

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 14 December 2020

Meeting time: 09.30

For further information contact:

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### – Supplementary Pack

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

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#### 2 Proposed Order in Council – The Government of Wales Act 2006 (Amendment) Order 2021: Evidence session

09.30–10.15

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Jeremy Miles MS, Counsel General

Christopher Warner, Deputy Director, Constitution and Justice, Welsh  
Government

Anna Hind, Lawyer, Welsh Government

CLA(5)–37–20 – Briefing

CLA(5)–37–20 – Paper 1 – Proposed Order

CLA(5)–37–20 – Paper 2 – Explanatory Memorandum (Welsh Government)

CLA(5)–37–20 – Paper 3 – Explanatory Memorandum (UK Government)

CLA(5)–37–20 – Paper 71

Attached Documents:

CLA(5)–37–20 – Paper 71

#### 3.1 SL(5)677 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020

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**CLA(5)-37-20 – Paper 4 – Report**

**CLA(5)-37-20 – Paper 4a – Welsh Government response**

**CLA(5)-37-20 – Paper 5 – Regulations**

**CLA(5)-37-20 – Paper 6 – Explanatory Memorandum**

Attached Documents:

**CLA(5)-37-20 – Paper 4a**

**5.10 SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**

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**CLA(5)-37-20 – Paper 47 – Explanatory Memorandum**

**CLA(5)-37-20 – Paper 48 – Letter from the Minister for Housing and Local Government, 9 December 2020**

**CLA(5)-37-20 – Paper 49 – Written statement, 10 December 2020**

Attached Documents:

**CLA(5)-37-20 – Paper 45**

**5.11 SL(5)698 – The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020**

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**5.12 SL(5)699 – The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020**

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Document is Restricted

# Agenda Item 3.1

## **Government Response: The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020**

### Technical Scrutiny point 1:

The drafting of the modifications to Article 6 (end of waste status) of Directive 2008/98/EC (the Waste Framework Directive) is appropriate, for the reasons set out below.

Currently, there are two methods by which a decision as to whether a substance or object has ceased to be waste for the purposes of the Waste Framework Directive, is made. In the first, a decision is made in accordance with detailed end of waste criteria set out in EU legislation, in relation to particular types of waste, for example, scrap metal. Such legislation will become retained EU law after IP completion day and is reflected in the inserted paragraph 1A(a) in Article 6.

Where detailed criteria are not set out in EU legislation for particular waste streams, member States have discretion under the Waste Framework Directive, within certain constraints, to issue guidance containing detailed criteria for determining end of waste status. It is that guidance, which can contain detailed criteria, to which inserted paragraph 1A(b) refers.

The substitution in the second sub-paragraph of paragraph 2 of Article 6, of the words “Any detailed criteria set out in guidance as referred to in paragraph 1A” has the effect of requiring guidance developed under inserted paragraph 1A(b), to conform to the requirements set out in the second sub-paragraph of paragraph 2 of Article 6.

### Technical scrutiny point 2:

Agree. This is a drafting error and will be rectified at the earliest practicable opportunity.

### Merit Scrutiny point 4:

Noted.

### Merit Scrutiny point 5:

A corrected Explanatory Memorandum will be laid.

## SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

### Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984. The Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, nuisance or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant.

These Regulations come into force on 11 December 2020 and will expire on 11 January 2021.

The Minister for Housing and Local Government made a statement on 10 December 2020 adding that “the purpose of the Regulations is to ensure that during the Christmas and mid-winter period, evictions are kept as low as possible. With access to services and alternative accommodation often limited during this time, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of transmission of the virus.”

### Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 26 January 2021 in order for it to remain in effect”

### Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 3(2) is a saving provision and it states

*“(2) The expiry of these Regulations does not affect the validity of anything done or not done pursuant to these Regulations before they expire.”*



It is unclear why this provision is necessary owing to the operation of section 34 of the Legislation (Wales) Act 2019. The provision appears to serve no purpose and is superfluous. There will be contexts in which it is both meaningful and desirable, or even necessary, to make provision replicating a provision of the Legislation (Wales) Act but in this instance it is unclear why it has been included and could cause confusion. The Government are asked to explain why this provision is deemed necessary.

