

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 3 August 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 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

10:00–10:05

(Page 1)

CLA(5)–23–20 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

**2.1 SL(5)576 – The Education (Student Support) (Miscellaneous Amendments)
(Wales) (No. 2) Regulations 2020**

**3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**

10:05–10:15

Negative Resolution Instruments



3.1 SL(5)574 – The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020

(Pages 2 – 20)

CLA(5)–23–20 – Paper 2 – Report

CLA(5)–23–20 – Paper 3 – Regulations

CLA(5)–23–20 – Paper 4 – Explanatory Memorandum

3.2 SL(5)577 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

(Pages 21 – 53)

CLA(5)–23–20 – Paper 5 – Report

CLA(5)–23–20 – Paper 6 – Regulations

CLA(5)–23–20 – Paper 7 – Explanatory Memorandum

CLA(5)–23–20 – Paper 8 – Letter from the Minister for Finance and Trefnydd, 9 July

CLA(5)–23–20 – Paper 9 – Written statement

3.3 SL(5)578 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020

(Pages 54 – 66)

CLA(5)–23–20 – Paper 10 – Report

CLA(5)–23–20 – Paper 11 – Regulations

CLA(5)–23–20 – Paper 12 – Explanatory Memorandum

CLA(5)–23–20 – Paper 13 – Letter from the Minister for Finance and Trefnydd, 10 July 2020

3.4 SL(5)588 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 67 – 77)

CLA(5)–23–20 – Paper 14 – Report

CLA(5)–23–20 – Paper 15 – Regulations

CLA(5)–23–20 – Paper 16 – Explanatory Memorandum

CLA(5)–23–20 – Paper 17 – Letter from the Minister for Finance and Trefnydd, 27 July 2020

CLA(5)–23–20 – Paper 18 – Written statement

**3.5 SL(5)580 – The Countryside Access (Local Access Forums) (Wales)
(Coronavirus) Regulations 2020**

(Pages 78 – 89)

CLA(5)–23–20 – Paper 19 – Report

CLA(5)–23–20 – Paper 20 – Regulations

CLA(5)–23–20 – Paper 21 – Explanatory Memorandum

**3.6 SL(5)582 – The Relaxation of School Reporting Requirements (Wales)
(Coronavirus) Regulations 2020**

(Pages 90 – 104)

CLA(5)–23–20 – Paper 22 – Report

CLA(5)–23–20 – Paper 23 – Regulations

CLA(5)–23–20 – Paper 24 – Explanatory Memorandum

**3.7 SL(5)585 – The Coronavirus Act 2020 (Assured Tenancies and Assured
Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales)
Regulations 2020**

(Pages 105 – 125)

CLA(5)–23–20 – Paper 25 – Report

CLA(5)–23–20 – Paper 26 – Regulations

CLA(5)–23–20 – Paper 27 – Explanatory Memorandum

CLA(5)–23–20 – Paper 28 – Letter from the Minister for Finance and
Trefnydd, 23 July 2020

CLA(5)–23–20 – Paper 29 – Written statement

Affirmative Resolution Instruments

**3.8 SL(5)581 – The Representation of the People (Electoral Register Publication
Date) (Wales) (Coronavirus) Regulations 2020**

(Pages 126 – 135)

CLA(5)–23–20 – Paper 30 – Report

CLA(5)–23–20 – Paper 31 – Regulations

CLA(5)–23–20 – Paper 32 – Explanatory Memorandum

CLA(5)–23–20 – Paper 33 – Letter from the Minister for Housing and Local
Government, 17 July 2020

Made Affirmative Resolution Instruments

3.9 SL(5)579 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

(Pages 136 – 182)

CLA(5)–23–20 – Paper 34 – Report

CLA(5)–23–20 – Paper 35 – Regulations

CLA(5)–23–20 – Paper 36 – Explanatory Memorandum

CLA(5)–23–20 – Paper 37 – Letter from the First Minister, 10 July 2020

CLA(5)–23–20 – Paper 38 – Written statement

3.10 SL(5)584 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020

(Pages 183 – 196)

CLA(5)–23–20 – Paper 39 – Report

CLA(5)–23–20 – Paper 40 – Regulations

CLA(5)–23–20 – Paper 41 – Explanatory Memorandum

CLA(5)–23–20 – Paper 42 – Letter from the First Minister, 17 July 2020

CLA(5)–23–20 – Paper 43 – Written statement

3.11 SL(5)587 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 197 – 218)

CLA(5)–23–20 – Paper 44 – Report

CLA(5)–23–20 – Paper 45 – Regulations

CLA(5)–23–20 – Paper 46 – Explanatory Memorandum

CLA(5)–23–20 – Paper 47 – Letter from the First Minister, 24 July 2020

CLA(5)–23–20 – Paper 48 – Written statement

3.12 SL(5)586 – The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020

(Pages 219 – 234)

CLA(5)–23–20 – Paper 49 – Report

CLA(5)–23–20 – Paper 50 – Regulations

CLA(5)–23–20 – Paper 51 – Explanatory Memorandum

CLA(5)–23–20 – Paper 52 – Letter from the Minister for Finance and Trefnydd, 22 July 2020

