed. One such mechanism is the facility for provisions that are in force to be suspended and then subsequently revived, as and when the course of events permits or requires. Where Regulations, or orders, are made under this power they will be available on the <http://www.legislation.gov.uk/> website and will also be included on the GOV.wales website².

The content and format of the table will be reviewed and updated as changes occur.

Section (All Part 1) And Schedule	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N Or N/A) If yes, give date	Revived? (Y/N Or N/A) If yes, give date
<i>Interpretation</i>				
1	Meaning of ‘coronavirus’ and related terminology	Came into force on Royal Assent	N/A	N/A
<i>Emergency registration of health professionals</i>				
2 Sch 1	Emergency registration of nurses and other health and care professionals	Came into force on Royal Assent	N/A	N/A

² <https://gov.wales/coronavirus-legislation-and-guidance-law#Welshlegislationimposingcoronavirusrestrictions>

3 Sch 2	Emergency arrangements concerning medical practitioners: Wales	Came into force on Royal Assent	N	N/A
<i>Temporary registration of social workers</i>				
6 Sch 5	Emergency registration of social workers: England and Wales	Came into force on Royal Assent	N	N/A
<i>Emergency volunteers</i>				
8 Sch 7	Emergency volunteering leave	Not yet in force	N	N/A
9	Compensation for emergency volunteers	Not yet in force	N	N/A
<i>Mental health and mental capacity</i>				
10 Sch 8-11	Temporary modification of mental health and mental capacity legislation	<p>Section 10(1) came into force on 27 March 2020 in relation to Wales only³</p> <p>Schedule 8 (paragraphs 1 - 2 relating to came into force on 27 March 2020 in relation to Wales only⁴</p> <p>Schedule 8 (paragraph 11-13 only) relating to the Mental Health Tribunal for Wales came into force on 27 March 2020⁵</p> <p>Schedule 8 (paragraphs 3 - 10 and 14 -16) not yet in force</p>	N	N/A

³ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

⁴ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

⁵ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

Health service indemnification				
11	Indemnity for health service activity: England and Wales	Came into force on Royal Assent	N/A	N/A
NHS and local authority care and support				
15 Sch 12	Local authority care and support	Section 15 (in relation to Wales) and Part 2 of Schedule 12 (powers and duties of local authorities in Wales) came into force on 1 April 2020⁶	N	N/A
Registration of deaths and still-births etc				
18 Sch 13	Registration of deaths and still-births etc	Came into force on 26 March 2020⁷	N	N/A
19	Confirmatory medical certificate not required for cremations: England and Wales	Came into force on 26 March 2020⁸	N	N/A
Investigatory powers				
22	Appointment of temporary Judicial Commissioners	Came into force on Royal Assent	N	N/A
23	Time limits in relation to urgent warrants etc under Investigatory Powers Act	Came into force on Royal Assent	N	N/A
Fingerprints and DNA profiles				
24	Extension of time limits for retention of fingerprints and DNA profiles	Came into force on Royal Assent	N	N/A
Food supply				
25	Power to require information relating to food supply chains	Not yet in force	N	N/A

⁶ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

⁷ [Coronavirus Act 2020 \(Commencement No. 1\) Regulations 2020/361](#)

⁸ [Coronavirus Act 2020 \(Commencement No. 1\) Regulations 2020/361](#)

26	Authorities which may require information	Not yet in force	N	N/A
27	Restrictions on use and disclosure of information	Not yet in force	N	N/A
28 Sch 15	Enforcement of requirement to provide information	Not yet in force	N	N/A
29	Meaning of 'food supply chain' and related expressions	Not yet in force	N	N/A
<i>Inquests</i>				
30	Suspension of requirement to hold inquest with jury: England and Wales	Came into force on Royal Assent	N	N/A
<i>Disclosure: Wales</i>				
33	Disapplication etc by Welsh Ministers of DBS provisions	Came into force on Royal Assent	N	N/A
<i>Schools, childcare providers etc</i>				
37 Sch 16	Temporary closure of educational institutions and childcare premises	Came into force on Royal Assent	N	N/A
38 Sch 17	Temporary continuity: education, training and childcare	Came into force on Royal Assent	N	N/A
<i>Statutory sick pay</i>				
39	Statutory sick pay: funding of employers' liabilities	Came into force on Royal Assent	N	N/A
40	Statutory sick pay: power to disapply waiting period limitation	Came into force on Royal Assent	N	N/A
41	Statutory sick pay: modification of regulation making powers	Came into force on Royal Assent	N	N/A
<i>Pensions</i>				
45	NHS pension schemes: suspension of restrictions on return to work: England and Wales	Came into force on Royal Assent	N/A	N/A

<i>Power to suspend port operations</i>				
50 Sch 20	Power to suspend port operations	Came into force on Royal Assent	N/A	N/A
<i>Powers relating to potentially infectious persons</i>				
51 Sch 21	Powers relating to potentially infectious persons	Came into force on Royal Assent	N/A	N/A
<i>Powers relating to events, gatherings and premises</i>				
52 Sch 22	Powers to issue directions relating to events, gatherings and premises	Came into force on Royal Assent	N/A	N/A
<i>Courts and Tribunals: use of video and audio technology</i>				
53 Sch 23	Expansion of availability of live links in criminal proceedings	Came into force on Royal Assent	N	N/A
54 Sch 24	Expansion of availability of live links in other criminal hearings	Came into force on Royal Assent	N	N/A
55 Sch 25	Public participation in proceedings conducted by video or audio	Came into force on Royal Assent	N	N/A
56 Sch 26	Live links in magistrates' court appeals against requirements or restrictions imposed on a potentially infectious person	Came into force on Royal Assent	N	N/A
<i>Powers in relation to bodies</i>				
58 Sch 28	Powers in relation to transportation, storage and disposal of dead bodies etc	Came into force on Royal Assent	N	N/A
<i>Postponement of elections: Wales</i>				
65	Elections due to be held in Wales in period after 15 March 2020	Came into force on Royal Assent	N/A	N/A
66	Postponement of National Assembly for Wales elections for constituency vacancies	Came into force on Royal Assent	N/A	N/A

