

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 8 June 2020	Committee Clerk
Meeting time: 10.00	0300 200 6565
	SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Informal pre-meeting (09:30–10:00)

- 1 Introduction, apologies, substitutions and declarations of interest
10:00
- 2 The Health Protection (Coronavirus) Wales Regulations 2020 –
Evidence session with the Minister for Health and Social Services
10:00–10:30 (Pages 1 – 9)
Vaughan Gething MS, Minister for Health and Social Services
Neil Surman, Deputy Director, Public Health Division, Welsh Government
Helen Lentle, Director of Legal Services, Welsh Government
Dylan Hughes, First Legislative Counsel, Welsh Government

CLA(5)–17–20 – Briefing

[SL\(5\)530 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#)
[SL\(5\)534 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) Regulations 2020](#)



[SL\(5\)540 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020](#)

[SL\(5\)548 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) \(No. 3\) Regulations 2020](#)

[SL\(5\)552 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) \(No. 4\) Regulations 2020](#)

[SL\(5\)554 – The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) \(No. 5\) Regulations 2020](#)

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

10:30–10:35

(Page 10)

CLA(5)–17–20 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

3.1 SL(5)551 – The Sustainable Drainage (Approval and Adoption) (Wales) (Amendment) Order 2020

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

10:35–10:40

Negative Resolution Instruments

4.1 SL(5)550 – The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020

(Pages 11 – 40)

CLA(5)–17–20 – Paper 2 – Report

CLA(5)–17–20 – Paper 3 – Order

CLA(5)–17–20 – Paper 4 – Explanatory Memorandum

CLA(5)–17–20 – Paper 5 – Letter from the Minister for Finance and Trefnydd,
18 May 2020

Made Affirmative Resolution Instruments

**4.2 SL(5)552 – The Health Protection (Coronavirus Restrictions) (Wales)
(Amendment) (No. 4) Regulations 2020**

(Pages 41 – 53)

CLA(5)–17–20 – Paper 6 – Report

CLA(5)–17–20 – Paper 7 – Regulations

CLA(5)–17–20 – Paper 8 – Explanatory Memorandum

CLA(5)–17–20 – Paper 9 – Letter from the First Minister to the Llywydd, 20
May 2020

**4.3 SL(5)554 – The Health Protection (Coronavirus Restrictions) (Wales)
(Amendment) (No. 5) Regulations 2020**

(Pages 54 – 70)

CLA(5)–17–20 – Paper 10 – Report

CLA(5)–17–20 – Paper 11 – Regulations

CLA(5)–17–20 – Paper 12 – Explanatory Memorandum

CLA(5)–17–20 – Paper 13 – Letter from the First Minister to the Llywydd, 29
May 2020

**5 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3 – previously considered**

10:40–10:45

**5.1 SL(5)549 – The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations
2020**

(Pages 71 – 73)

CLA(5)–17–20 – Paper 14 – Report

**6 Legislative Consent Memorandum on the Corporate Insolvency
and Governance Bill**

10:45–10:50

(Pages 74 – 81)

CLA(5)–17–20 – Paper 15 – Legislative Consent Memorandum

7 Paper(s) to note

10:50–10:55

- 7.1 Letter from the Chair of the Public Accounts Committee to the Auditor General for Wales and the Future Generations Commissioner: Well-Being of Future Generations – Statutory Reports**
(Pages 82 – 84)
CLA(5)–17–20 – Paper 16 – Letter from the Chair of the Public Accounts Committee, 29 May 2020
- 8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**
10:55
- 9 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3 – previously considered**
10:55–11:00
- 9.1 SL(5)531 – The Agricultural Wages (Wales) Order 2020**
(Pages 85 – 86)
CLA(5)–17–20 – Paper 17 – Legal Advice Note
- 10 Legislative Consent Memorandum on the Fire Safety Bill – consideration of draft report**
11:00–11:10 (Pages 87 – 89)
CLA(5)–17–20 – Paper 18 – Draft report
- 11 Legislative Consent Memorandum on the Trade Bill – consideration of correspondence with the Minister**
11:10–11:25 (Pages 90 – 93)
CLA(5)–17–20 – Paper 19 – Letter from the Minister for International Relations and the Welsh Language, 29 May 2020
- [Legislative Consent Memorandum](#)
- 12 Legislative Consent Memorandum on the Non-Domestic Rating (Public Lavatories) Bill**
11:25–11:35 (Pages 94 – 96)

CLA(5)-17-20 – Paper 20 – Legal Advice Note

[Legislative Consent Memorandum](#)

13 Legislative Consent Memorandum on the Finance Bill

11:35-11:45

(Pages 97 – 100)

CLA(5)-17-20 – Paper 21 – Legal Advice Note

[Legislative Consent Memorandum](#)

Date of the next meeting – 15 June

Document is Restricted

Agenda Item 3

08 June 2020

SL(5)551 – The Sustainable Drainage (Approval and Adoption) (Wales) (Amendment) Order 2020

Procedure: Negative

This Order amends the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018 (“the 2018 Order”). The 2018 Order makes provision in relation to the requirement for approval of, and requests for adoption of, sustainable drainage systems under Schedule 3 to the Flood and Water Management Act 2010 (“the 2010 Act”).

Article 3 of this Order inserts an interpretation provision into article 2 of the 2018 Order (interpretation) which makes clear that permitted developments, which are developments that are granted planning permission by virtue of development orders and local development orders in accordance with section 58(1)(a) of the Town and Country Planning Act 1990, are not to be considered as works which have been granted planning permission for the purposes of the exceptions in articles 3 to 6 of the 2018 Order. This amendment is made to correct an unintended omission in the 2018 Order.

The effect of this is that construction works which have drainage implications, which are also permitted developments and cover an area of land of 100 square metres or more, will require approval by the approving body, in accordance with the provisions of the 2018 Order.

In response to the Covid 19 pandemic, article 4 of this Order amends article 4 of the 2018 Order (exceptions to requirement for approval: planning permission not required). It inserts a new paragraph (3) which provides that emergency permitted developments under Part 3A, Part 12A and Part 37 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, do not require approval under paragraph 7(1) of Schedule 3 to the 2010 Act.

Parent Act: Flood and Water Management Act 2010

Date Made: 18 May 2020

Date Laid: 19 May 2020

Coming into force date: 09 June 2020



SL(5)550 – The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020

Background and Purpose

This Order makes amendments to the following Orders:

- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the “2012 Order”); and
- The Developments of National Significance (Procedure) (Wales) Order 2016 (the “2016 Order”).

The Finance Minister and Trefnydd, Rebecca Evans, explained why the Welsh Government considered that these amendments were needed in a letter to the Llywydd, dated 18 May 2020:

“The travel restrictions and closure of premises necessary to slow the spread of COVID-19 have prevented the submission of certain planning applications because it is not possible to comply with pre-application procedures. The order is intended to temporarily modify planning procedures in relation to the period beginning with 19 May and ending with 18 September (the temporary period) to remove these barriers and enable the subsequent submission of planning applications for these developments”.

As such, this Order inserts provisions into the 2012 Order and the 2016 Order which modify or disapply certain requirements from 19 May 2020 to 18 September 2020.

Article 2 of the Order inserts a new article 2G into the 2012 Order. Article 2G modifies Part 1A of the 2012 Order, which makes provision about the consultation that must be carried out before making an application for planning permission for major development.

The new article 2G(3) replaces the requirement to make information associated with a proposed planning application available locally for inspection, with a requirement to make the documents available on a website and in hard copy, if requested. As such, a modified form of the notice that must be placed on or near the land to which the proposed application relates and sent to owners and occupiers of adjoining land is provided. The same modified form of notice is to be used to notify community consultees.

New article 2G(4) modifies article 2C of the 2012 Order to provide that if hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.

New article 2G(7) modifies article 2F of the 2012 Order to require a pre-application consultation report to include confirmation that the modified requirements (to make information about the proposed application available on a website and to provide hard copies of such information where requested) have been discharged. A statement confirming whether hard copies have been requested is also to be included.

Article 3 amends article 16 of the 2012 Order to extend the time that community councils have to respond when notified of a planning application, from 14 days to 21 days.



Article 4 disapplies the requirement in the 2016 Order for a person to deposit a hard copy of an application for planning permission for development of national significance with the Welsh Ministers and the Local Planning Authority when making the application electronically.

Procedure

Negative.

Technical Scrutiny

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

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 of public policy likely to be of interest to the Assembly

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.

The Order was laid on 18 May, and came into force the following day, 19 May. In this case, the Welsh Government considers that the circumstances justify a breach of the 21 day rule. We note the letter sent by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd, dated 18 May 2020. This states:

The Order is required to come into force as soon as possible, so adjustments to planning procedures can mitigate the effects of COVID-19 restrictions on travel and the opening of premises, contributing to a functioning planning system. It will enable planning permissions to be submitted so that, if granted, the construction sector can implement them as soon as the restrictions are eased.

Not bringing the Order into force straight away will cause an increasing backlog of planning applications waiting to be submitted, which would have consequential impacts for the construction sector, and economy, at a time when rapid reversal of financial losses is important to lessen the longer term economic and social damage being caused. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

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 Assembly

Paragraph 4.3 of the Explanatory Memorandum states that “due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals”. The Welsh Government has laid a detailed Explanatory Memorandum, and a Regulatory Impact Assessment has been prepared in respect of this Order. Paragraph 4.4 of the Explanatory Memorandum (at page 5) states as follows:

The amendments are required immediately in relation to a relatively short period so adjustments to planning procedures can mitigate the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendments will enable planning



applications to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as soon as COVID-19 restrictions are eased.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

June 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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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

2020 No. 514 (W. 121)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Planning Applications
(Temporary Modifications and
Disapplication) (Wales)
(Coronavirus) Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“the 2016 Order”). It inserts provisions into those Orders which modify or disapply certain requirements in relation to the period starting on 19 May 2020 and ending on 18 September 2020.

Article 2 inserts a new article 2G into the 2012 Order. Article 2G modifies Part 1A of the 2012 Order, which makes provision about the consultation that must be carried out before making an application for planning permission for major development.

The new article 2G(3) modifies article 2C of the 2012 Order so that the requirement to make information associated with a proposed planning application available locally for inspection, is replaced with a requirement to make the documents available on a website and in hard copy on request. To reflect that, a modified form of the notice that must be placed on or near the land to which the proposed application relates and sent to owners and occupiers of adjoining land is provided. The same modified form of notice is to be used to notify community consultees under article 2D of the 2012 Order.