## Merits Scrutiny

The following 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 or public policy likely to be of interest to the Senedd.**

These Regulations engage a landlord's rights under Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1"). Although the Explanatory Memorandum states that these Regulations are made in response to a public health emergency, it fails to refer specifically to the fact that these regulations engage human rights and how they deem the provisions to be justifiable and proportionate in the context of those rights. The Government are asked to provide this justification.

**2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

*"Given the public health emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so."*

Although it is accepted that there is no statutory requirement to consult when making these regulations under the above powers, can the Government confirm whether or not they were able to engage in any capacity with relevant stakeholders before making these regulations.

**3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:

*"The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment."*



The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

## **Implications arising from exiting the European Union**

None.

## **Welsh Government response**

A Welsh Government response is required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**11 December 2020**



# Agenda Item 5.11

## **SL(5)698 – The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020**

### **Background and Purpose**

These Regulations make amendments to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 to (the principal Regulations) —

- (a) require all cinemas, funfairs, amusement parks, theme parks, museums, galleries and visitor attractions to be closed, whether indoors or outdoors;
- (b) clarify that trampoline parks and centres and indoor skate parks and centres must be closed;
- (c) (despite the requirements on certain business premises to be closed) allow drive-in cinemas and theatres to open subject to the requirement in the principal Regulations for all reasonable measures to be taken on business premises to minimise the risk of exposure to coronavirus.

These changes come into force at the very beginning of the day on 14 December 2020.

### **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**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **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**

We note the Welsh Government's comments in the Explanatory Memorandum (copied below) regarding the human rights impact of these Regulations:



*The amendments contained in these Regulations continue to engage, under the principal Regulations, 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.*

However, this is just a statement that the Regulations are justified / proportionate – there is no analysis of how that conclusion was reached.

## **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**

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.*

*In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 11 December the Welsh Government's intention to publish an update to the Coronavirus Control Plan the following week.*

## **Implications arising from exiting the European Union**

None.

## **Welsh Government response**

A Welsh Government response is not required

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**13 December 2020**



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1522 (W. 326)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 4) (Wales)  
(Amendment) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These 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) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

These Regulations make amendments to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (S.I. 2020/1219 (W. 276)) (the “principal Regulations”) to—

- (a) require all cinemas, funfairs, amusement parks, theme parks, museums, galleries and visitor attractions to be closed, whether indoors or outdoors;
- (b) clarify that trampoline parks and centres and indoor skate parks and centres must be closed;
- (c) (despite the requirements on certain business premises to be closed) allow drive-in cinemas and theatres to open subject to the requirement in the principal Regulations for

all reasonable measures to be taken on business premises to minimise the risk of exposure to coronavirus.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1522 (W. 326)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 4) (Wales)  
(Amendment) Regulations 2020**

*Made*                    *at 4.52 p.m. on 11 December 2020*

*Laid*                    *before*                    *Senedd*  
*Cymru*                *at 8.00 p.m. on 11 December 2020*

*Coming into force*                *on 14 December 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These 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) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

### **Title and coming into force**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 14 December 2020.

### **Amendment of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020**

**2.**—(1) The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020<sup>(1)</sup> are amended as follows.

(2) In regulation 7(2)(c)—

(a) in paragraph (i), after “film” insert “at a drive-in cinema”;

(b) after that paragraph insert—

“(ia) a performance at a drive-in theatre;”.

(3) In regulation 19, omit paragraph (1A).

(4) In regulation 47, after paragraph (4) insert—

“(4A) For the purposes of these Regulations, the premises of a cinema or theatre is a drive-in cinema or theatre if—

(a) the premises are outdoors, and

(b) persons attending the showing of a film or performance at the premises—

(i) may only do so in an enclosed vehicle, and

(ii) may not, in so far as is reasonably practicable, leave the vehicle while at the premises.”

(5) In Schedule 1—

(a) in paragraph 3, after “Theatres” insert “other than drive-in theatres”;

(b) in paragraph 6, after “amusement arcades” insert “, trampoline parks and centres, indoor skate parks and centres”;

(c) in paragraph 8, after “Cinemas” insert “other than drive-in cinemas”.