67	Power to postpone local authority elections in Wales for casual vacancies	Came into force on Royal Assent	N/A	N/A
68	Power to make supplementary etc provision	Came into force on Royal Assent	N/A	N/A
<i>Other administrative requirements</i>				
71	Signatures of Treasury Commissioners	Came into force on Royal Assent	N	N/A
<i>National Insurance Contributions</i>				
72	Power under section 143 of the Social Security Administration Act 1992	Came into force on Royal Assent	N/A	N/A
73	Power under section 145 of the Social Security Administration Act 1992	Came into force on Royal Assent	N/A	N/A
74	Power under section 5 of the National Insurance Contributions Act 2014	Came into force on Royal Assent	N/A	N/A
<i>Financial assistance for industry</i>				
75	Disapplication of limit under section 8 of the Industrial Development Act 1982	Came into force on Royal Assent	N/A	N/A
<i>HMRC functions</i>				
76	HMRC functions	Came into force on Royal Assent	N	N/A
<i>Up-rating of working tax credit etc</i>				
77	Up-rating of working tax credit etc	Came into force on Royal Assent	N	N/A
<i>Local authority meetings</i>				
78	Local authority meetings	Came into force on Royal Assent	N	N/A
<i>Business improvement districts</i>				
79	Extension of BID arrangements: England	Came into force on Royal Assent	N	N/A
80	Extensions of BID arrangements: Northern Ireland	Came into force on Royal Assent	N	N/A

Residential tenancies: protection from eviction				
81 Sch 29	Residential tenancies in England and Wales: protection from eviction	Came into force on Royal Assent	N	N/A
Business tenancies: protection from forfeiture etc				
82	Business tenancies in England and Wales: protection from forfeiture etc	Came into force on Royal Assent	N	N/A
83	Business tenancies in Northern Ireland: protection from forfeiture etc	Came into force on Royal Assent	N	N/A
General Synod of the Church of England				
84	Postponement of General Synod elections	Came into force on Royal Assent	N	N/A
<i>Information correct as of 21 July 2020</i>				

SUMMARY OF CORONAVIRUS RELATED LEGISLATION MADE BY THE WELSH MINISTERS

Date of report: 28 July 2020

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
1.	04/02/20	Statutory Instrument 2020 No 113 (W. 20)	The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020	National Health Services (Wales) Act 2006
2.	06/03/20	Statutory Instrument 2020 No. 232 (W. 54)	The Health Protection (Notification) (Wales) (Amendment) Regulations 2020	Public Health (Control of Diseases) Act 1984
3.	17/03/20	Statutory Instrument 2020 No. 308 (W. 68)	The Health Protection (Coronavirus) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
4.	21/03/20	Statutory Instrument 2020 No. 326 (W. 74)	The Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
5.	23/03/20	Statutory Instrument 2020 No. 334 (W. 76)	The Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
6.	24/03/20	Non-SI subordinate legislation (ref no: 2020 (WG20-14))	Directions to Local Health Boards as to the Statement of Financial Entitlements (COVID-19 Suspension of Enhanced Services) Directions 2020	National Health Services (Wales) Act 2006
7.	26/03/20	Statutory Instrument 2020 No. 353 (W. 80)	The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
8.	26/03/20	Statutory Instrument 2020 No. 366 (W. 81) (C.19)	The Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020	Coronavirus Act 2020
9.	27/03/20	Statutory Instrument 2020 No. 367 (W. 82)	The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2020	Town and Country Planning Act 1990

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
10.	29/03/20	Non-SI subordinate legislation (ref no: 2020 (WG20-15))	Declaration of threat to public health in Wales due to coronavirus	Coronavirus Act 2020
11.	01/04/20	Non-SI subordinate legislation (ref no: 2020 (WG20-21))	The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) 2020	Abortion Act 1967
12.	03/04/20	Statutory Instrument 2020 No. 399 (W.88)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020	Public Health (Control of Diseases) Act 1984
13.	06/04/20	Non-SI subordinate legislation (ref no: 2020 (WG20-21))	Direction under section 53 of Qualifications (Wales) Act 2015	Qualifications (Wales) Act 2015
14.	08/04/20	Statutory Instrument 2020 No. 414 (W. 89)	The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020	Climate Change Act 2008
15.	08/04/20	Non-SI subordinate legislation (ref no: 2020 (WG20-18))	The primary medical services Easter weekend and bank holiday provision of essential general medical services during the COVID 19 pandemic) (directed enhanced service) Directions 2020	National Health Services (Wales) Act 2006
16.	09/04/20	Statutory Instrument 2020 No. 420 (W. 90)	The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (Wales) Order 2020	Town and Country Planning Act 1990
17.	20/04/20	Non-SI subordinate legislation (ref no: 2020 (WG20-20))	The National Health Service (General Medical Services – Recurring Premises Costs during the COVID-19 Pandemic) (Wales) Directions 2020	National Health Services (Wales) Act 2006
18.	21/04/20	Statutory Instrument 2020 No. 442 (W. 100)	The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020	Coronavirus Act 2020 and Local Government Act 2000