The new article 2G(4) modifies article 2C of the 2012 Order to provide that if hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.

The new article 2G(7) modifies article 2F of the 2012 Order to require a pre-application consultation report to include confirmation that the modified requirements to make information about the proposed application available on a website and to provide hard copies of such information where requested have been discharged. A statement confirming whether hard copies have been requested is also to be included.

Article 3 makes changes to article 16 of the 2012 Order to extend the time that community councils have to respond when notified of a planning application, from 14 days to 21 days.

Article 4 disapplies the requirement in article 12 of the 2016 Order for a person to deposit a hard copy of an application for planning permission for development of national significance with the Welsh Ministers and the Local Planning Authority when making the application using electronic communications.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and is published on the Welsh Government website at www.gov.wales.

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

2020 No. 514 (W. 121)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Planning Applications
(Temporary Modifications and
Disapplication) (Wales)
(Coronavirus) Order 2020**

<i>Made</i>	<i>15 May 2020</i>
<i>Laid before Senedd Cymru</i>	<i>18 May 2020</i>
<i>Coming into force</i>	<i>19 May 2020</i>

The Welsh Ministers, in exercise of the powers conferred on them by sections 61Z(8) and (9), 62(11), 62R and 333(4B) of the Town and Country Planning Act 1990⁽¹⁾, and in exercise of the powers conferred on the Secretary of State by sections 59, 62(1) and (2), 71(1), (2)(a) and (2A), and 333(7) of that Act⁽²⁾ now

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- (1) 1990 c. 8. Section 61Z was inserted by section 17(2) of the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). Section 62(11) was inserted by section 17(3) of the 2015 Act (see also section 59(4) of the Town and Country Planning Act 1990 (“the 1990 Act”) (referred to in the next footnote) which provides a development order in relation to Wales means a development order made by the Welsh Ministers). Section 62R was inserted by section 25 of the 2015 Act. Section 333(4B) was substituted by section 55 of, and paragraph 6(3) of Schedule 7 to, the 2015 Act. There are other amendments which are not relevant to this instrument.
- (2) Section 59(2) was amended by section 1 of, and paragraph 4 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27) and by section 27 of, and paragraph 3 of Schedule 4 to, the 2015 Act. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the 2015 Act. For the meaning of “prescribed” see section 71(4). Section 71 was amended by section 16(2) of the Planning and Compensation Act 1991 (c. 34). There are other amendments which are not relevant to this instrument.

exercisable by them⁽¹⁾ (as applied in the case of section 62(1) with modifications by the Developments of National Significance (Application of Enactments) (Wales) Order 2016⁽²⁾), make the following Order.

Title and commencement

1.—(1) The title of this Order is the Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020.

(2) This Order comes into force on 19 May 2020.

Pre-application consultation: making information available

2.—(1) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012⁽³⁾ is amended as follows.

(2) After article 2F insert—

“Coronavirus: temporary modifications of this Part

2G.—(1) This Part applies with the modifications set out in this article where—

- (a) each of the notices that articles 2C(1)(a) and 2D(2) require an applicant to give in relation to a proposed application is given after the start of the emergency period, and
- (b) at least one of those notices is given before the end of the emergency period.

(2) In this article, “the emergency period” means the period—

- (a) beginning with 19 May 2020, and
- (b) ending with 18 September 2020.

(3) Article 2C(1) has effect as if—

- (a) in sub-paragraph (b), for “making the following information available for inspection at a location in the vicinity of the proposed development” there

(1) The functions of the Secretary of State so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the 1990 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(2) S.I. 2016/54 (W. 24).

(3) S.I. 2012/801 (W. 110), amended by S.I. 2016/59 (W. 29) and S.I. 2017/567 (W. 136); there are other amending instruments but none is relevant.

were substituted “making the following information available on a website”;

(b) after sub-paragraph (b) there were inserted—

“and

(c) sending hard copies of the documents referred to in sub-paragraph (b) to any person who requests them, where the request is made within the period of 28 days mentioned in that sub-paragraph.”

(4) Article 2C has effect as if after paragraph (3) there were inserted—

“(3A) If hard copies of any documents have been requested as mentioned in paragraph (1)(c), an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent in accordance with that paragraph.”

(5) Article 2C(5) has effect in relation to each notice given by the applicant under article 2C(1)(a) as if the reference to Schedule 1B were to Schedule 1D.

(6) Article 2D(5)(a) has effect in relation to each notice given by the applicant under article 2D(2) as if the reference to Schedule 1B were to Schedule 1D.

(7) Article 2F(2) has effect as if after sub-paragraph (c) there were inserted—

“(ca) a declaration that the information referred to in sub-paragraph (b) of article 2C(1) was made available in accordance with that sub-paragraph;

(cb) a statement setting out whether hard copies of any documents were requested as mentioned in sub-paragraph (c) of article 2C(1) and, if so, a declaration that the hard copies were sent in accordance with that sub-paragraph;”.

(3) After Schedule 1C insert Schedule 1D set out in the Schedule to this Order.

Period for community councils to make representations on applications

3. In article 16 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, after paragraph (3) insert—

“(4) Where the council of a community are notified of an application during the emergency period, paragraphs (1) and (2)(c) have effect as if the references to 14 days were to 21 days.

(5) In paragraph (4), “the emergency period” has the meaning given by article 2G(2).”

Developments of national significance: making applications

4. In article 12 of the Developments of National Significance (Procedure) (Wales) Order 2016⁽¹⁾, after paragraph (6) insert—

“(6A) Paragraphs (5) and (6) do not apply to an application made during the period—

- (a) beginning with 19 May 2020, and
- (b) ending with 18 September 2020.”

Julie James

Minister for Housing and Local Government, one of the Welsh Ministers

15 May 2020

(1) S.I. 2016/55 (W. 25), to which there are amendments which are not relevant to this Order.

SCHEDULE Article 2(3)

Pre-application notice for emergency period

“SCHEDULE 1D Article 2G

PUBLICITY AND CONSULTATION BEFORE APPLYING FOR PLANNING PERMISSION: NOTICE TO BE GIVEN DURING EMERGENCY PERIOD

Town and Country Planning (Development Management Procedure) (Wales) Order 2012

PUBLICITY AND CONSULTATION BEFORE APPLYING FOR PLANNING PERMISSION

NOTICE UNDER ARTICLES 2C AND 2D AS MODIFIED BY ARTICLE 2G

(to be served on owners and/or occupiers of adjoining land and community consultees; and displayed by site notice on or near the location of the proposed development)

Purpose of this notice: this notice provides the opportunity to comment directly to the developer on a proposed development prior to the submission of a planning application to the local planning authority (“LPA”). Any subsequent planning application will be publicised by the relevant LPA; any comments provided in response to this notice will not prejudice your ability to make representations to the LPA on any related planning application. You should note that any comments submitted may be placed on the public file.

Proposed development at (a)

I give notice that (b)

is intending to apply for planning permission to (c):

You may inspect copies of:

- the proposed application;
- the plans; and
- other supporting documents

online at (d)

If you are unable to access the documents electronically you may request copies of this information by emailing (e)..... or by telephoning the applicant on (f).....

Anyone who wishes to make representations about this proposed development must write to the applicant/agent at (e) or (g)
by (h)

Signed:

Date:

Insert:

- a) address or location of the proposed development
- b) applicant's name
- c) description of the proposed development
- d) address of website
- e) email address of the applicant/agent
- f) telephone number of applicant/agent
- g) address of the applicant
- h) date giving a period of 28 days, beginning with the date of service and publication

Explanatory Memorandum to the Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020.

I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
18 May 2020

PART 1

1. Description

- 1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the “DMPWO”) provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.
- 1.2 The Developments of National Significance (Procedure) (Wales) Order 2016 (“the DNSPWO”) makes provision for the manner in which applications for planning permission in respect of Developments of National Significance (“DNS”) are to be dealt with by the Welsh Ministers
- 1.3 The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 modifies or disapplies certain requirements in the DMPWO and DNSPWO in relation to the period beginning with the coming into force date of the Order and ending on 18 September. In particular the Order does the following.

The pre-application procedure for major development

- In relation to pre-application consultation which must be carried out before submitting an application for planning permission for certain development known as major development, the requirement to make copies of documents associated with a proposed planning application available locally for inspection, is replaced with a requirement to make such documents available on a website and in hard copy on request.
- Changes to reflect the above are made to the requisite site notices and letters to owners and occupiers of adjoining land, as well as to notices to community consultees. If hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.
- A pre-application consultation report is to include confirmation requirements have been discharged, relating to making information about the proposed application available on a website and to provide hard copies of such information where requested. A statement confirming whether hard copies have been requested is also to be included.

Time for community councils to respond to notifications

- The period of time which community councils have to respond to planning applications notified to them is extended from 14 to 21 days.

Deposit of hard copy DNS applications

- The current requirement in the DNSPWO to deposit a hard copy of an application for planning permission for a DNS, where an application has been submitted by electronic communication is disapplied.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.
- 2.2 The Order is required to come into force as soon as possible, so adjustments to planning procedures can mitigate the effects of COVID-19 restrictions on travel and the opening of premises, contributing to a functioning planning system. It will enable planning permissions to be submitted so that, if granted, the construction sector can implement them as soon as the restrictions are eased.
- 2.3 Not bringing the Order into force straight away will cause an increasing backlog of planning applications waiting to be submitted, which would have impacts for the construction sector, and longer term economic and social consequences. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative background

- 3.1 Section 61Z (8) and (9) of the Town and Country Planning Act 1990 (the “1990 Act”) enables the Welsh Ministers to make provision about or in connection with consultation required to be carried out in relation to proposed applications for development specified in a development order. (Major development is specified for these purposes in article 2B(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and major development is defined in article 2 of the same.)
- 3.2 Section 62(11) enables the Welsh Ministers to make provision by development order as to applications for planning permission and pre-application consultation reports.
- 3.3 Section 62R enables development orders to make provision about applications for planning permission made to the Welsh Ministers.
- 3.4 Section 333(4B) of the 1990 Act enables different provision for different purposes, cases and areas.
- 3.5 The powers conferred on the Secretary of State by sections 59 (power to make development orders), 62(1) and (2) (provision as to applications for planning

permission), 71(1), (2)(a), (2A) (consultation on applications for planning permission) and 333(7) (power to vary order) of the 1990 Act were, so far as exercisable in relation to Wales, transferred to and are now vested in the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and the entry in Schedule 1 for the Town and Country Planning Act 1990.

- 3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.7 Section 62(1) has been applied with modifications by the Developments of National Significance (Application of Enactments) (Wales) Order 2016.
- 3.8 This Order is being made under the negative resolution procedure.

