

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>.