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
19.	24/04/20	Statutory Instrument 2020 No. 452 (W. 102)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020	Public Health (Control of Diseases) Act 1984
20.	24/04/20	Non-SI subordinate legislation (ref no: 2020 (WG20-22))	Direction under section 53 of Qualifications (Wales) Act 2015	Qualifications (Wales) Act 2015
21.	27/04/20	Statutory Instrument 2020 No. 461 (W. 105)	The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020	Coronavirus Act 2020
22.	29/04/20	Statutory Instrument 2020 No. 473 (W.109)	The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020	European Communities Act 1972
23.	30/04/20	Statutory Instrument 2020 No. 479 (W. 110)	The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020	School Standards and Framework Act 1998
24.	04/05/20	Statutory Instrument 2020 No. 486 (W. 111)	The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020	Regulation and Inspection of Social Care (Wales) Act 2006
25.	06/05/20	Statutory Instrument 2020 No. 493 (W. 116)	The Community Health Council (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2020	National Health Services (Wales) Act 2006
26.	11/05/20	Statutory Instrument 2020 No 497 (W. 118)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020	Public Health (Control of Diseases) Act 1984
27.	12/05/20	Statutory Instrument 2020 No 507 (W. 120)	The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations	European Communities Act 1972
28.	15/05/20	Statutory Instrument 2020 No 514 (W. 121)	The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020	Town and Country Planning Act 1990
29.	18/05/20	Statutory Instrument 2020 No 517 (W. 122)	The Sustainable Drainage (Approval and Adoption) (Wales) (Amendment) Order 2020	Flood and Water Management Act 2010

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
30.	20/05/20	Statutory Instrument 2020 No 529 (W. 124)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020	Public Health (Control of Diseases) Act 1984
31.	21/05/20	Statutory Instrument 2020 No 531 (W. 125)	The Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) Regulations 2020	Regulation (EU) No. 1306/2013
32.	22/05/20	Non-SI subordinate legislation (ref no: 2020 (WG20-24))	The National Health Service (Wales Eye Care Services payments during the COVID-19 Pandemic) (Wales) Directions 2020	National Health Services (Wales) Act 2006
33.	29/05/20	Statutory Instrument 2020 No 557 (W. 129)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020	Public Health (Control of Diseases) Act 1984
34.	03/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-27))	The National Health Service (General Medical Services – Premises Costs) (Wales) (Amendment) Directions 2020	National Health Services (Wales) Act 2006
35.	04/06/20	Statutory Instrument 2020 No 570 (W. 131)	The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020	Regulation and Inspection of Social Care (Wales) Act 2016
36.	05/06/20	Statutory Instrument 2020 No 574 (W. 132)	The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
37.	10/06/20	Statutory Instrument 2020 No 585 (W. 133)	National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020	National Health Services (Wales) Act 2006
38.	12/06/20	Statutory Instrument 2020 No 593 (W. 134)	The Single Use Carrier Bags Charge (Wales) (Amendment) (No. 2) Regulations 2020	Climate Change Act 2008
39.	15/06/20	Statutory Instrument 2020 No 594 (W. 135)	The Waste (Prescribed Enactment) (Wales) Regulations 2020	Environmental Protection Act 1990
40.	15/06/20	Statutory Instrument 2020 No 595 (W. 136)	The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
41.	17/06/20	Statutory Instrument 2020 No 606 (W. 140)	The Business Tenancies (Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020	Coronavirus Act 2020
42.	17/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-26))	The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Coronavirus Life Assurance Scheme) (Wales) Directions 2020	National Health Services (Wales) Act 2006
43.	18/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-29))	Directions to Local Health Boards as to the Statement of Financial Entitlements (COVID-19 Suspension of Enhanced Services) (Amendment) Directions 2020	National Health Services (Wales) Act 2006
44.	19/06/20	Statutory Instrument 2020 No 619 (W. 141)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020	Public Health (Control of Diseases) Act 1984
45.	19/06/20	Statutory Instrument 2020 No 622 (W. 142)	The Education (Notification of School Term Dates) (Wales) (Amendment) (Coronavirus) Regulations 2020	Education Act 2002
46.	22/06/20	Statutory Instrument 2020 No 623 (W. 143)	The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) (Coronavirus) Regulations 2020	Education (Wales) Act 2014
47.	22/06/20	Statutory Instrument 2020 No 624 (W. 144)	The Curriculum Requirements (Amendment of paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020	Coronavirus Act 2020
48.	22/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-28))	Directions to Local Health Boards as to the Statement of Financial Entitlements (Amendment) (No. 2) Directions 2020	National Health Services (Wales) Act 2006
49.	23/06/20	Statutory Instrument 2020 No 638 (W. 146)	The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020	Teaching and Higher Education Act 1998
50.	23/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-35))	Disapplication of Curriculum Requirements in Wales Notice 2020	Coronavirus Act 2020

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
51.	25/06/20	Statutory Instrument 2020 No 640 (W. 147)	The Maintained Schools (Amendment of paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020	Coronavirus Act 2020
52.	25/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-27))	Disapplication of Changing School Session Times Requirements (Wales) Notice 2020	Coronavirus Act 2020
53.	25/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-37))	Modification of School Organisation Code (Wales) Notice 2020	Coronavirus Act 2020
54.	25/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-38))	Modification of section 3 of the Education Act 1996 (Wales) Notice 2020 ⁹	Coronavirus Act 2020
55.	26/06/20	Statutory Instrument 2020 No 653 (W. 150)	The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020	Coronavirus Act 2020
56.	29/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-25))	Directions to Local Health Boards as to the Statement of Financial Entitlements (Provision of Enhanced Services during the Recovery Phase of the COVID-19 Pandemic) Directions 2020	National Health Services (Wales) Act 2006
57.	29/06/20	Non-SI subordinate legislation (ref no: 2020 (WG20-30))	The Primary Medical Services (COVID-19 Care Homes) (Directed Enhanced Services) (Wales) Directions 2020	National Health Services (Wales) Act 2006
58.	03/07/20	Statutory Instrument 2020 No 686 (W. 153)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020	Public Health (Control of Diseases) Act 1984
59.	08/07/20	Statutory Instrument 2020 No 708 (W. 159)	The Education (Student Support) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2020	Teaching and Higher Education Act 1998