4. Purpose and intended effect of the provisions

Requirement to carry out pre-application consultation

- 4.1 As part of the measures introduced as part of the ongoing response to COVID-19, all non-essential public buildings were closed and non-essential travel is not permitted. As a consequence, it is difficult for developers to comply with article 2C(1)(b) of the DMPWO.
- 4.2 The pre-application consultation procedure must be completed before planning applications for major development can be submitted to Local Planning Authorities.
- 4.3 The aim of the changes to the pre-application procedure provisions described in section 1 above is to enable developers to make information about proposed major development available locally in a practical way while Coronavirus restrictions impede this, so that interested parties have an opportunity to consider and comment if they wish. To maximise inclusivity, the information is available electronically and in hard copy on request.
- 4.4 The completion of this pre-application process will in turn enable developers to proceed to submit applications for planning permission for major development, avoiding an increasing backlog of planning applications waiting to be taken forward. If the applications are subsequently granted, the construction sector can then implement them as soon as the restrictions are eased, lessening the longer term economic and social damage being caused.

Representations by community councils before determination of applications

- 4.5 Community councils are the grassroots tier of government in Wales. Community councils have an important role in acting as the local link with communities to improve their understanding of, and participation in, the planning process.

- 4.6 The extension of the period during which they may make representations on applications notified to them is intended to alleviate the difficulties experienced by community councils in undertaking regular scheduled meetings due to control measures introduced as part of the COVID-19 response.

Removal of the requirement to deposit hard copy of DNS planning application

- 4.1 Applications for DNS are typically submitted electronically, however, where such an application is made, there is the requirement to deposit a hard copy with the Welsh Ministers and the local planning authority. As a consequence of the ongoing restrictions in response to COVID-19, and the closure of non-essential public buildings, relevant offices are not currently staffed for the purpose of receiving hard copies of applications, and as such, it can be difficult to verify this.
- 4.2 The purpose of the amendment to the DNSPWO is to disapply an aspect of the current procedure with which it is difficult to verify compliance while Covid-related restrictions are in place.

5. Consultation

- 4.3 Due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals.
- 4.4 The amendments are required immediately in relation to a relatively short period so adjustments to planning procedures can mitigate the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendments will enable planning applications to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as soon as COVID-19 restrictions are eased.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Pre-application consultation

Options

1.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order to remove the requirement that developers make information available for inspection at a location in the vicinity of the proposed development

Option 1 – Do nothing

Description

1.2. There would be no change to the current legislation under this option. As long as buildings open to the public such as libraries, community centres and estate agencies remain closed due to COVID-19, developers would be unable to fully comply with Article 2C of the DMPWO before they submit a valid planning application for major development.

Costs

The Welsh Government

1.3. There would be no financial cost to the Welsh Government.

1.4. There would however be a knock-on effect on the delivery of locally and nationally strategic developments as a result of the delay that would inevitably occur as a result of the inability of developers to fully carry out pre-application consultation and then submit a valid application for major development. Major development is development involving any one or more of the following:

- a) the winning and working of minerals or the use of land for mineral-working deposits;
- b) waste development;
- c) the provision of dwellinghouses where—
 - i. the number of dwellinghouses to be provided is 10 or more; or
 - ii. the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- e) development carried out on a site having an area of 1 hectare or more;

Local Planning Authorities

- 1.5. Option 1 would result in no applications for major development being submitted to local planning authorities for as long as developers are unable to comply with the procedural requirements of the DMPWO.
- 1.6. The primary source of funding for LPAs is generated from fee income received for determining applications. Our evidence suggests this funding is heavily reliant upon the fees associated with the determination of these types of applications¹.
- 1.7. A pause in the submission of applications for major development would therefore have detrimental impact upon the funding of local planning authorities.

Development Industry

- 1.8. The total cost for the developer of undertaking a basic level of pre-application community consultation is estimated to be between £390 and £1,430². Whilst the pausing of the pre-application consultation process would result in these costs being saved, these are likely to be significantly outweighed by the costs incurred as a result of delay. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a financial burden on developers and the Welsh economy.
- 1.9. Delay is likely to lead to a detrimental impact on how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for economic, social and environmental progress. A healthy, functioning development industry is likely to play a significant role in the recovery process once COVID-19 measures are relaxed.

The Local Community

- 1.10. Pausing the pre-application system would delay the development of a wide-range of large-scale, socially and economically beneficial, developments to the detriment of local communities, particularly those where there is a need for affordable housing or employment.

Benefits

The Welsh Government

- 1.11. There are no recognisable benefits to the Welsh Government.

Local Authorities

¹ Changes to planning and related application fees. Welsh Government. December 2019.

² EMRIA Planning (Wales) Act 2015 (uprated to current prices using the GDP deflator series')

1.12. At the current time, local authority resources are stretched due to the impacts of COVID-19. A reduction in the number of planning applications will enable planning department staff resources to be reassessed and potentially redeployed to other key areas to meet the temporary needs of the local authority.

1.13. However, the redeployment of staff, if not returned as COVID-19 restrictions begin to lift, could impact upon the functioning of the planning service to the detriment of the ability of the planning system being able to function in its role as a key tool, assisting with the recovery process.

Development Industry

1.14. There are no benefits to the development industry.

The Local Community

1.15. Under option 1, the pre-application consultation process will remain paused until public buildings reopen so developers can use these facilities to host information relating to the proposed development for inspection by the public.

Option 2 - Introduce an Amending Order

Description

1.16. Part 1A of the DMPWO sets out the requirement to carry out pre-application consultation, how such consultation must be publicised, who must be consulted, a duty for specialist consultees to respond to such a consultation; and the form and content of pre-application consultation reports.

1.17. One such requirement is that developers must make information available for inspection at a location in the vicinity of the proposed development. This is currently not always possible due to restrictions and closures in response to COVID-19.

1.18. As a consequence, the pre-application consultation process has paused with only those applications for major development that had completed the pre-application procedure prior to COVID-19 control measures being introduced being submitted.

1.19. Option 2 would result in the Amendment Order being made and having the following effect:

- Removes the requirement to make information available for inspection at a location in the vicinity of the proposed development and replaces it with a requirement to make the information available on a website.
- Replaces Schedule 1B, the 'requisite notice', to reflect all information being stored online only. The notice must now also include a contact telephone number for the developer/agent. Upon request, information must be provided in hard copy at the developers cost.

1.20. These changes would be temporary until 18 September, or until such time a further amending Order is made to remove or extend the temporary changes following government advice concerning COVID-19.

Costs

The Welsh Government

1.21. There would be no additional financial cost to the Welsh Government.

1.22. All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

1.23. There would be no additional costs to local planning authorities. Normal pre-COVID-19 business would continue.

Development Industry

1.24. There may be an additional cost to the development industry for the posting a hard copies of information requested by those who do not have internet access. Of all households in Great Britain, 93% had access to the internet in 2019³ therefore such requests are expected to be minimal.

1.25. The cost of producing a printed copy of a major planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. Those who request information may only want to see a particular plan or survey and not the all the information relevant to the application. Nonetheless, the additional costs incurred are insignificant compared to the potential costs incurred through delay.

The Local Community

1.26. There are no financial costs to the local community, normal pre-Covid-19 business would continue.

1.27. Mitigation has been put in place to ensure those who do not have internet access can still access the relevant information. A telephone number will be provided on the site notice which those without internet access can contact to request a hard copy of the relevant information. They may also discuss the development with the developer/agent.

1.28. There is a risk that, due to people observing social distancing and/or self-isolating, those who are not directly consulted may not see the site notice and therefore may not be aware of the consultation. Whilst the publication of a site

³ Office for National Statistics. Internet Users, UK 2019.

notice and direct neighbour notification are the only statutory publicity requirements, developers often go beyond the minimum requirements to ensure their consultation has maximum exposure, such as posting on local social media pages.

- 1.29. Developers will be reminded to exploit social media to publicise their consultations to ensure the widest possible reach. Word of mouth will also continue to assist with awareness within communities.
- 1.30. Notwithstanding this, following the submission of a planning application, a formal consultation and publicity process will be undertaken by the local planning authority. This will provide a second opportunity for those with an interest in the development to make representations before a final decision is made to grant or refuse planning permission.

Benefits

The Welsh Government

- 1.31. The legislative amendment proposed under option 2 would restart the pre-application consultation process. This will enable pre-application consultation procedures Wales to function.
- 1.32. Prosperity for All⁴ acknowledges planning decisions affect every area of a person's life and sends a message of working differently. The strategy states the right planning system is critical to delivering the Welsh Government's objectives. Amending procedures will ensure the smooth functioning of the planning application system, supporting local planning authorities to deliver sustainable development, and supporting businesses by maintaining an effective planning system which provides the means for creating economic opportunities for all.

Local Planning Authorities

- 1.33. Local planning authorities would continue to receive fee income from applications for major development.
- 1.34. Planning departments would retain staff to ensure they are sufficiently resourced. This will ensure they are in a state of readiness for applications to be submitted post-Covid-19 as part of the economic recovery process.

Development Industry

- 1.35. Under option 2, the development industry would restart the pre-application consultation process, the end product of which is the ability to submit planning applications for major development. This will prevent widespread delays in the

⁴ Prosperity for All: the national strategy. Taking Wales Forward. The Welsh Government. 2017

submission of planning applications, and the knock-on impacts for the construction sector.

- 1.36. The development industry can maintain business continuity through the continued submission of planning applications. This will contribute towards ensuring people with roles linked to the planning system remain in employment during this national emergency, supporting wealth creation and a vibrant economy.

The Local Community

- 1.37. Under option 2, the local community will benefit directly from the development industry being able to continue – from affordable housing to business building new premises which will create employment, both in the construction industry and to the end user of those facilities.

Summary and Preferred Option

- 1.38. Option 1 would pause the development industry for major development. This would have economic implications for developers, local planning authorities and the wider economy. The delay could impact upon the readiness of the planning system to assist in the recovery process post-Covid-19.
- 1.39. Option 2 would ensure the submission of planning applications for major development could resume, preventing delay to the development industry and planning system.
- 1.40. Option 2 is therefore the preferred option.

2. Community Council consultation

Options

2.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order to extend the period for consultation responses

Option 1 – Do nothing

Description

2.2. In respect of the planning application process, upon notifying the local planning authority that they wish to be notified on a particular application, Article 16 of the DMPWO prescribes a statutory period of 14 days (30 days in the case of an EIA application) in which Community Councils must make those representations to the local planning authority. The local planning authority are prevented from determining the application during this period.

