

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>