⁹ Relates to the definition of a pupil

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
60.	09/07/20	Statutory Instrument 2020 No 714 (W. 160)	The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020	Public Health (Control of Diseases) Act 1984
61.	09/07/20	Statutory Instrument 2020 No. 723 (W. 161)	The Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2020	Countryside and Rights of Way Act 2000
62.	10/07/20	Statutory Instrument 2020 No. 725 (W. 162)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020	Public Health (Control of Diseases) Act 1984
63.	10/07/20	Statutory Instrument 2020 No. 726 (W. 163)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020	Public Health (Control of Diseases) Act 1984
64.	13/07/20	Statutory Instrument 2020 No. 729 (W. 164)	The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020	Education Act 1996; Education Act 1997; School Standards and Framework Act 1998; Education Act 2002
65.	15/07/20	Non-SI subordinate legislation (ref no: WG20-39)	Directions to Local Health Boards as to the Statement of Financial Entitlements (Amendment) (No. 3) Directions 2020	National Health Services (Wales) Act 2006
66.	17/07/20	Statutory Instrument 2020 No. 752 (W. 169)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020	Public Health (Control of Diseases) Act 1984
67.	21/07/20	Statutory Instrument 2020 No. 778 (W. 172)	The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020	Coronavirus Act 2020
68.	22/07/20	Statutory Instrument 2020 No. 794 (W. 174)	The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020	Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017
69.	23/07/20	Statutory Instrument 2020 No. 803 (W. 175)	The Traffic Orders Procedure (Amendment) (Wales) (Coronavirus) Regulations 2020	Road Traffic Regulation Act 1984
70.	24/07/20	Statutory Instrument 2020 No. 803 (W. 176)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020	Public Health (Control of Diseases) Act 1984

	<i>Date made</i>	<i>Type</i>	<i>Title</i>	
71.	25/07/20	Statutory Instrument 2020 No. 804 (W. 177)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020	Public Health (Control of Diseases) Act 1984
72.	30/07/20	Statutory Instrument 2020 No. 817 (W. 179)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020	Public Health (Control of Disease) Act 1984
73.	31/07/20	Statutory Instrument 2020 No. 820 (W. 180)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020	Public Health (Control of Disease) Act 1984
74.	06/08/20	Statutory Instrument 2020 No. 840 (W. 185)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020	Public Health (Control of Disease) Act 1984
75.	07/08/20	Statutory Instrument 2020 No. 843 (W. 186)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020	Public Health (Control of Disease) Act 1984
76.	10/08/20	Statutory Instrument 2020 No. 848 (W. 187)	The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020	Education Act 1996



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Reporting to the Senedd on the making of Coronavirus-related legislation and use of powers under the Coronavirus Act 2020**

DATE **19 August 2020**

BY **Vaughan Gething MS, Minister for Health and Social Services**

During the consideration of the Legislative Consent Motion on the then Coronavirus Bill on 24 March 2020, I gave an undertaking to report on the use of the powers in that Bill (now the Coronavirus Act 2020) on a regular basis.

To date the majority of Coronavirus-related legislation has been made using pre-existing powers, rather than the powers under the Coronavirus Act. As a consequence, there has been no summary report provided to Members of the Senedd relating solely to that Act. Written statements have been issued to inform Members of the making of the most important coronavirus-related legislation (for example, relating to the main coronavirus restrictions legislation), but it is not a standard practice for every item of subordinate legislation.

To help improve the accessibility of Welsh law relating to coronavirus, all legislation relating to coronavirus made by the Welsh Ministers (either by way of Statutory Instrument (SI) or other form of subordinate legislation) has been published on the Gov.wales website and with [a single page](#) on the site where all this legislation is published. This reflects the seriousness with which we take the importance of transparency in the use of the unusually broad powers granted by public health legislation. Statutory instruments also continue to be published on the [legislation.gov.uk](#) website.

We are now publishing a first report to the Senedd on legislation made relating to coronavirus. While my initial commitment was solely to report on the use of powers under the 2020 Act, it is more informative and meaningful to provide a report which includes all subordinate legislation relating to coronavirus made by or on behalf of the Welsh Ministers, not just legislation which originates from the 2020 Act.

This report has been published at: <https://senedd.wales/laid%20documents/gen-ld13409/gen-ld13409-e.pdf>

This report will be updated periodically and will detail areas such as:

- the use of powers (or confirmation none have been used);
- the amendments to the principal restriction-related Regulations, including the 'travel' Regulations
- all other subordinate legislation made (including all SIs and, wherever possible, non-SI subordinate legislation such as directions, notices and declarations).

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Agenda Item 6.1

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA LG 2505 20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament

6 August 2020

Dear Mick

BASIC PAYMENT SCHEME AND RURAL SUPPORT LEGISLATIVE FRAMEWORK FROM 2021 – Consultation 31 July 2020 to 23 October 2020

On 31st July, I published a consultation which sets out proposals to establish an interim regulatory framework to provide agricultural support from the end of the EU withdrawal agreement implementation period (31 December 2020) until new powers are introduced through the proposed Agriculture (Wales) Bill. These proposals would give effect to the powers we are proposing to take through schedule 5 of the UK Agriculture Bill.