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3 – previously considered

10:15–10:20

4.1 SL(5)565 – The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) (Coronavirus) Regulations 2020

(Pages 235 – 238)

CLA(5)–23–20 – Paper 53 – Report

CLA(5)–23–20 – Paper 54 – Welsh Government response

5 Written statements under Standing Order 30C

10:20–10:25

5.1 WS–30C(5)164 – The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020

(Pages 239 – 242)

CLA(5)–23–20 – Paper 55 – Written statement

CLA(5)–23–20 – Paper 56 – Commentary

5.2 WS–30C(5)165 – The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020

(Pages 243 – 246)

CLA(5)–23–20 – Paper 57 – Written statement

CLA(5)–23–20 – Paper 58 – Commentary

6 Papers to note

10:25–10:30

6.1 Letter from the Counsel General: Joint Ministerial Committee (EU Negotiations)

(Page 247)

CLA(5)–23–20 – Paper 59 – Letter from the Counsel General, 15 July 2020

6.2 Letter from the Minister for Education: Disapplication of Curriculum Requirements in Wales Notice 2020

(Pages 248 – 249)

CLA(5)–23–20 – Paper 60 – Letter from the Minister for Education, 15 July 2020

6.3 Letter from the Minister for Environment, Energy and Rural Affairs: Agricultural Wages (Wales) Order 2020

(Pages 250 – 251)

CLA(5)–23–20 – Paper 61 – Letter from the Minister for Environment, Energy and Rural Affairs, 15 July 2020

6.4 Letter from the Minister for International Relations and the Welsh Language: Ministerial Forum for Trade

(Page 252)

CLA(5)–23–20 – Paper 62 – Letter from the Minister for International Relations and the Welsh Language, 19 July 2020

6.5 Letter from the First Minister: Data on access to justice

(Pages 253 – 254)

CLA(5)–23–20 – Paper 63 – Letter from the First Minister, 23 July 2020

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

10:30

8 Consideration of the UK Government's internal market White Paper

10:30–10:45

(Pages 255 – 306)

CLA(5)–23–20 – Paper 64 – Letter from the Secretary of State for the Department for Business, Energy & Industrial Strategy, 16 July 2020

CLA(5)–23–20 – Paper 65 – Letter from the Chair of the Economy, Infrastructure and Skills Committee, 27 July 2020

CLA(5)–23–20 – Paper 66 – Letter from the Chair of the External Affairs and Additional Legislation Committee, 30 July 2020

CLA(5)-23-20 – Paper 67 – Research briefing on the UK internal market White Paper

CLA(5)-23-20 – Paper 68 – Draft letter to the Secretary of State for the Department for Business, Energy & Industrial Strategy

9 Motion under Standing Order 17.22 to elect a temporary Chair for the next meeting

10:45-10:50

Date of the next meeting – 24 August 2020

Statutory Instruments with Clear Reports

03 August 2020

SL(5)576 – The Education (Student Support) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2020**Procedure: Negative**

The Education (Student Support) (Miscellaneous Amendments) (Wales) (No 2) Regulations 2020 ('the Regulations') are made under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 ('the 1998 Act'). Section 22 provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. This power enables the Welsh Ministers to prescribe, amongst other things, the amount of financial support (grant or loan) and who is eligible to receive such support.

The Regulations amend:

- the Education (Student Support) (Wales) Regulations 2017 ('the 2017 Regulations'); and
- the Education (Student Support) (Wales) Regulations 2018 ('the 2018 Regulations').

These amendments apply to the provision of support to students in relation to academic years which begin on or after 1 August 2020.

The Regulations amend provision in the 2017 Regulations and 2018 Regulations relating to the recovery of overpayments of loans for living costs. The way in which the Welsh Ministers may recover such overpayments no longer depends on whether a student has failed to provide information or has provided inaccurate information. The amended regulation 62 of the 2018 Regulations also enables the Welsh Ministers to require a student to repay an overpayment in accordance with regulations made under section 22 of the 1998 Act.

The Regulations amend also the provision in the 2018 Regulations to allow students to receive or continue receiving support for distance learning courses if coronavirus prevents them starting or continuing their course outside Wales or the UK respectively.

Parent Act: Teaching and Higher Education Act 1998

Date Made: 08 July 2020

Date Laid: 09 July 2020

Coming into force date: 31 July 2020



Agenda Item 3.1

SL(5)574 – The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020

Background and Purpose

The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020 (“the Regulations”) are made under the powers provided to the Welsh Ministers by section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006.

Directive 2005/36/EU transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015, already imposes on the Welsh Ministers a requirement to complete proportionality tests when regulating professions. The purpose of these Regulations is to transpose into domestic law Directive (EU) 2018/958 which established a detailed framework for conducting such proportionality tests before adopting new or amending provisions relating to the regulation of professions.

These Regulations will apply to a number of professions in Wales where the Senedd has legislative competence, including qualified teachers and headteachers in a school, teachers at a further education institution, and professions regulated by the Regulation and Inspection of Social Care (Wales) Act 2016, including social workers and social care managers in Wales.

These Regulations will come into force on 30 July in line with equivalent regulations that have been made in England. The Regulations will cease to have effect on implementation period completion day, which is 31 December 2020 at 11.00 pm, as defined in the EU (Withdrawal Agreement) Act 2020.