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<sup>(1)</sup> S.I. 2020/1219 (W. 276) as amended by S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1409 (W. 311) and S.I. 2020/1477 (W. 316).

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 4.52 p.m. on 11 December 2020

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) 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. 4) (Wales) (Amendment) Regulations 2020.

**Mark Drakeford**  
**First Minister**

11 December 2020

## **1. Description**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 4) (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. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

### *European Convention on Human Rights*

The amendments contained in these Regulations continue to engage, under the principal Regulations, 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.

## **3. Legislative background**

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45C(1) and (3)(c), 45F(2) and 45P(2) 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**

These Regulations make amendments to the principal Regulations to:

- close all outdoor attractions including funfairs with the exception of drive-in events such as drive in cinemas; and
- close trampoline parks and skate parks.

Given the deteriorating public health position and the UK wide agreement to relax restrictions for a short period over Christmas, the advice from the Chief Medical Officer for Wales and Public Health Wales is that urgent action should be taken in the pre-festive period to avoid unsustainable demand on the NHS in late December

and January. A separate decision has been made to move all secondary schools to online learning one week before the end of term.

To further assist in deterring mixing in public places, the Regulation will require all outdoor attractions and funfairs to be closed from Monday 14 December.

These amendments come into force at the beginning of Monday, 14 December 2020.

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 11 December the Welsh Government's intention to publish an update to the Coronavirus Control Plan the following week.

## **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment 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.



Elin Jones, MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

11 December 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020 under sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 14 December 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 28 January 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the Plenary on 15 December 2020.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru  
Welsh Government

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**        **Closure of outdoor attractions**  
**DATE**        **11 December 2020**  
**BY**            **First Minister, Mark Drakeford MS**

The situation in Wales is very serious; rates of coronavirus are very high and the NHS is under sustained pressure.

The advice from the Chief Medical Officer for Wales and from Public Health Wales is that we need to take urgent action now which will help us enter the festive period with as low an infection rate as possible. This is why we have decided to ask all secondary schools to move to online teaching for the last week of term.

As of Monday 14 December, we will also bring forward changes to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020. This will require all outdoor attractions, including funfairs, to close. It will also make clear that trampoline parks and indoor skating parks must be closed.

The regulations will be formally reviewed next week.

# Agenda Item 5.12

## **SL(5)699 – The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020**

### **Background and Purpose**

These Regulations limit the circumstances under which a pupil or student may attend the premises of a school or further education institution in Wales between 14 and 22 December 2020. The Regulations are made in response to the risks to public health arising from Coronavirus and are based upon advice given by the Chief Medical Officer for Wales. The Regulations prohibit-

- (i) proprietors of schools from allowing pupils in year 7 and above to attend school; and
- (ii) proprietors of further education institutions from allowing students to attend the institution.

There are exceptions for (among others) the children of critical workers, vulnerable pupils and students, and pupils of special schools.

### **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 dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

The enabling powers relied upon in the Welsh text are-

Section 45C(1) and (3)(c), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984 (our emphasis).

The enabling powers relied up upon in the English text are-

Section 45C(1) and (3), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984.



## Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

*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.*

*Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.*

*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. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). It balances 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 reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.*

### **3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations. In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 10th December 2020, supported by a press statement.*



**4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We acknowledge that these Regulations have been made in response to a public health emergency. The Committee would, however, like the Welsh Government to provide further detail on who it consulted and when, prior to making these Regulations.

**5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

**6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note that there is no child impact assessment and invite the Welsh Government to explain what steps it took to assess the particular impact of these Regulations on children.

## Implications arising from exiting the European Union

None.

## Welsh Government response

A Welsh Government response is required (but not to points 2 and 3).

### Legal Advisers

Legislation, Justice and Constitution Committee

13 December 2020



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1524 (W. 327)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (School Premises and  
Further Education Institution  
Premises) (Wales) Regulations  
2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These 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) in Wales. The Regulations impose requirements and restrictions on individuals.