Please find a link to the consultation document here: <https://gov.wales/sustainable-farming-and-our-land-simplifying-agricultural-support>

The consultation proposes a number of minor but impactful amendments to the retained (EU) regulatory framework governing the Basic Payment Scheme and Rural Development Programme in Wales. Responses will inform the scope for the Welsh legislation required to deliver those replacement domestic schemes after 2020, subject to UK Government confirming the available budgets.

Following EU Exit in January I was planning to consult in late spring. However, timings slipped due to the Covid-19 pandemic. Legislation is required by 31 December 2020 to ensure all aspects of the schemes are in place, in particular, enforcement of environmental and animal health and welfare standards through

Cross Compliance from 1 January 2021. I am mindful the proposals may generate significant interest so am proposing a full 12 week consultation, which requires the consultation to open now.

As outlined in the Legislative Consent Motion concerning the UK Agriculture Bill, powers are being taken for Welsh Ministers as a temporary measure to allow us to continue supporting farmers in Wales and to ensure agricultural sectors across the UK can operate effectively once we leave the EU and the consultation, which runs till 23 October 2020, is consistent with this.

I look forward to receiving the Committee's views on the proposals, which are an important element of the preparations for departing the EU and provide much needed continuity and stability for Welsh agriculture, during this period of unprecedented uncertainty and before a formal transition to the proposed future Sustainable Farming scheme.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Eich cyf/Your ref
Ein cyf/Our ref : RE/278/20

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

11 August 2020

Dear Mick,

Thank you for your letter regarding The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020.

I am sorry that the associated written statement did not provide the detail the Committee sought in scrutinising Welsh Ministers' consent for that Statutory Instrument.

With regards to the withdrawing and relaying of the regulations, Department for Transport officials have confirmed that this was a result of a mistaken reference in the Explanatory Memorandum rather than any change in the Regulations themselves.

Finally, regarding the Regulations' effect on the legislative powers of the Senedd or executive powers of Welsh Ministers, the Statutory Instrument makes only technical amendments to correct deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the EU and contains no transfer of functions. Consequently, it is confirmed that, in accordance with Standing Order 30C.3(ii), the Statutory Instrument does not have any impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

I hope that helps answer any outstanding questions the Committee had about the Regulations.

Yours sincerely,

A handwritten signature in black ink that reads 'Rebecca Evans'.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 6/8

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

David Rees MS
Chair, External Affairs and Additional Legislation Committee

14 August 2020

Dear Chairs,

I am writing to draw your attention to the Welsh Government's analysis of the UK Government's White Paper on the UK Internal Market, which I have sent to the Secretary of State for BEIS today and is attached for your information.

I look forward to engagement with your Committees in due course on the matters covered in the analysis.

Yours sincerely,



Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel
General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

The Rt. Hon Alok Sharma MP
Secretary of State for Business, Energy & Industrial Strategy
secretary.state@beis.gov.uk

14 August 2020

Dear Alok,

I am writing further to the UK Government's White Paper on the UK Internal Market, published just four weeks ago.

Prior to the Paper's publication, I wrote to you and the Chancellor of the Duchy of Lancaster (7 July) to set out our position on the UK Internal Market and the steps we believe we should take to ensure future regulatory and economic cooperation across the UK, as a result of the UK leaving the EU Single Market. Our position and thoughts on a potential approach to this issue, as set out in my letter, have not changed.

The Welsh Government is concerned that the long-term survival of the United Kingdom is under great strain and that the approach taken in the White Paper will exacerbate those tensions in a way which, if not addressed, will accelerate the break-up of the Union. Our initial view was that the White Paper was fundamentally flawed and misleading – further analysis of the substance of your proposals has confirmed this view.

We have already made clear that we are not opposed to an internal market for the United Kingdom, neither are we opposed to legislation being brought forward to support the functioning of a UK Internal Market. Wales' interests, and those of the UK as a whole, are best served by ensuring smooth trading arrangements for businesses across all four nations. However, your proposals do not deliver this and in any case, this should be a collaborative piece of work in which all the governments within the UK have the opportunity to participate fully and on an equal basis.

Legislation of the kind proposed in your White Paper is simply not necessary, and we do not recognise the need for this type of solution as the UK Internal Market is already highly integrated.

The proposals also undermine three years of collaboration via Common Frameworks. Our commitment to the Frameworks programme remains and we continue to focus on the effective delivery of the programme.

Our reading of the proposals is that the proposed legislation would prevent the Senedd or Welsh Ministers from imposing mandatory requirements relating to lawful sale of goods and services in Wales – even where there were justified by public health objectives,

environmental concerns or any other public policy reason. This would represent a direct attack on the current model of devolution. The power – even if untouched – to regulate for goods and services produced in Wales would moreover be severely undermined, if not made completely impractical as in almost any sector, only a minority of good and services consumed in Wales are produced here.

The White Paper would thus remove or emasculate the current rights of the devolved institutions to implement changes to the regulatory environment in devolved policy areas governed to date by EU law, such as labelling, or environmental standards.

Attached to this letter is the Welsh Government's analysis to the substance of the UK Government's White Paper. I cannot emphasise strongly enough that, in our view, the model of primary legislation envisaged in the White Paper is unnecessary, unworkable, heavy-handed, and will not secure legislative consent from the Senedd.

I ask that you resume multilateral discussions on the future UK Internal Market, underpinned by our continuing and joint efforts to put in place Common Frameworks, to design and agree appropriate arrangements which serve the interests of the whole of the United Kingdom.

I am copying this letter to the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, the Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, and the First Minister and deputy First Minister of Northern Ireland.

Yours sincerely,



Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

The UK Government's White Paper on a UK Internal Market Welsh Government Analysis

Claims of risk / harm without legislative underpinning

The assertion that the UK Government, through the proposals in the White Paper, will 'give' the DAs new powers is misleading – the powers in question are not reserved and, in the absence of UK legislation to reverse the devolution settlement, would automatically and properly come back to the devolved institutions in any case.