Procedure

Negative.

Technical Scrutiny

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

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

There are incorrect references to the legislation regarding the retention of retained saved EU law at the end of the implementation period. References are made to section 5A of the European Union (Withdrawal Agreement) Act 2020, however such a provision does not exist. Section 25(5) of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) inserted a new section 5A into the European Union (Withdrawal) Act 2018 (“the 2018 Act”), although section 5A is not yet in force. These incorrect references appear in the first footnote at page 5, on the second page of the Explanatory Notes and on the third page of the Explanatory Memorandum. Subsequent references in the Explanatory Notes and the Explanatory Memorandum to “sections 2, 3 and 4 of the 2020 Act” should refer to the 2018 Act as a result.



Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006. These Regulations will cease to have effect on implementation period completion day, at 11.00 pm on 31 December 2020.

Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

27 July 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. 696 (W. 154)

EDUCATION, WALES

**PROFESSIONAL
QUALIFICATIONS, WALES**

SOCIAL CARE, WALES

The European Union (Regulated
Professions Proportionality
Assessment) (Wales) Regulations
2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

The agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU requires the UK to comply with its legal obligations under EU law for the duration of the transition period. This includes transposition obligations.

Under Directive 2005/36/EU (transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)), member States are required to complete proportionality tests when regulating professions.

Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 (“the 2018 Directive”) goes further and establishes a detailed framework for conducting proportionality tests before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions (“a professional regulatory provision”).

These Regulations implement the 2018 Directive and require the Welsh Ministers to carry out this proportionality assessment. As the UK’s obligations to comply with transposition obligations only extends until the end of the implementation period, these

Regulations are time-limited and will expire on IP completion day (see the definition in regulation 2).

Whilst section 5A of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”) provides that the fact that anything which continues to be, or forms part of, domestic law on or after IP completion day by virtue of sections 2 to 4 of the 2020 Act has an effect immediately before IP completion day which is time-limited by reference to the implementation period does not prevent it from having an indefinite effect on and after IP completion day by virtue of sections 2 to 4, there is no requirement for these Regulations to have such an indefinite effect, and they will not therefore continue to have effect after IP completion day.

Regulation 3 sets out the scope of these Regulations. These Regulations apply to the regulated professions listed in paragraphs (1) to (3). Paragraph (4) sets out the restrictions on the scope of these Regulations in accordance with Article 2 of the 2018 Directive.

Regulation 4 requires the Welsh Ministers to carry out proportionality assessments and sets out conditions which must be met when doing so.

Regulation 5 requires Welsh Ministers to ensure that professional regulatory provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.

Regulation 6 requires a professional regulatory provision to be justified by public interest objectives. It sets out when a provision will be justified by public interest objectives and gives examples of reasons which could constitute overriding reasons in the public interest, as listed in Article 6 of the 2018 Directive.

Regulation 7 deals with the principle of proportionality and sets out considerations which must be taken into account when assessing the proportionality of a professional regulatory provision, as well as those which must be considered when relevant to the nature and content of the professional regulatory provision.

Regulation 8 requires the Welsh Ministers to also ensure compliance with the principle of proportionality when imposing specific requirements for the temporary and occasional provision of services.

Regulation 9 requires the Welsh Ministers to make information publicly available about a proposed professional regulatory provision and to consult relevant stakeholders.

Regulation 10 requires the Welsh Ministers to send a copy of the professional regulatory provision and the

completed proportionality assessment to the European Commission.

Regulation 11 requires the Welsh Ministers to monitor the proportionality of a professional regulatory provision.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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. 696 (W. 154)

EDUCATION, WALES

**PROFESSIONAL
QUALIFICATIONS, WALES**

SOCIAL CARE, WALES

The European Union (Regulated
Professions Proportionality
Assessment) (Wales) Regulations
2020

Made 7 July 2020

Laid before Senedd Cymru 8 July 2020

Coming into force 30 July 2020

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and section 58B of the Government of Wales Act 2006⁽²⁾, make the following Regulations.

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- (1) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day (defined in section 20 of that Act as 31 January 2020 at 11pm), but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) 2006 c. 32. Section 58B was inserted by sections 20(1) and 71(4) of, and paragraphs 1 and 6 of Schedule 7 to, the Wales Act 2017 (c. 4) and provides that section 2(2) of the European Communities Act 1972 applies to the Welsh Ministers as if they were a Minister of the Crown or government department designated by Order in Council under that provision.

Title, commencement, expiry and application

1.—(1) The title of these Regulations is the European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020.

(2) These Regulations come into force on 30 July 2020.

(3) These Regulations cease to have effect on IP completion day⁽¹⁾.

(4) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the European Union (Recognition of Professional Qualifications) Regulations 2015⁽²⁾;

“IP completion day” (“*diwrnod cwblhau'r cyfnod gweithredu*”) has the meaning given in section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020⁽³⁾;

“professional qualifications” (“*cymwysterau proffesiynol*”) has the meaning given by regulation 9(1) of the 2015 Regulations;

“professional regulatory provision” (“*darpariaeth reoleiddiol broffesiynol*”) means a new, or an amendment to an existing, legislative, regulatory or administrative provision restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title;

“proportionality assessment” (“*asesiad cymesuredd*”) means an assessment of the proportionality of a professional regulatory provision, carried out in accordance with regulation 4;

“regulated profession” (“*proffesiwn rheoleiddiedig*”) has the meaning given by regulation 8(1) of the 2015 Regulations.

