

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) 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. 7) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

28 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 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 coronavirus, taking into account the scientific evidence.

The relaxation of certain restrictions on visits to care homes, hospices and secure accommodation has a positive impact on the Article 8 right to respect for private and family life. The Welsh Ministers consider it proportionate to respond to the current level of threat by loosening those restrictions, in conjunction with the safeguards set out in supporting guidance.

The reopening of casinos raises no new human rights issues, and is considered proportionate from a public health perspective because of the existing inspection and enforcement regime.

The public health risks attaching to unlicensed musical events, together with the likelihood of these events going ahead based on advice from the four police forces in Wales, make the new offence a necessary and proportionate step to now take. The amendments also permit the police to take preventative action to stop these events being organised before they start. This is not easily done under existing licensing legislation but is considered to be an important and proportionate aspect consistent with the overarching aim of protecting public health

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 the principal regulations so as to:

- explicitly enable visits (indoors) to residents and patients in care homes, hospices and secure accommodation. Prior to these changes it would not have been clear whether it was a reasonable excuse for persons to gather indoors for the purposes of undertaking visits to family and friends in care homes and similar settings. Although a number of care homes and hospices are permitting outdoor visits, and indoor visits in exceptional circumstances such as end of life, it is important to ensure that vital family and social connections are maintained. Circumstances now allow for this, and therefore the amendments to the principal Regulations create a new explicit reasonable excuse for gathering indoors, for the purpose of visiting a care home, hospice or premises providing secure accommodation
- re-open casinos. Such settings have not been permitted to open since late March 2020, and work with the sector has been underway to enable such premises to open safely. The Betting Gaming Council (the umbrella body for the sector) has developed membership guidance (at a UK level) which sets out health and risk management activity specific to their operations, aimed at keeping their employees and customers safe. This includes particular guidance for Wales which has been developed to reflect the requirements of the principal Regulations.

- create a new offence of organising (or being involved in holding) in an unlicensed music event that is in contravention of regulation 14(1) or 14A(1) of the principal Regulations. There is some evidence that events are being organised in various parts of Wales in breach of the principal Regulations, and some risk that in the absence of comparable penalties for organising these events in both England and Wales, event organisers might have an incentive to organise the events in Wales. Although participation in such events is already unlawful there has been, until now, no particular sanction could be imposed on those who place public health at risk by organising these events. The new offence ensures that action can be taken against those who organise events and came into force ahead of the August Bank Holiday, as this is a notoriously busy time for unlicensed music events.

The commission of the offence is subject to having a reasonable excuse. This is consistent with the treatment of offences under the principal Regulations to date.

A fixed penalty notice of £10,000 can be issued under regulation 20, in respect of this new offence.

The amendments being made also provide that the offence is capable of being committed by a body corporate (by way of an amendment to regulation 20(6)). It is recognised that a body corporate could also commit offences under Schedule 5 to the Regulations (i.e. non-compliance with a closure notice), and as such the amendment now being made reflects that as well.

In addition the Regulations also make various technical and consequential changes to the principal Regulations, notably –

- adding a further reasonable excuse to gather indoors, i.e. “for educational reasons”. This is to put beyond doubt that individuals accessing certain educational services (for example, private schools and certain further education/higher education institutions) may gather indoor for those purposes.
- providing that the collection of contact tracing information is not only for the purposes of minimising the risk of exposure on the premises but also (and more appropriately) to minimise the risk of spreading the virus. Further to reflect that it is not only the Welsh Ministers and persons designated as public health officers under the Coronavirus Act 2020 who collect and process contact tracing information, the provisions now refer to persons designated by a local authority for this purpose.

The Regulations come into force at the beginning of Friday, 28 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 consultation in relation to these Regulations.

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. In making the Regulations this week there has been ongoing discussions with the Chief Constables and Police and Crime Commissioners in Wales about the likelihood of unlicensed music events taking place in Wales, and the risk of organisers moving events from England to Wales if reciprocal provision was not made for Wales. All four police forces support the introduction of the new offence through this week's Regulations.

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 21 August the intention to bring about some of the changes achieved in the Regulations made today, around casinos and visits to care homes, if circumstances allowed for it. These proposed changes were subsequently widely reported.

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 has been prepared and will be published. These Regulations are not believed to have any disproportionately negative impacts on groups with protected characteristics. The measures to allow for indoor visits to residents of care homes, hospices and secure accommodation is expected to have positive distributional impacts for the elderly, those with disabilities (particularly those with dementia), and children. The proposed easement will allow for feelings of isolation to be addressed for those in care and improve the well-being of them and their families/friends.