The risks of harm to the UK economy if an Internal Market Bill is not introduced are overstated and are based on speculation on the extent of regulatory differences which *may* emerge, rather than the current situation within the UK which includes, and has included for some time, managed regulatory divergence. We have been clear from the outset that policy and regulatory divergence already exists within the UK, and this ability to diverge has led to innovative solutions being developed in one nation and subsequently introduced across the UK.

We note that the White Paper refers to construction and building regulations as examples where differences in regulations could create complexities over time. With the transfer of functions in 2012, England and Wales have diverged on their approach to building regulations as a reflection of each administration's policies and priorities. The construction sector has become accustomed to dealing with differing processes and performance standards set through regulations and associated statutory advice, in particular with regard to energy performance of buildings and fire safety. Liaison amongst the four administrations ensures that, where practical and of mutual benefit, policy work is shared – divergence is not considered a barrier to development.

Generally, the White Paper's analysis is very focussed on hypothetical examples of policy and/or regulatory divergence and there is no study of the impact of current divergence, such as building regulations, on businesses and how they manage current regulatory practices within the UK. There is no evidence of any engagement with stakeholders already operating in areas of current divergence in regulations.

We would question the economic modelling and analysis used to support the Paper's assertions of risk and the basis for a legislative underpinning of the kind proposed. For example, the use of Germany as a model to determine the economic cost to the UK if trade costs increased (pages 36 & 90), however with the clear caveat on page 89 that this data should not be used as a prediction for the UK market. This is deeply concerning.

It is clear that the evidence to support the White Paper's proposals is flawed in many ways. Stakeholder views and evidence should be analysed from across the UK and across a variety of sectors with differing levels of current divergence – this evidence should reflect the needs of the *whole* of the UK, not solely one nation.

Mutual Recognition & Non-discrimination

The Welsh Government has already clearly stated that the mutual recognition model proposed in the White Paper would undermine the Welsh and wider UK economy, our work on Common Frameworks, inter-governmental relations and the devolution settlements.

Whilst we recognise that the UK Government's proposals are careful not to suggest that there will be a constraint on devolved legislative competence to make regulations for goods

and services produced in Wales, it seems inevitable that the legislation will limit the Senedd's competence to legislate on goods which are placed on the market in Wales. Moreover, the effects of an overarching Internal Market Bill would also hollow out our competence in these areas. The economic dominance of England within the UK would undermine any policy innovation that could only apply to Welsh goods in Wales, as Welsh laws will not apply to goods and services being sold in Wales.

In addition, whilst the principles of mutual recognition and non-discrimination are well-established elements of the architecture of the EU Single Market, they are balanced by a commitment to subsidiarity and proportionality, a baseline of minimum standards and by the recognition that certain public policy concerns, for example in terms of environmental protection or public health, can in certain circumstances over-ride these principles. This is not reflected in the UK Government's proposals within the White Paper. It is also widely recognised by academics that there is a big difference between what is being suggested by the UK Government and how the EU Single Market works, and the context of the UK is key. By legislating in this way, the UK Government would be imposing a model of mutual recognition and non-discrimination on the three other nations of the UK, whereas the EU Single Market is a result of Member States voluntarily coming together to negotiate and agree a set of rules to which they are all bound.

We also note that the principles of mutual recognition and non-discrimination will apply in an unqualified way to goods and services from Northern Ireland being put on the market in Great Britain. This will not be the case in the reverse direction, since the Northern Ireland Protocol requires a large proportion of goods which are placed on the market there to conform to EU standards. We are concerned that there is a distinct lack of detail within the UK Government's proposals of how an Internal Market Bill will work alongside the Northern Ireland Protocol.

We have also made clear in past discussions with BEIS officials that comparing the UK's Internal Market to mutual recognition systems in other countries such as Australia is flawed as these comparisons do not reflect our structures, levels of devolution and way of working within the UK. Indeed, the closest comparison to be made would be with Spain, which also has a system of asymmetric devolution – where, in 2017, the law establishing the principle of mutual recognition was cancelled following a ruling by the Spanish Constitutional Court.

In addition, the non-discrimination provisions, while mentioned by UK Government during our discussions, were not interrogated in detail as part of our collaborative work on the Internal Market and continue to lack substance within the White Paper.

The economic weight of England and its impact on the rest of the UK's nations must be fully recognised and considered, and any adverse impact mitigated or minimised. What actions is the UK Government putting in place to ensure this?

Why is it proposed that mutual recognition will apply to all goods and services placed on the market in the UK rather than only to those originating in the UK?

How will the UK Government ensure that arrangements for the UK Internal Market reflect the unique multinational character of the UK and that learning from other systems is properly analysed in both home and UK contexts?

Services and Qualifications

The White Paper makes explicit that services and professional qualifications will be covered by the mutual recognition principle. This is an area of divergence which already exists and

each nation of the UK already has its own regulators overseeing areas such as social care and education.

The current Provision of Services Regulations 2009 implement the EU's 'Services Directive'. The UK 2009 Regulations facilitate both the cross-border provision of services within the EU *and* intra-UK access, therefore allowing people to live and work freely within the UK. Importantly, the 2009 Regulations also allow for divergence and exceptions, if justified – therefore allowing each nation of the UK to amend its rules if they believe it is within the public interest.

It is not clear whether this exception will be preserved if the system under the 2009 Regulations is brought within the Internal Market system, as proposed by the White Paper.