Scope

3.—(1) These Regulations apply to the profession of—

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- (1) These Regulations will cease to have effect on IP completion day despite section 5A of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
- (2) S.I. 2015/2059, amended by paragraph 389 of Schedule 19 to the Data Protection Act 2018 (c. 12), S.I. 2016/696, 2016/1094, 2016/1030, 2018/166, 2018/838 and 2018/1101.
- (3) 2020 c. 1.

- (a) qualified teacher (within the meaning of section 132 of the Education Act 2002⁽¹⁾) in a school (as defined in section 14(6) of the Education (Wales) Act 2014⁽²⁾) in Wales;
- (b) head teacher (within the meaning of section 135 of the Education Act 2002) in a school (as defined in section 14(6) of the Education (Wales) Act 2014) in Wales.

(2) These Regulations apply to the profession of teacher at a further education institution (within the meaning of section 140 of the Education Act 2002) in Wales.

(3) These Regulations apply to any profession regulated under Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾.

(4) These Regulations do not apply to—

- (a) any profession in relation to which specific arrangements directly related to the recognition of professional qualifications are made in any EU Regulation, EU Directive, EU decision or EU tertiary legislation and the effect of those arrangements exclude the application of Directive 2005/36/EC of the European Parliament and the Council of 7th September 2005 on the recognition of professional qualifications⁽⁴⁾;
- (b) a professional regulatory provision to the extent that it implements EU legislation concerning the regulation of a profession, where there is no choice as to the exact way in which those requirements are to be transposed.

Requirement to carry out a proportionality assessment

4.—(1) The Welsh Ministers must carry out a proportionality assessment in respect of a professional regulatory provision before the provision takes effect.

(2) When carrying out a proportionality assessment, the Welsh Ministers must ensure that—

- (a) the professional regulatory provision complies with each of the requirements set out in regulations 5 to 8,
- (b) the extent of the assessment is proportionate to the nature, content and impact of the professional regulatory provision,

(1) 2002 c. 32.

(2) 2014 anaw 5.

(3) 2016 anaw 2.

(4) OJ No. L 255, 30.9.2005, p. 22, as amended by Directive 2013/55/EU (OJ No. L 354, 28.12.2013, p. 132).

- (c) the reasons for considering that the professional regulatory provision is justified and proportionate are substantiated by qualitative and, wherever possible and relevant, quantitative elements, and
- (d) the assessment is carried out in an objective and independent manner.

Non-discrimination

5. A professional regulatory provision must not directly or indirectly discriminate against nationals of an EU member State⁽¹⁾ on the basis of nationality or residence.

Justification by public interest objectives

6.—(1) A professional regulatory provision must be justified by public interest objectives.

(2) A professional regulatory provision is justified by public interest objectives if it is objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest.

(3) Overriding reasons in the public interest include (but are not limited to)—

- (a) preserving the financial equilibrium of the social security system;
- (b) the protection of consumers, of recipients of services and of workers;
- (c) the safeguarding of the proper administration of justice;
- (d) ensuring the fairness of trade transactions;
- (e) the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision;
- (f) transport safety;
- (g) the protection of the environment and the urban environment;
- (h) the health of animals;
- (i) the protection of intellectual property;
- (j) the safeguarding and conservation of the national historic and artistic heritage;
- (k) social policy objectives;
- (l) cultural policy objectives.

(4) Overriding reasons in the public interest do not include grounds of a purely economic nature or purely administrative reasons.

⁽¹⁾ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 has not been adopted by the EEA EFTA states (Norway, Liechtenstein and Iceland) or Switzerland.

Proportionality

7.—(1) A professional regulatory provision must be suitable for achieving the objective pursued and must not go beyond what is necessary to achieve that objective.

(2) When carrying out a proportionality assessment, the Welsh Ministers must consider—

- (a) the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients (including consumers), professionals or third parties;
- (b) whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient to achieve the objective pursued;
- (c) the suitability of the provision as regards its appropriateness to achieve the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and addresses the risks identified in a similar way as in comparable activities;
- (d) the impact of the provision on—
 - (i) the free movement of persons and services within the European Union,
 - (ii) consumer choice, and
 - (iii) the quality of the service provided;
- (e) the possibility of using less restrictive means to achieve the public interest objective, including, in particular, whether the objective can be achieved by means that are less restrictive than reserving activities where—
 - (i) the provisions are justified by consumer protection only;
 - (ii) the risks identified are limited to the relationship between the professional and the consumer and therefore do not negatively affect third parties;
- (f) the effect of the professional regulatory provision, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the professional regulatory provision, combined with other requirements contribute to and whether they are necessary for the achievement of the same public interest objective.