2.3. Doing nothing would mean the timescale would remain 14 days.

Costs

The Welsh Government

2.4. There would be no financial cost to the Welsh Government.

Local Planning Authorities

2.5. Whilst there would be no financial cost to Local Planning Authorities, there could be a democratic impact with applications potentially being determined without receiving representations from Community Councils.

2.6. The representation of Community Councils could have impacted upon the determination of planning applications.

Community Councils

2.7. Whilst there would be no financial cost to Community Councils, there is a risk that they would be unable to participate in the planning process as a result of being unable to coordinate a remote meeting and provide representations to the Local Planning Authority within the current 14 day timescale.

2.8. This would result in democratic deficit in the decision-making process.

Benefits

The Welsh Government

2.9 There are no benefits to the Welsh Government.

Local Planning Authorities

2.10 There are no benefits to Local Planning Authorities.

Community and Town Councils

2.11 There are no benefits to Community and Town Councils.

Option 2 - Introduce an Amending Order to extend the period for consultation responses

Description

2.12 Option 2 would result in an Amendment Order being laid that extends the period during which Community and Town Councils must make representations to Local Planning Authorities following a request to be consulted from 14 days to 21 days.

2.13 This amendment would provide additional time for a response in light of difficulties experienced by Community Councils in undertaking regular scheduled meetings due to government control measures introduced in as part of the COVID-19.

Costs

The Welsh Government

2.14 There would be no additional financial cost to the Welsh Government.

2.15 All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

2.16 There would be no financial cost to Local Planning Authorities.

Community and Town Councils

2.17 There would be no financial cost to Community and Town Councils.

Benefits

The Welsh Government

2.18 There are no direct benefits to the Welsh Government.

Local Planning Authorities

2.19 Extending the time period for responses by Community Councils to 21 days would bring the timeframe in line with that currently afforded to general members of the public as part of the statutory publicity period.

2.20 A single date on which all consultation responses are expected to be received will assist in the management of the application process.

Community and Town Councils

2.21 Under option 2, Community Councils would be afforded an additional 7 days to provide their response to the Local Planning Authority.

2.22 COVID-19 has impacted upon the ability of Community Councils to undertake their regular meetings due to meeting places being closed and members observing social distancing.

2.23 The additional time will provide Community Councils will time to arrange remote meetings and provide timely responses to Local Planning Authorities.

Summary and Preferred Option

2.24 Option 1 would maintain the current 14 days' timescale for community and town councils to make representations on planning applications follow a request to be consulted. Delays in the ability of Community Councils to host meetings is likely to result in their responses being delayed, potentially being submitted to the local planning authority after they have determined the planning application.

2.25 Option 2 would extends the period during which Community Councils must make representations to 21 days, in line with general public consultation timeframes. The additional time would assist Community Councils to provide timely responses to planning applications, ensuring maximum democratic involvement in the decision-making process.

2.26 Option 2 is therefore the preferred option.

3. Changes to DNS

Options

3.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order to remove the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA, where an application is made electronically.

Option 1 – Do nothing

Description

- 3.2. Where a DNS planning application is made electronically, the DNSPWO contains provision which requires the applicant to deposit a hard copy of the planning application to both the Welsh Ministers and the LPA. The purpose of this is for practical reasons, such as to enable the LPA and for the Welsh Ministers to have a hard copy at hand to analyse the application, which is the preferred format of many officers and appointed persons who will examine the application.
- 3.3. Doing nothing would mean this requirement would remain in place, were an application submitted electronically.

Costs

The Welsh Government

- 3.4. There would be no financial cost to the Welsh Government.

Local Planning Authorities

- 3.5. There would be no financial cost to LPAs.

Development Industry

- 3.6. The cost of producing a printed copy of a DNS planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. An estimate has been drawn of £120, based on the cost of printing 1,000 pages in colour, binding costs and the cost to plot 25 drawings at A1 size. The cost for two applications, including delivery, is estimated to be £260 on a per application basis.

Benefits

The Welsh Government

- 3.7. There are no major benefits to the Welsh Ministers as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officials in analysing the application.

Local Planning Authorities

3.8. There are no major benefits for the LPA as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officers in analysing the application. While the hard copy may be made available for inspection, the duty to hold a planning register is generally undertaken and discharged electronically.

Development Industry

3.9. There are no known benefits to the Development Industry. As the Development Industry would be unable to comply with the requirements of the DNSPWO, there would be the inability to submit a valid application.

Option 2 - Introduce an Amending Order to remove the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA, where an application is made electronically. Introduce an Amending Order to extend the period for consultation responses

Description

3.10. Applications for DNS are typically submitted electronically. During the COVID-19 outbreak, practical issues may arise with the deposit of hard copies as the relevant offices are not currently staffed for the purpose of receiving it, and receipt of it cannot always be verified.

3.11. Option 2 would result in an amendment being made to the DNSPWO which removes the requirement for a hard copy to be submitted to be deposited with the Welsh Ministers and LPA, were the application made electronically, for reasons of practicality.

Costs

The Welsh Government

3.12. There would be no additional financial cost to the Welsh Government. As offices are not currently staffed, there would be no facility to print the application. Officials must analyse all applications electronically.

3.13. All costs associated with the making of the legislation will be met from existing budgets.

Local Planning Authorities

3.14. There would be no additional financial cost to LPAs. As offices are not currently staffed, there would be no facility to print the application. Officers must analyse all applications electronically.

Development Industry

3.15. There would be a cost saving of approximately £260 per application.

Benefits

The Welsh Government

3.16. There are no direct benefits to the Welsh Government.

Local Planning Authorities

3.17. There are no direct benefits to LPAs.

Development Industry

3.18. COVID-19 has impacted upon the ability of the Development Industry to comply with the requirements of the DNSPWO. The change at option 2 will enable the Development Industry to continue to submit applications and comply with the relevant requirements.

Summary and Preferred Option

3.19. Option 1 would maintain the status-quo, however, could result in applications not complying with the relevant requirements and subsequently not being made. Option 2, while causing a minor inconvenience for those analysing the application, allows for continuity of the process, while removing a requirement which prevents applications from effectively being submitted.

3.20. Option 2 is therefore the preferred option.

4. Competition Assessment

4.1. A competition filter test has been completed. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

END

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Elin Jones AS/MS
Llywydd
Senedd Cymru
Bae Caerdydd
Caerdydd
CF99 1SN

18 May 2020

Dear Llywydd,

The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 (“the Order”)

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument has come into force less than 21 days from the date of laying. The explanatory memorandum which accompanies the Order is attached for your information.

The travel restrictions and closure of premises necessary to slow the spread of COVID-19 have prevented the submission of certain planning applications because it is not possible to comply with pre-application procedures. The order is intended to temporarily modify planning procedures in relation to the period beginning with 19 May and ending with 18 September (the temporary period) to remove these barriers and enable the subsequent submission of planning applications for these developments.

The Order modifies the pre-application consultation requirements of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“DMPWO”) to remove the requirement for information to be made available at a local place during the temporary period. Instead all information must be hosted online and those people without internet access will be able to request hard copies of the information.

The Order also modifies the DMPWO during the temporary period to extend the period during which community councils must make representations from 14 days to 21 days to account for difficulties in scheduling and undertaking regular meetings due to COVID-19 restrictions.

The requirement to deposit a hard copy of a Development of National Significance (DNS) application with the Welsh Ministers and the local planning authority in the Developments of National Significance (Procedure) (Wales) Order 2016 is disapplied for the temporary

period. This is intended to overcome the closure of non-essential public buildings and the restrictions on non-essential travel.

The Order is required to come into force as soon as possible, so adjustments to planning procedures can mitigate the effects of COVID-19 restrictions on travel and the opening of premises, contributing to a functioning planning system. It will enable planning permissions to be submitted so that, if granted, the construction sector can implement them as soon as the restrictions are eased.

Not bringing the Order into force straight away will cause an increasing backlog of planning applications waiting to be submitted, which would have consequential impacts for the construction sector, and economy, at a time when rapid reversal of financial losses is important to lessen the longer term economic and social damage being caused. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

Due to the immediate need for the Order it has not been subject to consultation, however, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)552 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the Principal Regulations”) to increase the amount of the fixed penalty for repeated breaches of the Principal Regulations up to a maximum of £1,920.

The previous and new fine structure is set out in the table below:

	Previous fine structure	New fine structure
First offence	£60	£60
Second offence	£120	£120
Third offence	£120	£240
Fourth offence	£120	£480
Fifth offence	£120	£960
Sixth offence	£120	£1,920

Procedure

Made affirmative.

These 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

The following point is 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

There appears to be a number of errors in the Welsh text of these Regulations:

1. In the preamble to the Welsh text “iechyd a cyhoedd” should read “iechyd y cyhoedd”
2. The reference to “Deddf Iechyd a Gofal Cymdeithasol” in the footnote on page 3 does not include the year of the Act
3. Regulation 2(2) – the amendment results in “y” appearing twice in the Welsh text, so the amended text now reads “ar y **y** cynharaf o’r canlynol” (emphasis added)
4. Regulation 2(3)(iii) – the “yn” is missing before “achos y pedwerydd...”



Merits Scrutiny

The following point is 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.

The Welsh Government is asked to clarify why these Regulations follow the urgent procedure under section 45R of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), given there had been widespread public discussion around the level of Welsh fixed penalty notices in the weeks leading up to the making of these Regulations. In other words, we ask what happened that resulted in an urgent need to increase the level of fixed penalty notices in Wales.

We note that the urgent “made affirmative” procedure does not have to be used under the 1984 Act, and that the more usual “draft affirmative” procedure (where the Senedd approves regulations **before** they are made) is the default procedure under the 1984 Act.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

2 June 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.

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

2020 No. 529 (W. 124)

PUBLIC HEALTH, WALES

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

Regulation 2 of these Regulations makes two amendments to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”).

Paragraph (3) amends regulation 13 of the principal Regulations to increase the amount of the fixed penalty for repeated breaches of the Regulations up to a maximum of £1920. The increased penalties apply to any fixed penalty notice issued on or after 22 May 2020. When determining the number of notices received by a person for the purposes of calculating the amount of fixed penalty, notices received before 22 May will be counted.

Paragraph (2) makes a minor amendment to regulation 3 of the principal Regulations consequential upon an amendment made to that regulation by regulation 2(2) of the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020.

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.

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

2020 No. 529 (W. 124)

PUBLIC HEALTH, WALES

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

<i>Made</i>	20 May 2020
<i>Laid before Senedd Cymru</i>	21 May 2020
<i>Coming into force</i>	22 May 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 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 the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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.