Case study: teachers' qualifications

This is illustrated by teachers' qualifications. Presently, in order to teach in maintained settings in Wales teachers must hold Qualified Teacher Status (QTS) and be registered with the Education Workforce Council. Teachers trained and awarded QTS in England are currently automatically recognised as being able to teach in Wales. For a number of years the route to being awarded QTS and the standards underpinning QTS have diverged significantly between England and Wales. Student teachers studying in Wales must hold GCSE (or equivalent) qualifications at a certain level, complete a degree level academic qualification as well as be assessed against the Welsh QTS Standards. In addition the Scottish regulatory model for teachers is also continuing to be altered in a policy direction slightly different from that in Wales in order to support their own education system effectively.

In England, the entry requirements to the teaching profession are lower and the English version of QTS can be awarded without undertaking an academic qualification. The policy direction in England continues to move towards an unregulated professional space or at least with minimal statutory requirements or academic qualifications in order to teach in schools. This is an example of an existing regulatory difference – while we would need to seek confirmation that this position can be maintained and will be outside the scope of the legislation, the worst case scenario of the proposed system of mutual recognition could be the significant reduction of the standards of the teaching workforce in Wales. Also, should the requirements to gain QTS continue to fall in England, potential student teachers could be attracted by lower cost and lower standard routes into teaching in England and seek to undertake their training there before returning to teach in Wales, undermining the requirements set to gain QTS in Wales.

Can the UK Government clarify how their proposals will affect (and indeed protect) the system of divergence for services and qualifications, already in place within the UK?

Common Frameworks

We have previously set out our proposals for future economic and regulatory cooperation across the UK. These proposals were, and continue to be, based on the Common Frameworks programme – and the development of other tools such as regulatory impact assessments – which would ensure any detrimental effect to the Internal Market of any policies are identified and could be weighed against any identified benefits such as public policy reasons.

Common Frameworks are expressly designed to allow for managed divergence in areas where all four Governments agree there is a need for this. In setting up the Common Frameworks programme, the UK Government identified the areas they considered may need a Framework to ensure the functioning of the UK Internal Market – these areas are supposed to cover all areas of returning powers. This would suggest, on the UK Government's own analysis, that there are no other areas outside the Frameworks areas which require agreement on divergence. Since that exercise, and in good faith, policy areas have been considering to what extent any Frameworks are needed in specific areas based on the fact-specific circumstances of each Framework area. This work has been developed on the basis of collaboration and cooperation across the UK's nations, in line with the Inter-governmental Agreement already agreed.

The UK Government, through the proposals set out in the White Paper, now suggests that the Common Frameworks programme does not go far enough in protecting the integrity of the UK's Internal Market. We have been clear that, while we agree that every aspect of the Internal Market is not covered by current Frameworks, this is not a justification for a heavy-handed piece of legislation which goes much further than areas covered by retained EU law.

The UK Government has stated on numerous occasions that Common Frameworks do not go far enough to protect the UK Internal Market.

Which areas fall outside the scope of Common Frameworks and are in need of an overarching legislative underpinning?

How has the UK Government reached the conclusion that legislation of this type is justified to govern those areas?

As Common Frameworks provide the mechanism for agreeing in specific detail what divergence is possible in all areas identified as part of that programme – why do these areas require a blunt, catch-all Bill that fails to reflect or recognise the years of work undertaken on Common Frameworks?

Exemptions & Exclusions

The list of exclusions from mutual recognition and non-discrimination within the White Paper is very limited, with no provision made for future exceptions. This does not allow for a sustainable, future-proofed way of working, neither does it allow for future changes to be made based on agreement by consensus.

The proposed exclusions do not reflect the current position in EU law which allow derogations for public policy reasons, neither are they consistent with similar arrangements in other countries such as Canada.

We will also need to consider the scope of any exceptions under the principle of non-discrimination and how this would apply in practice – the White Paper is very lacking in detail in this area. For example, it is not clear how the proposals may impact Welsh language requirements.

The Paper also makes reference to existing regulatory differences being excluded. However, it is not clear how this would impact changes to existing regulation – where there is existing divergence – and where the underlying policy remains. It raises the question what level of changes to existing policies would render a policy 'changed' and therefore within scope of the Internal Market system.

Why has the UK Government limited the exceptions and exclusions in such a way which is inconsistent with systems already in operation in other parts of the world?

Maintaining high standards

While the UK Government has stressed in discussions and publicly that their intention is to continue to apply high standards, for example in environmental and animal welfare areas, there is no suggestion within the White Paper that the legislation would set these standards in law, nor set a mechanism for agreeing them, and create a baseline for minimum, maximum or unitary standards, as exists within the EU mutual recognition model. At an EU level, Member States voluntarily agree to these standards and agreement is made by collaboration – the Welsh Government has also been involved in this process via the Committee of the Regions and also in discussion with the UK Government to shape the negotiating position. It is therefore deeply concerning that this is not set within the UK Government's proposals.

Welsh business groups have also made clear that this setting of a baseline for standards is absolutely crucial to ensure certainty for business. Without such a baseline, the risk of deregulation by one of the nations of the UK is great and in itself would lead to uncertainty for business, as the risk would be vastly differing standards across the UK which would ultimately lead to radical deregulation and a 'race to the bottom'.

Case study: single use plastic items

This is illustrated by the ban on single use plastic items. While the Welsh Government's proposals to introduce a ban on the sale of nine single use plastic items in Wales aligns with the nine items included in Article 5 of the EU's Single Use Plastics (SUP) Directive¹, the UK Government's proposal for a similar ban for England will only apply to three of the nine items. Therefore, the sale of three of the items banned in Wales would also be banned in England, the sale of the other six items would be lawful in England. The mutual recognition principle could mean that Wales would not be able to introduce legislation or, if legislation is introduced, enforce the ban on the sale of these six items in Wales, irrespective of their origin. A ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective. Furthermore, even if the UK Government were to bring its ban in line with the SUP Directive in the future, it would not be possible for Wales to go further and ban other single use plastic products without the policy being undermined by such plastics from other parts of the UK being sold in Wales.