(3) When taking into account the consideration set out in paragraph (2)(f), the Welsh Ministers must assess the effect of the professional regulatory provision when combined with one or more requirements, including in particular—

- (a) reserved activities, protected professional titles or any other form of regulation of a regulated profession;
- (b) obligations to undergo continuous professional development;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;
- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding specific professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, including where the profession is regulated in parts of the United Kingdom in a manner that is different to the way in which it is regulated in other parts;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;
- (k) fixed minimum and/or maximum tariff requirements;
- (l) requirements on advertising.

(4) Where relevant to the nature and content of the professional regulatory provision, the Welsh Ministers must also consider—

- (a) the connection between the scope of activities covered by a profession or reserved to it and the professional qualification required,
- (b) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess specific professional qualifications, in particular as regards the level, nature and duration of the training or experience required,

- (c) the possibility of obtaining the professional qualification by alternative routes,
- (d) whether, and why, the activities reserved to certain professions can or cannot be shared with other professions,
- (e) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the achievement of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional, and
- (f) the scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

(5) Where a professional regulatory provision concerns the regulation of healthcare professions and has patient safety implications, the Welsh Ministers must take account of the objective of ensuring a high level of human health protection when carrying out a proportionality assessment of the provision.

(6) In this regulation—

- (a) “protected professional title” means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;
- (b) “reserved activities” means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

Temporary and occasional provision of services

8.—(1) Before a professional regulatory provision takes effect, the Welsh Ministers must ensure compliance with the principle of proportionality of any specific requirement in that provision related to temporary and occasional provision of services, provided under Part 2 of the 2015 Regulations, including—

- (a) automatic temporary registration with or pro-forma membership of a professional

organisation or body, in accordance with regulation 14(2) of the 2015 Regulations;

- (b) a declaration to be made in advance in accordance with regulation 15 of the 2015 Regulations, documents to be required in accordance with regulation 16 of the 2015 Regulations, or any other equivalent requirement;
- (c) the payment of a fee, or any charges, required for the administrative procedures, related to the access to, or pursuit of, regulated professions which the service provider incurs.

(2) This regulation does not apply to measures designed to ensure compliance with applicable employment terms and conditions applied in accordance with EU law.

Public information and consultation

9.—(1) Before a proposed professional regulatory provision takes effect, the Welsh Ministers must—

- (a) by appropriate means, make information about a proposed professional regulatory provision available to the public, service recipients and other relevant stakeholders, including those who are not members of the profession concerned;
- (b) consult relevant stakeholders and such persons as they consider appropriate.

(2) A professional regulatory provision must be accompanied by an explanation which is sufficiently detailed to make it possible to assess the proportionality of the provision.

Report

10.—(1) After completing a proportionality assessment, the Welsh Ministers must send the information listed in paragraph (2) to the European Commission and record it in the database of regulated professions referred to in Article 59(1) of Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications⁽¹⁾.

(2) The information required under paragraph (1) is—

- (a) a copy of the professional regulatory provision, and
- (b) the reasons for considering that the provision is justified and proportionate.

(1) OJ No. L 255, 30.9.2005, p. 22, as amended by Directive 2013/55/EU (OJ No. L 354, 28.12.2013, p. 132).

Monitoring of professional regulatory provisions

11. After a professional regulatory provision takes effect, the Welsh Ministers must monitor the compliance of the provision with the principle of proportionality, having due regard to any developments that have occurred since it took effect.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

7 July 2020

Explanatory Memorandum to the European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Education Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020.

Kirsty Williams, MS
Minister for Education

8 July 2020

PART 1

1. Description

The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020 (“this instrument”) transposes into domestic law Directive (EU) 2018/958 on the requirement to carry out a proportionality test before adopting new or amending provisions relating to the regulation of professions (the “Directive”).

Under Directive 2005/36/EU (transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)), member States are required to complete proportionality tests when regulating professions. The Directive goes further and establishes a detailed framework for conducting proportionality tests before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions (“a professional regulatory provision”).

The aim of the Directive is to provide a common framework for conducting proportionality tests with the view to ensuring the proper functioning of the internal market, while guaranteeing transparency and a high level of consumer protection.

The instrument applies to certain professions in Wales where the Senedd has legislative competence, namely:

- School teachers working in a school in Wales;
- Teachers at a further education institution in Wales;
- Social workers in Wales;
- Social Care Managers in Wales; and
- Other regulated social care workers in Wales

The terms of the withdrawal agreement require the Welsh Ministers to comply with their legal obligations under EU law for the duration of the implementation period. This includes transposition obligations. This instrument is therefore made to fulfil those obligations.

As the obligation to comply with transposition obligations only extends until the end of the implementation period, this instrument contains a mechanism time-limiting its effect for the duration of the implementation period.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Section 58B of the Government of Wales Act 2006 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions (see section 3 below).

As the UK's obligations to comply with transposition obligations only extends until the end of the implementation period, these Regulations are time-limited and will expire on implementation period completion day (see the definition in regulation 2). Whilst section 5A of the EU (Withdrawal Agreement) Act 2020 (c. 1) ("the 2020 Act") provides that the fact that anything which continues to be, or forms part of, domestic law on or after IP completion day by virtue of section 2, 3 or 4 of the 2020 Act has an effect immediately before IP completion day which is time-limited by reference to the implementation period does not prevent it from having an indefinite effect on and after IP completion day by virtue of section 2, 3 or 4, there is no requirement for these Regulations to have such an indefinite effect, and they will not therefore continue to have effect after IP completion day.