These Regulations come into force 14 December 2020 and expire at the end of the day on 22 December 2020.

Regulations 3 and 4 limit the circumstances in which a pupil or student may attend the premises of a school or a further education institution.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared

as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1524 (W. 327)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (School Premises and  
Further Education Institution  
Premises) (Wales) Regulations  
2020**

*Made at 9.42 p.m. on 11 December 2020*

*Laid before Senedd  
Cymru at 11.45 p.m. on 11 December 2020*

*Coming into force 14 December 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

These 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) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

**Title, application, coming into force and interpretation**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 14 December 2020.

(4) In these Regulations—

(a) the “1996 Act” means the Education Act 1996<sup>(1)</sup>;

(b) “boarder” has the meaning given by section 579 of the 1996 Act;

(c) “critical worker” means a worker the local authority considers to be a critical worker having had regard to guidance published by the Welsh Ministers on identifying children of critical workers;;

(d) “further education institution” means—

(i) an institution within the further education sector;

(ii) a provider of education or training within the meaning of section 31(1)(a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000<sup>(2)</sup> that—

(aa) is not an institution within the meaning of paragraph (i),

(bb) is not an institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992<sup>(3)</sup>, and

(cc) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,

but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;

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(1) 1996 c. 56.

(2) 2000 c. 21.

(3) 1992 c. 13.

- (e) “independent school” has the meaning given by section 463 of the 1996 Act;
- (f) “institution within the further education sector” has the meaning given by section 91(3) of the Further and Higher Education Act 1992;
- (g) “parent” has the meaning given by section 576 of the 1996 Act;
- (h) “proprietor” has the meaning given by section 579 of the 1996 Act in relation to a school and, in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;
- (i) “pupil” has the meaning given by section 3 of the 1996 Act;
- (j) “pupil referral unit” has the meaning given by section 19 of the 1996 Act;
- (k) “special educational needs” has the meaning given by section 312 of the 1996 Act;
- (l) “special school” means—
  - (i) a special school within the meaning given by section 337 of the 1996 Act;
  - (ii) an independent school which wholly or mainly provides education for pupils with special educational needs;
- (m) “school” has the meaning given by section 4 of the 1996 Act;
- (n) “school year” means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July;
- (o) “year 7” means a year group in which the majority of children will, in the school year, attain the age of 12;
- (p) “year group” means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

### **Expiry**

2.—(1) These Regulations expire at the end of the day on 22 December 2020.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

### **Restriction on attending school premises**

3.—(1) The proprietor of a school in Wales may not permit a pupil in year 7 or above to attend the premises of the school during the period that starts at the

beginning of the day on 14 December 2020 and ends at the end of the day on 22 December 2020.

(2) But paragraph (1) does not apply to a pupil whose parent is a critical worker.

(3) And paragraph (1) does not prevent a proprietor from permitting —

- (a) a pupil to attend a school's premises—
  - (i) to undertake an examination or other assessment;
  - (ii) where the pupil's parent is notified by the proprietor of the school that the proprietor considers it appropriate for the pupil to attend due to exceptional circumstances related to the pupil's vulnerability;
- (b) a pupil from attending the premises of a special school;
- (c) a pupil from attending the premises of a pupil referral unit;
- (d) a pupil from attending the premises of a unit in a school, where—
  - (i) the unit is recognised by a local authority as being reserved for pupils with special educational needs, and
  - (ii) the pupil is wholly or mainly educated at the unit;
- (e) a pupil who is a boarder from residing in accommodation at the school premises.

#### **Restriction on attending further education premises**

4.—(1) A proprietor of a further education institution in Wales may not permit a student to attend the premises of the further education institution during the period that starts at the beginning of the day on 14 December 2020 and ends at the end of the day on 22 December 2020.

(2) But paragraph (1) does not prevent a proprietor from permitting a student to attend the premises of—

- (a) a further education institution to undertake an examination or other assessment;
- (b) an institution within the further education sector where the student is notified by the institution that the institution considers it appropriate for the student to attend due to exceptional circumstances related to the student's vulnerability.

