

Require Senedd vote for 'local lockdowns' before implementation

Y Pwyllgor Deisebau | 15 Rhagfyr 2020
Petitions Committee | 15 December 2020

Reference: RS20/14570-4

Petition Number: P-05-1050

Petition title: Require local lockdowns to be subject to a vote of the Senedd for approval before being implemented

Text of petition:

In light of the recent amendment in the U.K. Parliament by Sir Graham Brady for further restrictions to require the approval of Parliament, the same requirement should be made for restrictions in Wales. Civil liberties being curtailed should require the democratic consent of the people of Wales through a vote of Senedd members before being implemented. It will help to provide accountability for those areas which are placed under local Coronavirus restrictions.

The issue of consent is crucial with these regulations. Politicians have a responsibility to uphold people's fundamental freedoms, whilst also protecting people's lives. This is something that is a delicate balancing act in the case of Coronavirus. Especially when decisions could have an enormous impact on the public in many factors. Therefore, the implementation of further restrictions should have to pass by a majority vote of the Senedd.

Please see amendment below as the basis for this petition.

Text of Sir Graham Brady's Amendment: 'provided Ministers ensure as far as is reasonably practicable that in the exercise of their powers to tackle the pandemic under the Coronavirus Act 2020 and other primary legislation, including for example part 2A of the Public Health



(Control of Disease) Act 1984, Parliament has an opportunity to debate and vote upon any secondary legislation with effect in the whole of England or the whole United Kingdom before it comes into effect.'

1. Background to 'local lockdowns'

Between the start of the coronavirus pandemic and 8 September 2020, the Welsh Government implemented national measures to control the virus.

On 8 September, the Caerphilly County Borough Council area became the first in Wales to be designated a 'local health protection area' subject to local restrictions. This was colloquially referred to as being under 'local lockdown'. The legal basis for this is discussed below.

By 23 November 2020, 17 local authority areas (or certain parts of local authority areas) were under local lockdown in Wales.

On 23 November 2020, Wales entered a 'Firebreak lockdown' which introduced strict national measures, replacing the existing local lockdown restrictions.

On 30 October 2020, the First Minister confirmed that the system of local lockdowns would not return after the Firebreak lockdown ended on 9 November and would be replaced by a new set of national rules.

2. Legal basis for 'local lockdowns'

In September (when local lockdowns were first introduced), the applicable coronavirus regulations in Wales were The Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 (the "Principal Regulations"). These have subsequently been revoked and superceded.

Local lockdowns were introduced in Wales by amending the Principal Regulation via The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (the "Caerphilly Regulations").

Additional local authority areas were subsequently placed in local lockdown by amendments 10, 11, 13, 14, 15, 16 and 18 to the Principal Regulations (together with the Caerphilly Regulations, the "Amending Regulations")

3. Senedd Procedure

The Amending Regulations were made by the Welsh Ministers under the 'Emergency Procedure' in Section 45R of the *Public Health (Control of Disease) Act 1984*.

In respect of Wales, an instrument may be made under this procedure without a draft of the regulation having been laid and approved by a resolution of the Senedd if it contains a declaration that the person making it is "of the opinion that, by reason of urgency, it is necessary" to do so. All Amending Regulations contained such a declaration.

However, unless a regulation made under the Emergency Procedure is approved by a resolution of the Senedd (i.e. voted upon and affirmed) within 28 days of being made, it ceases to have effect.

All Amending Regulations were in force before being approved by a resolution of the Senedd.

However, all Amending Regulations were retrospectively affirmed by the Senedd under the Affirmative Resolution Procedure in the Senedd Standing Orders. As the regulations were in force before being affirmed, this is sometimes referred to as the 'made affirmative' procedure, although this term is not contained in the Standing Orders.

In practice, this means that all Amending Regulations were reported upon by the Legislation, Justice and Constitution Committee, debated in Plenary and affirmed by a vote in the Senedd.

4. Brady Amendment

In March, the UK Parliament passed the Coronavirus Act 2020 containing emergency powers to respond to the coronavirus pandemic.

On 30 September, as required by the Act, the House of Commons debated a motion on whether the temporary provisions in the Act should expire.

Sir Graham Brady MP, tabled an amendment (the “Brady Amendment”) to the motion which stated:

[...] as far as is reasonably practicable that in the exercise of their powers to tackle the pandemic [...] Parliament has an opportunity to debate and to vote upon any secondary legislation with effect in the whole of England or the whole United Kingdom before it comes into effect.

The Brady Amendment was not selected for debate by the Speaker of the House of Commons.

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