(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.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020 and they come into force on 22 May 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 3, in paragraph (1)(b), for the words from “day” to the end substitute “earlier of—

- (i) the revocation of the provision imposing the requirement or restriction, or
- (ii) the expiry of these Regulations under regulation 15.”

(3) In regulation 13, in paragraph (8), for “, the amount of the fixed penalty is £120 and paragraph (7) does not apply.” substitute “—

- (a) paragraph (7) does not apply, and
- (b) the amount specified as the fixed penalty is to be—
 - (i) in the case of the second fixed penalty notice received, £120;
 - (ii) in the case of the third fixed penalty notice received, £240;
 - (iii) in the case of the fourth fixed penalty notice received, £480;
 - (iv) in the case of the fifth fixed penalty notice received, £960;
 - (v) in the case of the sixth and any subsequent fixed penalty notice received, £1920.”

(1) S.I. 2020/353 (W. 80) as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 (S.I. 2020/399 (W. 88)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/452 (W. 102)) and the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/497 (W. 118)).

Mark Drakeford
First Minister, one of the Welsh Ministers
20 May 2020

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

Vaughan Gething
Minister for Health and Social Services

21 May 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) which—

- impose restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, and;
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

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 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

The amendments contained in these Regulations do not change the engagement under the principal Regulations of 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. .

These articles are engaged by the principal Regulations: Article 8 – right to respect for private and family life; Article 11 - freedom of assembly and association; and Article 1 of the First Protocol – protection of property.

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 increase to the fixed penalty notices limit made by these Regulations, is a

proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, allowing people more reasons to leave their homes, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus. .

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, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The principal 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”.

Following the easing of travel restrictions in England by the UK government, evidence from the four police forces show a small minority of people are breaking the principal regulations, particularly by traveling to well-known beauty spots throughout Wales, even though they have been closed since the end of March.

Following a request from the four police forces in Wales and the Police and Crime Commissioners for increased penalties to help deter people from repeatedly breaching the principal regulations the increased fines are being introduced ahead of the bank holiday weekend.

More than 1,300 fixed penalty notices have been issued in the 8 weeks since the principal Regulations came into force at 26 March 2020.

These Regulations amend the principal regulations to allow for the amount of a fixed penalty for repeat breaches to be doubled up to a maximum of £1920 (Fixed penalty notices are provided for in the principal Regulations as an alternative to criminal proceedings being brought, under a which the fine that may be issued is unlimited).

	Current fine structure	New fine structure
First offence	£60	£60
Second offence	£120	£120
Third offence	£120	£240
Fourth offence	£120	£480
Fifth offence	£120	£960
Sixth offence	£120	£1,920

In addition, regulation 2(2) makes a minor amendment to regulation 3 of the principal Regulations consequential upon an amendment made to that regulation by regulation 2(2) of the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 26 March 2020 and will therefore expire on 26 September 2020.

It is critical to take all reasonable steps to limit 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 restrictions and requirements imposed by the principal Regulations are proportionate to what they 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, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations 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. There has, however, been consultation with Police and Crime

Commissioners following concerns raised by police forces about fixed penalties.

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

20 May 2020

Dear Elin

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

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations will come into force on 22 May 2020. I attach a copy of the statutory instrument and I intend to lay this statutory instrument 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 23 June 2020 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 am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, 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.

Agenda Item 4.3 SI(5)554 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the Principal Regulations”) SI 2020/353 made under Part 2A of the Public Health (Control of Disease) Act 1984 (as amended) and come into force at 4:00 p.m. on 1 June 2020.

Regulation 2 of these Regulations amends the Principal Regulations and the amendments made include:

- (a) provisions enabling a marriage or civil partnership where a party to the marriage or civil partnership is terminally ill;
- (b) a relaxation to the requirement to stay at home unless you have a reasonable excuse to enable people to be outside for any purpose within their local area;
- (c) a relaxation to the prohibition on gathering which allows persons from no more than two households to gather outdoors.

Procedure

Made Affirmative: the Regulations have already been made, but require Senedd approval for them to stay into force for more than 28 days.

Technical Scrutiny

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

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 of public policy likely to be of interest to the Senedd.

The Convention rights engaged by these Regulations are the same as those under the Principal Regulations, including Article 8 (right to respect for private and family life), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) of the Human Rights Act 1998 and the European Charter of Fundamental Rights.

As the Explanatory Memorandum refers, ‘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.’

Legal Services note the Welsh Government’s additional commentary in the Explanatory Memorandum concerning the Human Rights considerations.



“The tempered easing of the restrictions made by these amending Regulations, is a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, giving people more opportunity to leave their homes and to meet friends and family, albeit subject to restrictions, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence.”

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 June 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.

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

2020 No. 557 (W. 129)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 5) 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.

Regulation 2 of these Regulations amends the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”).

These amendments include—

- (a) provisions enabling a marriage or civil partnership where a party to the marriage or civil partnership is terminally ill;
- (b) a relaxation to the requirement to stay at home unless you have a reasonable excuse to enable people to be outside for any purpose within their local area;

- (c) a relaxation to the prohibition on gathering which allows persons from no more than two households to gather outdoors.

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.

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

2020 No. 557 (W. 129)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 5) Regulations 2020**

Made 29 May 2020

Laid before Senedd
Cymru at 12.00 p.m. on 1 June 2020

Coming into force at 4.00 p.m. on 1 June 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 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 the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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

(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.

having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020 and they come into force at 4.00 p.m. on 1 June 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 7(2)—

(a) before sub-paragraph (a) insert—

“(aa) for the solemnization of a marriage or formation of a civil partnership, where a party to the marriage or civil partnership is seriously ill and not expected to recover,”;

(b) for sub-paragraph (b) substitute—

“(b) to broadcast (whether over the internet or as part of a radio or television broadcast)—

(i) an act of worship (without a congregation);

(ii) a solemnization of a marriage or formation of a civil partnership allowed by sub-paragraph (aa);

(iii) a funeral, or”.

(3) For regulation 8 substitute—

“Restrictions on movement and being indoors during the emergency period

8.—(1) During the emergency period, no person may, without reasonable excuse—

(a) leave the area local to the place where they are living or remain away from that area;

(b) be indoors with another person who is not—

(i) a member of their household,

(ii) their carer, or

⁽¹⁾ S.I. 2020/353 (W. 80) as amended by S.I. 2020/399 (W. 88), S.I. 2020/452 (W. 102), S.I. 2020/497 (W. 118) and S.I. 2020/529 (W. 124).

- (iii) a person they are providing care to.
- (2) A reasonable excuse includes the need to do the following (but see paragraph (3))—
 - (a) obtain supplies from any business or service listed in Part 4 of Schedule 1 including—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
 - (b) obtain money from or deposit money with any business or service listed in paragraph 38 or 39 of Schedule 1;
 - (c) seek medical assistance, including accessing any of the services referred to in paragraph 42 of Schedule 1 or accessing veterinary services;
 - (d) provide or receive care or assistance, including relevant personal care, within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;
 - (e) provide or receive emergency assistance;
 - (f) donate blood;
 - (g) work or provide voluntary or charitable services (but see also regulation 8A);
 - (h) enable work to be undertaken at any premises (but see also regulation 8A);
 - (i) attend a solemnization of a marriage or formation of a civil partnership, where a party to the marriage or civil partnership is seriously ill and not expected to recover—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending.
 - (j) attend a funeral—

(1) 2006 c. 47. Sub-paragraph (3B) was substituted, with sub-paragraphs (1), (3) and (3A) to (3E) for sub-paragraphs (1) to (3) by s. 66(2) of the Protection of Freedoms Act 2012 (c. 9)

- (i) as a person responsible for arranging the funeral,
- (ii) if invited by a person responsible for arranging the funeral, or
- (iii) as the carer of a person attending;
- (k) visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person;
- (l) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (m) access or receive critical public services, including—
 - (i) childcare or educational services (where these are still available to a child in relation to whom the person is the parent, or has parental responsibility for, or has care of);
 - (ii) social services;
 - (iii) services provided by the Department for Work and Pensions;
 - (iv) services provided to victims (such as victims of crime or domestic violence);
- (n) visit a library;
- (o) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (p) in the case of a minister of religion or worship leader, go to their place of worship;
- (q) move house where the move cannot be postponed;
- (r) avoid injury or illness or escape a risk of harm.

(3) For the purposes of paragraph (1)(a), it is not a reasonable excuse for a person to leave the area local to the place where the person is living to do something, or remain away from the area to do something, if it would be reasonably practicable for them to do that thing within the area.

(4) Paragraph (1)(a) does not apply to a person who is exercising, but only where the exercise starts and finishes at the place where the person is living.

(5) Paragraph (1) does not apply to a person who is homeless.”

(4) After new regulation 8 insert—

“Requirement to continue to work from home where practicable

8A.—(1) During the emergency period, in the circumstances referred to in paragraph (2) no person may leave the place where they are living, or remain away from that place, for the purposes of work or to provide voluntary or charitable services.

(2) The circumstances are that it is reasonably practicable for the person to work or to provide voluntary or charitable services from the place where they are living.

(3) For the purposes of this regulation, the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.”

(5) After new regulation 8A insert—

“Restrictions on gathering with other persons

8B. During the emergency period no person may participate in a gathering outdoors except—

- (a) where the persons gathering are members of no more than two households,
- (b) where the gathering is essential for work purposes,
- (c) to attend a funeral, or
- (d) where the gathering is necessary—
 - (i) to facilitate a house move,
 - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006,
 - (iii) to provide emergency assistance to any person, or

(iv) to participate in legal proceedings, or fulfil a legal obligation.”

(6) In regulation 10—

(a) in paragraph (2)—

(i) in the words at the beginning, for “the requirement in regulation 8(1)” substitute “a requirement in regulation 8(1) or 8A”;

(ii) in sub-paragraph (a), at the end insert “(if P is not already there)”;

(iii) in sub-paragraph (b), at the end insert “(if P is not already there)”;

(b) in the words at the beginning of paragraph (7)—

(i) omit “three or more”;

(ii) for “8(5)” substitute “8B”;

(c) in the words at the beginning of paragraph (8A), for “8(5)” substitute “8B”.

(7) In regulation 12(1)—

(a) in sub-paragraph (a), for “8(5)” substitute “8A, 8B”;

(b) in sub-paragraph (b), for “the requirement in regulation 8(1)” substitute “a requirement in regulation 8(1)”.