#### **Enforcement**

5. Any failure by a proprietor to comply with regulation 3 or 4 is enforceable by an application for

injunction by the Welsh Ministers to the High Court or  
County Court, without notice.

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 9.42 p.m. on 11 December 2020

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions)  
(School Premises and Further Education Institution Premises) (Wales)  
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) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020.

**Mark Drakeford**  
**First Minister**

11 December 2020

## **1. Description**

These Regulations requires the proprietor of a school or a Further Education Institution (FEI) to, subject to the exceptions set out in the Regulations, not permit pupils in Years 7 and above from attending the school premises, or students from attending FEI premises, in Wales from 14 December 2020 until the end to the school/FEI term. These restrictions do not apply to the children of critical workers.

## **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. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

These Regulations include a ‘sunset provision’ which means they will expire at the end of 22 December 2020.

### *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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.

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. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). It balances 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 reduce 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”. Their purpose is, subject to the exceptions set out in the Regulations themselves, to prevent pupils in Year 7 and above from attending school or FEI premises in Wales from 14 December 2020 until the end of Autumn term.

The advice of the Chief Medical Officer for Wales is that action is needed now if we are to mitigate the ongoing transmission of Covid-19 and to prevent NHS capacity in Wales becoming stressed and potentially overwhelmed. These Regulations are intended to prevent direct covid-19 deaths and deaths related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

The latest published evidence<sup>1</sup> on schools and the potential impact they would have on the R rate if they were closed has been set out by Technical Advisory Group (TAG)

As noted in the TAG paper, by SAGE, though the role of children in transmission is limited, opening or closing schools would be expected to have an impact on community transmission (e.g. by changing the activities of a large number of adults):

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<sup>1</sup> [https://gov.wales/sites/default/files/publications/2020-10/technical-advisory-group-fire-breaks\\_2.pdf](https://gov.wales/sites/default/files/publications/2020-10/technical-advisory-group-fire-breaks_2.pdf)

***‘Mass school closure to prevent community transmission: Moderate impact. (moderate confidence) Closing all schools associated with a reduction in Rt of 0.2-~0.5. Closure of secondary schools may be more effective (reduction in R of ~0.35) as link more households, higher numbers of contacts within schools and transmission to/from younger children may be more limited. Overall, low confidence, as unclear how much schools may contribute to community transmission.’***

The Government has also published<sup>2</sup> TAG’s evidence on children and young people under the age of 18, following the ‘firebreak’ at the end of October.

The evidence from surveillance studies indicates a new finding of evidence of higher levels of infection (symptomatic and asymptomatic) and transmission in school based age groups than previously recognised, especially in 11-17 age groups.

Additional evidence in relation to the impact of interventions can be drawn from the TAG report on non-pharmaceutical interventions<sup>3</sup>.

As a result of this evidence, the Regulations make provision in two key areas:

- a) to restrict certain categories of students from attending secondary school premises
- b) to restrict students from attending FEI premises

They do this by requiring the proprietor of a school or FEI to restrict access to the premises of the school or the FEI. The Regulations do not prevent the proprietor from permitting the attendance at the premises of:

- learners undertaking exams or assessment; and
- vulnerable learners (as determined by the proprietor).

They also permit the proprietor to allow learners to attend the premises of special schools, pupil referral units and SEN units in schools. They also do not prevent a boarder from residing in accommodation at the school premises.

The Regulations also provide for the enforcement of these requirements and restrictions.

It is critical to take all reasonable steps to contain increasing transmission of coronavirus. The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are necessary and proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

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<sup>2</sup> <https://gov.wales/sites/default/files/publications/2020-11/technical-advisory-group-evidence-review-on-children-and-young-people-under-18-in-preschool-school-or-college-following-the-firebreak.pdf>

<sup>3</sup> <https://gov.wales/sites/default/files/publications/2020-12/technical-advisory-group-statement-regarding-non-pharmaceutical-interventions-in-the-pre-christmas-period.pdf>

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 10<sup>th</sup> December 2020, supported by a press statement.

## **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.



Elin Jones, MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

11 December 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020 under sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 14 December 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 28 January 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the Plenary on 15 December 2020.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.