3. Legislative background

This instrument is made using powers under section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006. Section 58B of the Government of Wales Act 2006 provides that section 2(2) of the European Communities Act 1972 applies to the Welsh Ministers as if they were a Minister of the Crown or government department designated by Order in Council under that provision.

Under section 58B of GoWA 2006, Welsh Ministers have the right to make regulations under section 2(2) of the European Communities Act 1972 (as saved by the European Union (Withdrawal) Act 2018) during the implementation period to implement EU law, provided the provisions made are within the legislative competence of the Senedd. Paragraph 140 of Schedule 7A to the Government of Wales Act 2006 provides that the regulation of the social care and social work professions are devolved to Wales. Welsh Ministers also have the power to regulate the education workforce.

As stated above, Regulations made under section 58B of the Government of Wales Act 2006 may be made under either the affirmative or negative procedure. These Regulations are being made under the negative resolution procedure because they are technical in nature and go no further than fulfilling the Welsh Ministers' obligations under the withdrawal agreement. They do not make any significant policy changes and have no substantive effect to the delivery of policy in Wales.

4. Purpose and intended effect of the legislation

In accordance with the requirements under the withdrawal agreement, the Welsh Ministers must implement EU legislation with a transposition deadline before the end of the implementation period.

The Directive strengthens and extends requirements on member States to assess the proportionality of measures which restrict access to, or the pursuit of, regulated professions.

A general obligation to undertake proportionality tests already exists in EU law (under European Union Directive 2005/36 on the recognition of professional

qualifications). However, these tests were not applied consistently or transparently across the EU. The European Commission therefore proposed the adoption of a proportionality framework. The UK was supportive of this proposal.

The Directive establishes a common framework, and sets out criteria, for conducting proportionality assessments. Proportionality assessments are to be carried out before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting the access to, or pursuit of, a regulated profession¹. The assessment is to ensure that any new or amending measures do not go beyond what is necessary to meet the public interest objective of a measure.

Proportionality assessments will be conducted by the relevant regulatory body of each regulated profession. This is because they are best placed to understand and assess how new or amended measures will affect professions.

Proposed measures must be objectively justified by one or more of the following public interest objectives:

- Public policy;
- Public security;
- Public health; or
- Overriding reasons in the public interest.

The justification for a new or amended measure must fall in one of the above categories. A measure which has purely administrative or financial justifications will not satisfy this requirement.

Proportionality assessments are to be undertaken in an open and transparent manner and must be based on objective reasoning. This aims to ensure consistency and transparency of application across the single market.

The requirements imposed by the Directive will be unachievable following the end of the implementation period, as they would depend on EU mechanisms which will no longer be in place. This instrument will therefore cease to have effect at the end of the implementation period.

5. Consultation

No public consultation was undertaken as no significant impact is foreseen from what are in the main technical amendments.

The regulator and authority responsible for implementing this instrument in respect of regulated teachers in Wales, the Education Workforce Council (“EWC”), has been made aware of the obligations in the Directive and is content. Ongoing engagement with EWC will continue as required.

¹ A regulated profession is a profession which the access to, or pursuit of, is limited to those holding a specific professional qualification - defined in regulation 8(1) of the European Union (Recognition of Professional Qualifications) Regulations 2015.

In respect of social workers and social care workers, Social Care Wales as the regulator and authority responsible for implementing the regulations for these workers have been made aware of the amendments. Welsh Government officials will continue to engage with them as these progress.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been conducted. The Regulations are technical in nature and build upon the current legislative and policy framework. Under Directive 2005/36/EU (transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)), Welsh Ministers are already required to complete proportionality tests when regulating professions. The Directive simply establishes a detailed framework for conducting such proportionality tests when introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. There is therefore no, or no significant, impact on business, charities or voluntary bodies.

Any direct costs would fall to government departments and regulators in Wales with responsibility for conducting proportionality tests. However, it is not anticipated that any new or amending professional regulatory provisions will be introduced between the date the instrument comes into force and the IP completion date. There are no identified costs to any Welsh businesses as a result of this instrument.

The legislation is technical in nature and has no impact on the statutory duties (sections 77 - 79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of that Act) and it would be disproportionate to conduct Impact Assessments where no policy changes are taking place.

SL(5)577 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”), and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”).

The International Travel Regulations

The International Travel Regulations impose requirements on people entering Wales after having been abroad. These requirements relate to information that must be provided using an online form, and a mandatory isolation period of 14 days. These requirements are subject to exceptions, and certain categories of person are exempt from having to comply, including those travelling from the common travel area.

These Regulations extends the exemptions from the requirement to provide information, and extends the exemptions and exceptions from the requirement to isolate.

These Regulations amend the self-isolation requirement so that it applies only to individuals arriving in Wales from non-exempt countries. Exempt countries are those which are considered to present an acceptable level of risk from a public health perspective for passengers to enter the UK and which are listed in the Regulations. These regulations insert a new Schedule 3 into the International Travel Regulations, which provides a list of “exempt countries and territories” (from which persons travelling to Wales will be exempt from the self-isolation requirements in regulations 7 and 8).