Savings for offences and penalties in relation to prior acts

3. Regulations 12 and 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before these Regulations came into force as if the amendments set out in regulation 2 had not been made.

Mark Drakeford

First Minister, one of the Welsh Ministers

29 May 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) 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) (Wales) (Amendment) (No. 5) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

1 June 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) which –

- impose restrictions on the movement of individuals including setting out circumstances in which they may leave and remain away from the place where they live, and
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

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 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

The amendments contained in these Regulations do not change the engagement under the principal Regulations of 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 8 (right to respect for private and family life), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal 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. The

tempered easing of the restrictions made by these amending Regulations, is a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, giving people more opportunity to leave their homes and to meet friends and family, albeit subject to restrictions, in a manner which remains proportionate to the need to avoid an increase to 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, as respects Wales, means the Welsh Ministers.

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) which causes the disease known as COVID-19 or “coronavirus”.

The principal Regulations are now being amended, as follows:

- a. People in Wales will no longer be required not to leave or remain away from their home, as this level of restriction is no longer considered necessary or proportionate to reduce the spread of the coronavirus. Instead, the following provisions are made: –
 - i. Individuals may not leave the area local to where they are living or be indoors with any other person, other than a member of their household or their carer, unless they have a reasonable excuse.

- ii. The non-exhaustive list of what constitutes a reasonable excuse has been updated. Activities such as collecting an order that has been made online ('click and collect') which can be undertaken locally no longer need to be set out. The remaining matters reflect those activities which should only be undertaken if they cannot be achieved locally.
- b. Allowing weddings and civil partnership ceremonies to be conducted in places of worship, where one of the parties to the wedding or civil partnership is terminally ill. The prohibition on gatherings to allow attendance at weddings and civil partnerships where one party is terminally ill has also been relaxed, and it is a reasonable excuse to leave the locality to attend them.
- c. Allowing two households to meet outside. It is recognised that detrimental well-being impacts from the restrictions on movement and gatherings, in particular for mental health, can occur. Evidence indicates a lower risk of transmission of the virus outdoors, which can be supported by maintaining the 2m physical distancing requirements. As such the initial restrictions on meeting others outdoors is no longer considered to be a proportionate response. The Government has updated guidance to support maintaining the physical distancing requirements.
- d. Other gatherings outside can continue to occur, if it is essential for work, to attend a burial or funeral, or for limited other purposes (see new regulation 8B).

The amending Regulations also make necessary consequential and savings provisions in light of the changes set out above.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 26 March 2020 and will therefore expire on 26 September 2020.

It is critical to take all reasonable steps to limit 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 restrictions and requirements imposed by the principal Regulations are proportionate to what they 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, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations 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. The First Minister announced the proposed changes to be brought in by these amending Regulations during his Press Conference on 29 May, which were subsequently widely reported.

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

29 May 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations will come into force 4pm on 1 June 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 29 June 2020 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. However as the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020 Regs are being debated on 17 June, the Government intends to schedule the debate on these Regulations on the same date.

Whilst I appreciate this slightly reduces the time available for reporting, the relationship between these Regulations means that debating them together would be the most coherent approach. It is not possible to reschedule the debate on the earlier Regulations, as they must be approved by 23 June. This will also mean that the Senedd will have considered all amending Regulations before the next three-weekly review and the laying of any further Regulations made as a consequence of that review.

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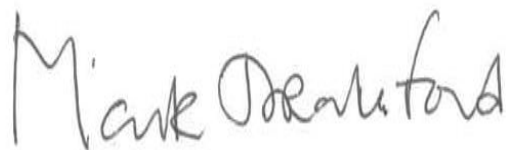
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

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

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive style with a large initial "M".

MARK DRAKEFORD

SL(5)549 – The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations amend regulation 4 of the Bathing Water Regulations 2013 (“the 2013 Regulations”) in order to change the start date of the bathing season in Wales for the year 2020. This amendment is part of the Welsh Government’s response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Procedure

Negative.

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 breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 14 May 2020.

In particular, we note what the letter says regarding Natural Resources Wales (“NRW”) being unable, as a result of the COVID-19 crisis, to carry out their usual pre-season sampling of bathing waters and collate the necessary water quality data to support the start of the bathing season on 15 May. Without these amending Regulations regulations in place, 15 May would be the specified statutory start date of the bathing season in Wales and NRW would be in breach of their statutory obligations. The letter states that:

“Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances linked to the COVID-19 emergency situation. This would not only provide the necessary legal clarity regarding the 2020 bathing season in Wales but would also minimise any the risk of NRW breaching their statutory sampling obligations.”

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

The 2013 Regulations, which are being amended by these Regulations, are composite and apply to England and Wales.



The amendment made by these Regulations however will only apply in relation to Wales. The amendment to regulation 4 of the 2013 Regulations means that the dates for the bathing season in Wales will be different to England in the year 2020. The UK Government have decided not to make any changes.

These amending Regulations change the position in Wales to read as follows:

“For the purposes of these Regulations, the bathing season in Wales—

(a) subject to paragraph (b), begins on 15th May and ends at the end of the day on 30th September in each year;

(b) for the year 2020, begins on 22nd June and ends at the end of the day on 30th September.”

However the amending Regulations have not removed the words ‘and Wales’ where the text will now relate to England. This reads:

“For the purposes of these Regulations, the bathing season in England and Wales begins on 15th May and ends at the end of the day on 30th September in each year.”

Whilst the amending Regulations are technically sound the change causes a lack of clarity in the primary 2013 Regulations.

The Committee consider that a change to the text as it applies to England would be within competence as its purpose is to clarify the law as it applies in Wales. It does not change the law in England.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. As such, they will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

Government response to merits scrutiny point 2 on the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

This point is noted. The Welsh Government did consider that the reference to “Wales” in the text that applies to England could be removed. We agree with the Committee that this would have been clearer. However, while we had discussed the bathing season issue more widely with Defra colleagues, we had not received confirmation from Defra that they would not be making similar provision in relation to England.

Given the emergency nature of this COVID-related instrument and the extremely tight timescales involved there was insufficient time as to be certain of receiving confirmation back from the UK Government before the Regulations needed to be made (following whatever internal consideration they might wish to undertake)

In lieu of that confirmation, there would be a risk of conflicting provisions arising because of such an approach. It was therefore considered sensible in these circumstances to proceed with the amendment as drafted in relation to Wales and avoid the risk of genuine version issues arising.



As it stands, while there is a reference to “Wales” in the English text, it does not create any practical problems in England – or, indeed, in Wales – because of course bathing waters in Wales can only be subject to the law applicable to Wales.

Legal Advisers

Legislation, Justice and Constitution Committee

22 May 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 73

Agenda Item 6

LEGISLATIVE CONSENT MEMORANDUM

CORPORATE INSOLVENCY AND GOVERNANCE BILL

1. This legislative consent memorandum is laid under Standing Order (**SO**) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the Senedd.
2. The Corporate Insolvency and Governance Bill (**the Bill**) was introduced in the House of Commons on 20 May 2020.
3. The Bill can be found at: <https://publications.parliament.uk/pa/bills/cbill/58-01/0128/20128.pdf>

Policy Objectives

4. The purpose of the Bill is two-fold. Firstly, some provisions are specifically aimed at putting in place temporary emergency measures to deal with the Covid-19 pandemic by amending Company and Insolvency law. The remaining provisions are bringing forward insolvency law reforms which UK Government has been developing and consulting on over the last few years.
5. These measures are regarded as being particularly helpful to address issues raised by the Covid-19 pandemic, and are therefore being brought forward to support the UK Government's stated policy objectives to help UK companies and other similar entities by easing the burden on businesses, helping them avoid insolvency and maximise their chances of survival during this period of economic uncertainty due to the COVID-19 pandemic.
6. Many otherwise economically viable businesses are experiencing significant trading difficulties and the Government-enforced social distancing measures and reduced resources are making it hard for businesses to continue to trade and meet their legal duties. The Bill is aimed at to provide businesses with the flexibility and breathing space they need to continue trading during this difficult time.

Summary of the Bill

7. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
8. The Bill has three main sets of measures to achieve its purpose:

- i. to introduce greater flexibility into the insolvency regime (introduction of a moratorium period – see p.), allowing companies breathing space to explore options for rescue whilst supplies are protected, so they can have the maximum chance of survival;
- ii. to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action; and
- iii. to provide companies and other bodies with temporary easements on company filing requirements and requirements relating to meetings including annual general meetings (AGMs).

Moratorium

9. The Bill will apply the moratorium provisions to all UK companies, including Registered Social Landlords (**RSLs**) which are companies, but the moratorium provisions will not apply to RSLs which are registered societies or to RSLs which are Charitable Incorporated Organisations (**CIOs**).
10. The Bill (at clause 1) introduces a new Part A1 (Moratorium) into the Insolvency Act 1986 (**the IA 1986**), before Part 1 of that Act, which will apply to all companies. In certain circumstances, a company can apply for a moratorium which is intended to allow a company in financial distress a breathing space to explore its rescue and restructuring options free from creditor action. This is a free-standing 20 business day moratorium, extendable by the company for a further 20 business days. The moratorium period can also be extended with the permission of the company's creditor or the court's permission.
11. During the moratorium period, certain benefits and restrictions apply. For example, no legal action will be able to be taken or continued against the company without leave of the court. There are a number of restrictions, including on: the enforcement or payment of certain debts for which a company has a payment holiday during a moratorium; certain insolvency proceedings and the directors of the company must also notify the monitor before taking certain steps in relation to other insolvency proceedings; obtaining credit; granting security; entering into market contracts; and the disposal of property.
12. A company in a moratorium will remain under the control of its directors, with the moratorium overseen by a monitor (a licensed insolvency practitioner) who is an officer of the court and who will assess the position. If it becomes clear that the company cannot be rescued, the monitor must bring the moratorium to an end and creditors can continue to enforce their debts. The moratorium will also come to an end if at any time the company enters into a scheme of arrangement or a relevant insolvency procedure.

