

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