These Regulations also make a number of changes to the existing Schedules to the International Travel Regulations. These Regulations amends Schedule 1 to make certain changes to the passenger information that must be provided. They also amend regulation 3 and Parts 1 and 2 of Schedule 2, to make certain changes to the categories of persons who are exempt from the requirement in regulations 4 and 5 of the International Travel Regulations to provide passenger information and/or from the requirement in regulations 7 and 8 of those regulations to self-isolate.

The Public Health Information Regulations

The Public Health Information Regulations require operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus. This includes measures required by the International Travel Regulations.

The Public Health Information Regulations are amended by these Regulations to make changes to the content of the on-board statement made to passengers during their journey to Wales, so that the statement is consistent across the United Kingdom. The requirement for operators to make the statement orally is also removed.



These Regulations amend both the International Travel Regulations and the Public Health Information Regulations to provide that the statutory review period will be 28 days, rather than 21 days.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following 5 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 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.

These Regulations were made at 10.20am on 9 July 2020, laid before Senedd Cymru at 4.00pm on 9 July and came into force on 10 July 2020. 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 9 July 2020. This states:

Not adhering to the 21 day convention allows the Regulations to come into force on 10 July 2020 and in view of the circumstances surrounding this disease the reduced period is considered necessary and justifiable in this case.

Equivalent Regulations were made in England on 6 July, coming into force in stages on 7 and 10 July and similar timeframes are being followed in Scotland and Northern Ireland as part of a 4 nations approach to avoiding the spread of infection or contamination from coronavirus or coronavirus disease in the UK via any imported infections via travellers.

The Welsh Government's Explanatory Memorandum to the Regulations provides further detail about the UK wide approach to avoid imported infections from travellers:

On 6 July 2020 the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020 were made, with some provisions coming into force on 7 July and some on 10 July. Amending regulations are also being introduced on similar timelines amending the equivalent requirements for Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from Covid-19 via any imported infections via travellers.

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 amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. The amendments made by these Regulations to the International Travel Regulations add additional exemptions from the requirement to isolate in certain cases, as such the restrictions on those entering Wales is reduced in that regard.

The Welsh Government's Explanatory Memorandum to the Regulations provides an analysis of the human rights implications of these Regulations and states as follows:

... Articles 5 (right to liberty and security), 8 (right to respect for private and family life) and A1P1 (right to peaceful enjoyment of possessions) are potentially engaged by the Travel Regulations. Article 14 (protection from discrimination) is also engaged in connection with the interference of the other rights identified.

These are all 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 necessary and proportionate.

The changes made by these amending Regulations are 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. The amendments widen and expand the exemptions from the requirements to isolate and remove the blanket requirement to isolate thus imposing less restrictive measures on persons entering Wales. Those who benefit from these amendments are those who (i) fall into an exempted category; or (ii) arrive from an exempted countries. These amendments remain a justifiable and proportionate interference with Article 8.

It was considered that the Passenger Information Regulations as originally made did not interfere with any ECHR rights. The changes these amending Regulations will make do not alter that position.

3. 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

Regulation 8 of these Regulations change the time period within which the Welsh Ministers must carry out reviews of the International Travel Regulations from 21 to 28 days. Similarly, Regulation 11 changes the review period in respect of the Public Health Information Regulations from 21 to 28 days.

The Welsh Government's Explanatory Memorandum states as follows:

...the statutory review period (at regulation 19 and 9 respectively) will be 28 days rather than 21 days, with the next reviews taking place no later than 27 July 2020. The same approach is being taken in England, Scotland and Northern Ireland and changing the Regulations for Wales will ensure that the review point remains consistent across all four nations of the UK for these Regulations

4. 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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat



arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently.

5. 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 Committee's previous report on the International Travel Regulations highlighted two cross referencing errors (in respect of regulation 9 and regulation 17(10)). The Welsh Government's response to the Committee's report stated that "*The Welsh Government will amend the Regulations to correct the cross references at the earliest available opportunity*". Regulation 9 of these Regulations makes miscellaneous amendments which, amongst other matters, corrects those referencing errors.

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

27 July 2020



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. 714 (W. 160)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”); and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad; these relate to information that must be provided using an online form and a mandatory isolation period of 14 days. These requirements are subject to exceptions, and certain categories of person are exempt from having to comply, including persons travelling from the common travel area.

Part 2 of these Regulations amends the International Travel Regulations to extend the exemptions from the requirement to provide information; and to extend the exemptions and exceptions from the requirement to isolate (regulations 3 to 6).

Regulation 3 amends the International Travel Regulations to exempt certain categories of worker – those who engage in regular travel but who typically do not encounter passengers – from having to comply with the requirement to provide information online.

Regulation 4 amends the International Travel Regulations to extend the exemption from the requirement to isolate. By virtue of these amendments, persons entering Wales after being in one or more of

the countries listed in Schedule 3 to the International Travel Regulations (as inserted by the Schedule to these Regulations) will not be required to isolate. These countries and territories, along with the countries and territories of the common travel area, are referred to in the amendments as “exempt countries and territories”.