Existing Provisions

13. RSLs in Wales are, however, subject to pre-existing insolvency provisions set out in sections 39–50 of the Housing Act 1996 (**the 1996 Act**).
14. Under the 1996 Act, before certain steps are taken in relation to insolvency the Welsh Ministers must be given notice of those steps. In addition, as soon as possible after certain steps are taken notice also needs to be given to the Welsh Ministers. Once certain steps have been taken there is a moratorium on the disposal of land by the RSL. The moratorium will last 28 days from the date that notice is received by the Welsh Ministers. This moratorium can be extended with the agreement of all the secured creditors. The Welsh Ministers can also give consent in relation to the disposal of land.
15. During the moratorium period, the Welsh Ministers can make proposals as to the future ownership and management of the land held by the RSL designed to secure the continued proper management of the landlord's land by an RSL which, once agreed with the secured creditors, will be binding on the Welsh Ministers, the landlord, all of the RSL's creditors and any liquidator, administrative receiver, receiver or administrator. The Welsh Ministers can appoint an interim manager, pending agreement of any proposals, and can appoint a manager to carry out such proposals once agreed. In addition, the Welsh Ministers can provide such financial assistance as they think appropriate.

Issues

16. Therefore, there are likely to be conflicts between the proposed Bill provisions and the existing insolvency arrangements for RSLs in Wales. The new moratorium and the appointment of a monitor under Part A1 (Moratorium) of the IA 1986 will interact with, and potentially conflict with, the housing moratorium and the appointment of a manager under the 1996 Act. There are also notice provisions in the 1996 Act which ensure that the Welsh Ministers are made aware that certain insolvency procedures will be or are engaged and which trigger the moratorium under the 1996 Act, but there is currently no provision for this process in respect of a moratorium obtained under Part A1 (Moratorium) of the IA 1986.
17. As these new provisions potentially conflict with the existing regime in the 1996 Act, on 13 May, the Minister for Housing and Local Government agreed policy instructions to request provisions for the Welsh Ministers within the Bill.
18. The agreed policy intentions were to:
 - a. ensure that the provisions within the Bill relating to the moratorium either operate in a way which is complementary to the existing RSL insolvency provisions in Wales or can be disapplied if deemed appropriate;

- b. maintain the Welsh Ministers' existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to achieve the desired outcomes of that insolvency regime, the main one being the protection of social housing stock/assets and, as a consequence of this, protection for the tenants (the housing related outcomes);
- c. ensure that the provisions within the Bill relating to the moratorium operate, in so far as they can, in a way which is consistent for all types (legal forms) of RSL in Wales; and
- d. ensure that there are no negative consequences for RSLs.

Provisions in the Bill for which consent is required

Companies - Clause 1 of the Bill (section A49 of the Insolvency Act 1986) and Schedule 1 to the Bill (paragraph 21 of Schedule ZA1 to the IA 1986)

Section A49 of the IA 1986

19. Under section A49 of the IA 1986, the Welsh Ministers may, by regulations, modify Part A1 (Moratorium) as it applies in relation to a company that is an RSL or make provision in connection with the interaction between Part A1 (Moratorium) and any other insolvency procedure in relation to such a company. This power may, in particular, be used to amend, repeal, revoke or otherwise modify any provision made by an enactment. An "insolvency procedure" includes the provision set out sections 39 to 50 of the 1996 Act. This will allow the Welsh Ministers to ensure the existing 1996 Act and the proposed new insolvency procedures can work together.
20. This will allow the Welsh Ministers to ensure that there is no conflict between the provisions in the 1996 Act and the procedure under Part A1 (Moratorium) of the IA 1986 (as well as the insolvency procedures that Part A1 (Moratorium) of the IA 1986 itself interacts with). This will also allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing related outcomes noted above.

Paragraph 21 of Schedule ZA1 of the IA 1986

21. Schedule 1 to the Bill inserts Schedule ZA1 into the IA 1986. This Schedule contains provisions for determining whether a company is eligible to obtain a moratorium under the new Part A1 (Moratorium) of the IA 1986. Under paragraph 21 of Schedule ZA1 to the IA 1986, the Welsh Ministers may amend Schedule ZA1 to provide for the eligibility or ineligibility of an RSL for the purposes of the moratorium under Part A1 of the IA 1986.
22. As identified above, there are likely to be conflicts between the provisions in Part A1 (Moratorium) of the IA 1986 and the existing insolvency arrangements for RSLs in Wales. Given these issues, the Welsh Ministers

need to be able to remove RSLs from eligibility for a moratorium under Part A1 (Moratorium) of the IA 1986, unless other powers to make regulations that would alter the effect of Part A1 (Moratorium) of the IA 1986 are used instead.

23. This will allow the Welsh Ministers to avoid a situation where an RSL is able to obtain a moratorium under Part A1 (Moratorium) of the IA 1986 in circumstances where the 1996 Act makes no provision for steps to be taken by the Welsh Ministers to protect social housing in those circumstances. This will also allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing related outcomes noted above. In the event that eligibility has been removed by the Welsh Ministers, it may also be reinstated by the Welsh Ministers under this power.
24. Both of these regulation making powers will be subject to the affirmative procedure (as they allow the Welsh Ministers to amend primary legislation by secondary legislation).
25. However, both will be subject to the negative procedure for the first six months after Royal Assent in order to facilitate urgent regulations should they be deemed necessary.

Registered Societies – Schedule 3: Moratoriums in Great Britain: further amendments to the Bill (paragraphs 50 to 53)

26. The provisions in Part A1 (Moratorium) of the IA 1986 will not apply to registered societies within the meaning of the Co-operative and Community Benefit Societies Act 2014 (**2014 Act**).
27. The majority of RSLs in Wales are registered societies under the 2014 Act.
28. The Bill makes amendments to section 118 of the 2014 Act, to provide a regulation making power for the Welsh Ministers which allows for the application Part A1 (Moratorium) of the IA 1986 to registered societies who are RSLs and allows for necessary changes to be made to the housing legislation to take into account the availability of the moratorium under Part A1 (Moratorium) of the IA 1986 and to make provision for the interaction between the moratorium under Part A1 (Moratorium) of the IA 1986 and the other insolvency procedures available to the RSL (including a housing moratorium on the disposal of land under the 1996 Act).
29. This will allow the Welsh Ministers to ensure that the provisions within the Bill relating to the moratorium operate, as far as possible, in a way which is consistent for all types (legal forms) of RSL in Wales to ensure that there is consistency in the social housing sector across all types of legal entities. This will also allow the Welsh Ministers to allow RSLs which are registered societies to benefit from the some of the arrangements in the new Part A1 (Moratorium) of the 1986 Act, if they deem this appropriate. Further, this

will allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing outcomes.

30. This regulation making power is subject to the negative procedure. This is so that, if it is deemed appropriate, regulations can be made quickly to provide for the way in which Part A1 (Moratorium) of the IA 1986 should apply to registered societies that are RSLs and to ensure that there is consistency in the social housing sector across all types of legal entities that are RSLs.

Charitable Incorporated Organisations (CIOs) - Schedule 3: Moratoriums in Great Britain: further amendments to the Bill (paragraphs 43-45 and 49)

31. The provisions in Part A1 (Moratorium) of the IA 1986 will generally apply to CIOs in England and Wales within the meaning of Part 11 of the Charities Act 2011 ("**2011 Act**") but Part A1 Moratorium) of the IA 1986 will not apply to CIOs who are RSLs.
32. There are currently no RSLs which are CIO's in Wales but there may be in the future and therefore, the power provides for future proofing.
33. Paragraph 45 of Schedule 3 to the Bill inserts a new section 247A into the Charities Act 2011 which gives a power to the Welsh Ministers to make regulations, made by statutory instrument, providing for Part A1 (Moratorium) of the IA 1986 to apply (with such modifications as may be specified in the regulations) to RSLs which are CIOs. The regulations may make provision in connection with the interaction between Part A1 (Moratorium) as applied by the regulations and any other insolvency procedure in relation to a CIO that is an RSL. An "insolvency procedure" includes the provision set out sections 39 to 50 of the 1996 Act.
34. This will allow the Welsh Ministers to ensure that the provisions within the Bill relating to the moratorium operate, in so far as they can in a way which is consistent for all types (legal forms) of RSL in Wales to ensure that there is consistency in the social housing sector across all types of legal entities. It will also allow the Welsh Ministers to allow RSLs which are CIOs to benefit from the some of the arrangements in the new Part A1 (Moratorium) of the 1986 Act, if deemed appropriate. Further, this will allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to achieve the housing related outcomes noted above.
35. There is a requirement under the new section 247A(6) of the 2011 Act that the Welsh Ministers must consult such persons or bodies of persons as the Welsh Ministers consider appropriate before making any regulations under section 247A but the consultation duty does not commence for the first six months after section 42 of the Bill comes into force.

36. This regulation making power will be subject to the affirmative procedure (as it allows the Welsh Ministers to amend primary legislation by secondary legislation). However, it will be subject to the negative procedure for the first six months after Royal Assent, in order to facilitate urgent regulations should they be deemed necessary. This is so that regulations can be made quickly to provide for the way in which Part A1 (Moratorium) of the IA 1986 should apply to CIOs that are RSLs and to ensure that there is consistency in the social housing sector across all types of legal entity that are RSLs (clause 42(2)(c) of the Bill).
37. Consent is required for these provisions because they fall within the legislative competence of Senedd Cymru in so far as they relate to housing.

Reasons for making these provisions for Wales in the Corporate Insolvency and Governance Bill

38. The insolvency regime in the social housing sector operates differently than for entities in other sectors. There are additional insolvency procedures under the 1996 Act for RSLs which have different purposes/objectives (the main one being the protection of social housing stock/assets) than usual insolvency procedures.
39. The Welsh Government's policy intention behind the drafting instructions to include provisions for the Welsh Ministers within the Bill is set out in paragraph 18 above.
40. The Bill is intended to help all UK companies avoid insolvency and maximise their chances of survival during this period of economic uncertainty due to the COVID-19 pandemic. The Welsh Government considers that the housing (RSL) provisions fall within the legislative competence of the Senedd. The existence of existing RSL insolvency procedures in the 1996 Act means the potential conflicts in the differing schemes need to be able to be mitigated and that therefore the inclusion of appropriate powers for the Welsh Ministers in the UK Bill is appropriate.

Financial implications

41. Other than the staffing costs associated with producing the regulations in due course, it is not anticipated there are any new budgetary implications.

Conclusion

42. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable the provisions to apply in Wales and will allow the provisions to apply far sooner than could be achieved by separate legislation for Wales.

Julie James MS
Minister for Housing and Local Government

June 2020

Adrian Crompton

Auditor General for Wales

Sophie Howe

Future Generations Commissioner

29 May 2020

Well-Being of Future Generations – Statutory Reports

Dear Adrian and Sophie,

Thank you for your attendance to the recent meeting of the Public Accounts Committee held on 18 May 2020. It was a very useful introduction and starting point for Senedd consideration of your important statutory reports.

