

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.