Case study: food standards

A second example concerns food standards. Under the current EU regime, common standards are agreed at EU level on the basis of negotiation and compromise. Moreover, it is open to the Welsh Government to specify higher standards for food put on the market in Wales provided this can be justified in terms of public policy and is not discriminatory.

However, should the UK Parliament legislate, for example, to permit the use of hormones in beef cattle, the mutual recognition principle as envisaged by the White Paper would mean that meat from such cattle could be placed on the market in Wales, even if our current regulations – which forbid such techniques – remained in place in respect of cattle reared in Wales. Moreover, it would most likely be impossible for the Welsh Government to insist on labelling to identify beef produced from hormone-injected cattle, since beef products which originated elsewhere in the UK would only have to respect the labelling regulations of the

¹ Article 5 of Directive (EU) 2019/904 (the Single Use Plastics Directive). Use Annex C for further detail.

part of the UK in which they were produced. And since the legislation would apply to all goods, whether produced in the UK or imported, provided the UK Parliament had legislated to reduce standards in this way in England, the Welsh Government would have no possibility of excluding English produced or imported beef from sale in Wales or even making consumers aware of what they were buying.

While the UK Government, at this time, may publicly commit to maintaining high standards, these proposals would mean that any *future* reduction in standards would result in lower standard products entering the Welsh market.

How will the UK Government ensure that high standards will be agreed and preserved?

Governance

The section within the White Paper focussed on governance and independent monitoring is relatively light on detail, including on mechanisms for dispute resolution.

The reference to the oversight role of the UK Parliament (para. 154) suggests no role for the devolved legislatures in any new system which could be created to manage the UK Internal Market. As any new system would impact the whole of the UK, this is wholly unacceptable.

On independent advice and monitoring, the Paper states that there is a “range of potential vehicles” to explore. There is no real detail included, specifically in terms of the functions, constitution and accountability of an independent body.

In a country such as the UK, close collaboration and cooperation via a clear system of governance, based on strong inter-governmental relations and parity of participation, and agreed at the outset by each of the UK nations, is vital.

How does the UK Government envisage an independent body would be scrutinised and held accountable?

What governance and oversight role is envisaged for the devolved legislatures?

Subsidies regime / State aid

Currently, the Government of Wales Act 2006 (GoWA) does not include State aid in its list of reservations, and therefore State aid is not a reserved matter. The White Paper implicitly accepts this view by stating that the UK Government intends to “legislate to expressly provide that subsidy control is a reserved matter”, rolling back the process of devolution and constraining the Senedd’s ability to legislate on this matter.

We have made clear, through discussion with the UK Government, that we cannot foresee any way in which the Senedd would give legislative consent to changes to GoWA which would introduce a reservation on State aid policy.

Whilst the Paper commits to “work[ing] closely with all the devolved administrations to seek to agree the shape of a UK-wide domestic subsidy control regime” (para. 174) the inference is that the future UK subsidy regime will be developed to reflect the interests of the UK Government, rather than be the results of a collaborative development process, as is currently the case for the EU State aid rules.

The White Paper also gives little detail on the UK's future subsidy regime and makes no reference to an independent regulator for a future regime.

What are the UK Government's plans for a future subsidy regime and why do these require changes to the devolution settlements if the intention is to proceed by agreement?

Procurement

Despite the fact that procurement is a devolved competence, the White Paper confirms that the UK Government is considering extending the non-discrimination duty to the procurement of goods.

In raising the issue of the non-discrimination principle in relation to procurement, the UK Government is seeking to resolve an anomaly caused by the UK's exit from the EU, in relation to the WTO's Government Procurement Agreement (GPA). This issue has been raised as part of the discussions in relation to the Common Framework for procurement, the current draft of which states "The parties will... maintain principles of non-discrimination, equal treatment and transparency in respect of economic operators from the UK". No Party to the draft Concordat has objected to the inclusion of this intra-UK non-discrimination commitment.

This begs the question of why this provision should be included in an overarching Internal Market Bill. By unnecessarily extending the proposed UK non-discrimination provision to the procurement of goods there may be unintended adverse consequences for policy making in Wales and/or our devolved competence in this area.

What justification can the UK Government give to including this area within their proposals?

What impact will these proposals have on work already underway to agree a Common Framework for procurement?

Spending powers

It is not clear from the White Paper what is meant by 'spending powers', which at paras 47, 126 and 128 are characterised as new or "clarified" powers for the UK Government but at para 182 are described as for "all levels of Government". Reference is also made at para 182 to powers "for the UK Government to construct replacements of EU programmes". There is no further detail or substance about the rationale or impact of this, or about how this relates to ongoing intergovernmental discussions about the Shared Prosperity Fund and continued participation on programmes such as Erasmus+.

Could the UK Government clarify the meaning of 'spending powers' in this context and how they will ensure that any plans respect the current devolution settlements?

Eluned Morgan AS/MS
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14 August 2020

Dear Chairs,

I wrote to you in July to inform you that a meeting of the Ministerial Forum for Trade would be taking place on the 21 July.

Greg Hands, Minister for International Trade, chaired the meeting and my counterparts from Scotland and Northern Ireland were also present.

The meeting provided updates on the free trade negotiations taking place and I again stressed the importance of ensuring that these do not compromise the current environmental and animal health and welfare standards we hold dear in Wales. The meeting also provided updates on the continuity negotiations programme and the UK Trade Bill.

The engagement with DIT remains positive and my officials continue to work closely with UK Government officials to progress this work.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We currently do not have a date for the next meeting, but I will write to you again before any further meetings take place.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language