We recognise that the principles of the Well-Being of Future Generations (Wales) Act 2015 (hereafter 'the Act') underpin all aspects of public life in Wales and the importance of ensuring that all scrutiny by the Senedd should be fully encompassing.

As such we wish to take time to reflect on how the Senedd can effectively undertake this work and will await the formal launch of your reports in the Autumn before taking our scrutiny forward. This will enable us to assess how public bodies in Wales respond to your findings and take into account any feedback from stakeholders, which will shape our thinking.

While the Public Accounts Committee has been asked to lead this work I will ensure all Senedd Committee Chairs are invited to be involved. We want to be clear that this scrutiny will need to involve wider post legislative scrutiny of the Act and ensure that this is undertaken on a regular basis. At present, despite the Act being in place for 5 years there has been no wider post legislative scrutiny to date and only scrutiny of the Future



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Generations Commissioner is undertaken on an annual basis by the Equalities, Local Government and Communities Committee.

We recognise the importance of embedding the Act across the Welsh Public Sector. However, we are concerned that some public bodies do not see this as a priority. Our thinking will give consideration to how the Senedd might undertake post legislative scrutiny of the Act. This will include detailed examination of the barriers to successful implementation described in your reports and how they can be overcome. For example:

- The role of the Welsh Government in providing leadership on the Act's implementation.
- Short-term funding cycles and how these are hindering progress.
- Whether the bodies affected by the Act have sufficient resources to translate the principles of the Act into practice.

We will also focus on the development of clear milestones to measure progress and whether additional public bodies should be designated by Order to be subject to the Act.

The Committee recognises the profound challenges that have been presented to public bodies in Wales by the COVID-19 pandemic. We see the framework of the Well-Being of Future Generations Act as an opportunity to address some of these challenges. In many ways the pandemic has progressed the principles of the Act through increased agile and flexible working, active travel, collaborative working and other positive changes. We hope these positive changes will not be lost as COVID-19 related restrictions ease.

We note that every aspect of public life will need to be considered through a COVID-19 lens as public bodies take forward the recommendations of your reports. This will be a fundamental part of our work in the Autumn.



We look forward to engaging with you later this year in taking forward our scrutiny of the findings of your reports.

Yours sincerely,

A handwritten signature in black ink that reads "Nick Ramsay". The signature is written in a cursive style with a long, sweeping underline.

Nick Ramsay MS
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English.



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Llywodraeth Cymru
Welsh Government

Our ref: MA-EM-1622-20

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29 May 2020

Dear David and Mick,

Trade Bill: Legislative Consent

Thank you for your letter of 07 May 2020 seeking further information following the laying of a Legislative Consent Memorandum (LCMemo) relating to the Trade Bill. I am grateful to both your committees for your scrutiny of the Bill and the elements for which legislative consent is being sought. In your letter, you ask a number of questions, I shall address each in turn.

Part 1, Clause 1: Implementation of the Agreement on Government Procurement (GPA)

Q1: Which Welsh public bodies will the Welsh Government be seeking to include in any revised list in Annex 1 to the United Kingdom's Annex 1 to the GPA?

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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.

The UK Government has agreed to update its schedules for the GPA following its accession. The Cabinet Office is leading on this work and has been regularly engaging with Welsh Government officials in relation to potential changes to the public bodies listed in Annex 1. Our expectations at this stage are that the proposed changes will be largely technical in nature, for example changing the names of the bodies listed to reflect their current titles. Hence this is where our work is currently focused.

Q2: What discussions has the Minister had with UKG about the breadth of the regulation making power in Clause 1, specifically as regards the ability of UK and Welsh Ministers to make regulations for the implementation of the GPA as they consider 'appropriate'?

We have not had specific conversations regarding the breadth of the regulation making powers within clause 1 with UK Ministers. However, sub-clause (1) limits the power to the specific purposes listed, that is only in relation to the accession and membership of the UK to the GPA. To date, we have had good engagement with the UK Government Cabinet Office regarding provision needed under clause 1 which may be needed to implement the GPA. We will continue to engage with the Cabinet Office on this issue and will notify your committees in due course if the Welsh Ministers consent to any UK Government regulations under clause 1 in devolved areas.

Q3: In light of the fact that the list of Welsh public bodies appears to be in need of revision, and the reference to the need for an update in the Explanatory Notes, why do you consider the negative procedure to be the appropriate procedure for making these regulations?

The decision on Parliamentary procedure was chosen by the UK Government and we have simply reflected that decision. The reason for the UK Government's view is explained in the Delegated Powers Memorandum, namely the need for speed and the fact that the terms on which the UK accedes to the GPA will also be considered by the UK Parliament under the procedure in the Constitutional Reform and Governance Act 2010.

As the GPA is an international agreement, clause 1 of the Bill cannot be exercised to change any part of that agreement, including Annex 1. That Annex can only be updated in accordance with the process set out in Article XIX to the GPA. Clause 1 powers can then be exercised to implement the UK's international obligations into domestic law. For example, by making amendments to domestic legislation such as the Procurement Contract Regulations 2015 to ensure that the list of central government contracting authorities covered by those regulations is consistent with the UK's obligations under the GPA. As the clause 1 powers could only be exercised to implement obligations arising out of international law, the extent of discretion that could be exercised by UK Ministers or the Welsh Ministers is very limited in practice.

Q4: The Delegated Powers Memorandum indicates a need for clause 1 regulations to be able to be made with speed, whether that be, for example, in reaction to the UK's accession to the GPA as an independent member or in response to a dispute with another GPA party. The DPM suggests the negative resolution procedure provides the opportunity for UK and Welsh Ministers to act with that speed. What consideration was given to applying a made affirmative procedure to the regulations-making powers in clause 1?

As the decision on procedure was taken by the UK Government, I am not in a position to comment on the considerations that it took into account in deciding that it was unnecessary to apply the made affirmative procedure to clause 1.

Although speed has been cited by the UK Government as one of the factors in support of the negative procedure in the Delegated Powers Memorandum, I am not aware of any situations where the regulations would need to be made and brought into force in such an urgent fashion so as to justify the use of the made affirmative procedure. I am satisfied that the negative procedure strikes the right balance in this instance.

Expectations of the UK Ministers

Q5: Can you please clarify the basis on which the agreement to restate these commitments has been made? For example, was it confirmed in an exchange of letters between Ministers or was it an oral commitment?

I received assurances in an exchange of letters with the then Minister for Trade Policy, Conor Burns MP, that all commitments made to the Welsh Government during the partial passage of the former Trade Bill would be restated during the passage of the current Bill. I have also raised with and written to Greg Hands MP Minister for Trade Policy requesting confirmation that he will honour the assurances given by his predecessor and that he will repeat these commitments at the despatch box during the Commons stages of the Bill.

Q6: What action will you take should these commitments not be restated?

The Welsh Government's recommendation in the Legislative Consent Memorandum that the Senedd consent to the Bill is based on the UK Government's assurances that it will honour the commitments that it previously made in parliament during the partial passage of the original Trade Bill. If those commitments are not repeated at the despatch box, then the recommendation will be reconsidered in advance of inviting the Senedd to give legislative consent. I have made this clear to Greg Hands MP.

Q7: The Bill creates new concurrent powers that can be exercised in devolved areas by both the Welsh Government and the UK Government. Has the Welsh Government had discussions with the UK Government about the impact this has on the legislative competence of the Senedd, in particular the test set out in paragraph 11 of Schedule 7B to the Government of Wales Act 2006?

I can confirm that discussions have taken place with the UK Government about the impact of the Bill's provisions on the Senedd's legislative competence. I anticipate that a Section 109 Order will be brought forward shortly and that it will address the concurrent functions issue you have highlighted.

Extending the period within which clause 2 powers can be used

Q8: Can you confirm that the Welsh Government is content with the five-year period within which these powers can be used?

You will be aware that the Welsh Government's main request of UK Government in relation to the sunset clause has previously been ensuring that before deciding whether and how to extend the length of the sunset provision it would engage with the Devolved Administrations. I am content with the assurances that the UK Government provided in that respect. In light of the large number of trade agreements that may need to be implemented under this provision, the Welsh Government can appreciate the need for the powers to be available for a reasonable length of time. We are not currently aware of any significant issues with a five-year sunset period.

Q9: Whilst we note that you are seeking a commitment from UK Ministers to engage with Devolved Governments before extending the period during which clause 2 powers can be used under the Bill, what is your view on the suggestion that any extension of the five-year period should also be subject to the Senedd's consent, insofar as this relates to powers delegated to the Welsh Ministers?

The scope of the power in clause 2, including the potential for extension of the sunset provision by the Secretary of State has been included as a provision of the Bill for which the Senedd's consent is sought in the Legislative Consent Memorandum which was laid on 2 April 2020.

The Welsh Government took the view that the UK Government's commitments to engage with the executive rather than the legislature were appropriate in this case, given that the issue specifically concerns the exercise of a function conferred on the executive in a narrowly defined set of circumstances.

The Welsh and Scottish Governments' developed a joint set of amendments to the Bill in January 2018 which would have placed a statutory duty on the Secretary of State to consult with the Welsh Ministers and the Scottish Ministers before deciding whether and how to extend the length of the sunset provision. Although those amendments were not accepted, we were able to secure despatch box commitments from the UK Government that it would engage with the devolved administrations before extending the time period within which clause 2 regulations may be made during the partial passage of the original Trade Bill during the 2017-19 Parliamentary session.

On the basis that those commitments are restated during the passage of the current Bill, the Welsh Government has recommended that the Senedd provide consent for the Bill provision.

Q10: What is your view on the power in clause 2(6)(a) that enables a UK Minister to amend the Government of Wales Act 2006 by regulations? Why do you consider this to be an appropriate power? Have you made representations to the UK Government about this power?

I am content with the power in clause 2(6)(a) and have not made representations to the UK Government about this specific provision. Although there is no restriction which would prevent a Minister of the Crown from making amendments to the Government of Wales Act 2006 (GoWA), clause 2(6)(a) restricts any amendments to primary legislation, to the extent that a provision satisfies the definition of retained EU law in section 6(7) of the European Union (Withdrawal) Act 2018. Only a very small number of provisions in GoWA have the potential to fall within the scope of that definition and the UK Government has not indicated that it is minded to exercise the clause 2 powers to make any such amendments.

On this basis, I do not consider it necessary to secure a carve out for GoWA from the category of primary legislation which is capable of being amended by a Minister of the Crown under clause 2(6)(a).

I hope the information I have provided in response to your questions is satisfactory.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan MS

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Agenda Item 12

By virtue of paragraph(s) vi of Standing Order 17.42

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