But the extension of the exemption for the countries and territories listed in Schedule 3 is subject to the transitional provision made by regulation 7. This preserves the effect of the International Travel Regulations in their unamended form, in relation to persons who, in the two-week period before 10 July 2020 (the date these Regulations came into force), arrived in the common travel area from a place outside that area; this is the case even if the place in question is, from 10 July 2020 onwards, an exempt country or territory.

Where such persons are in Wales or arrive in Wales during the two-week period starting with the day they entered the common travel area (which means the United Kingdom, Republic of Ireland, Channel Islands and the Isle of Man), they will be subject to the rules on isolation imposed by Part 3 of the International Travel Regulations as those rules stood before the 10 July 2020.

The amendments made by regulation 5 relate to certain elite sporting events, and are included to enable persons required to isolate by the International Travel Regulations to leave the premises at which they’re isolating for reasons relating to the persons’ involvement with those events.

Regulation 6 includes miscellaneous amendments to Schedule 2 to the International Travel Regulations, the Schedule which describes categories of person who are exempt from the requirements of the International Travel Regulations. These amendments either modify existing categories of person or add new categories of person to the Schedule.

Part 2 of these Regulations also changes the period within which the Welsh Ministers must carry out reviews of the International Travel Regulations to a 28-day period instead of a 21-day period (regulation 8); and makes minor miscellaneous amendments (regulation 9).

The Public Health Information Regulations require the operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus, including measures required by the International Travel Regulations.

The amendments made to the Public Health Information Regulations by Part 3 of these Regulations include minor changes relating to the statement to be given to passengers travelling on services arriving in Wales (regulation 10); and a change to extend the review period for the purposes of the Welsh Ministers' reviews of the legislation (regulation 11).

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.

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. 714 (W. 160)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Amendment)
Regulations 2020**

Made at 10.20 a.m. on 9 July 2020

Laid before *Senedd*
Cymru at 4.00 p.m. on 9 July 2020

Coming into force 10 July 2020

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

PART 1

General

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 10 July 2020.

Interpretation

2. In these Regulations—

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

“the International Travel Regulations” (“*y Rheoliadau Teithio Rhyngwladol*”) means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);

“the Public Health Information Regulations” (“*y Rheoliadau Gwybodaeth Iechyd y Cyhoedd*”) means the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020(2).

PART 2

Amendments to the International Travel Regulations

Exemption from information requirement for certain categories of worker

3.—(1) In Part 2 of the International Travel Regulations (requirement to provide information), regulation 3 is amended in accordance with paragraphs (2) and (3).

(2) In paragraph (2) for “a person described in Part 1 of Schedule 2” substitute “—

- (a) a person described in Part 1 of Schedule 2,
- (b) a person described in paragraph 12(1)(b) of Schedule 2 (operational, maintenance and security workers working on the Channel Tunnel), or
- (c) a person described in paragraph (3), in respect of whom the condition in paragraph (4) is met.”

(3) After paragraph (2) insert—

“(3) The descriptions of person are—

- (a) a person who is a road passenger transport worker, within the meaning of paragraph 6 of Schedule 2;
- (b) a person described in paragraph 7 of Schedule 2 (masters and seamen);
- (c) a person described in paragraph 8 of Schedule 2 (pilots involved in merchant shipping);
- (d) a person described in paragraph 9 of Schedule 2 (inspectors and surveyors of ships);
- (e) a person described in paragraph 10 of Schedule 2 (crew on aircraft);

(1) S.I. 2020/574 (W. 132).

(2) S.I. 2020/595 (W. 136).

- (f) a person described in paragraph 12(1)(a) or (c) of Schedule 2 (drivers, crew and other persons performing essential functions in relation to the Channel Tunnel).

(4) The condition mentioned in paragraph (2)(c) is met in relation to a person if the person has, on their journey to Wales travelled only—

- (a) on a ship or aircraft which does not carry passengers;
- (b) in an area of a ship or aircraft which is not accessed by passengers.”

Exemption from isolation requirement for persons travelling from certain countries and territories outside the common travel area

4.—(1) Part 3 of the International Travel Regulations (requirement to isolate etc.) is amended in accordance with paragraphs (2) to (5).

(2) In regulation 7 (requirement to isolate: arrivals from outside the United Kingdom)—

- (a) in paragraph (1)(a), for “place outside the common travel area” substitute “non-exempt country or territory”;
- (b) in paragraph (1)(b)(i), for “the Republic of Ireland, the Channel Islands or the Isle of Man” substitute “an exempt country or territory that is not part of the United Kingdom”;
- (c) in paragraph (1)(b)(ii), for “arrived in the common travel area from a place outside that area” substitute “been in a non-exempt country or territory”.

(3) In regulation 8 (requirement to isolate: arrivals from another part of the United Kingdom), in paragraph (1)(b), for “arrived in the common travel area from a place outside that area” substitute “been in a non-exempt country or territory”.

(4) In regulation 9 (isolation requirements: exemptions)—

- (a) the existing text becomes paragraph (2);
- (b) before that paragraph insert—

“(1) For the purposes of this Part, “exempt country or territory” means—

 - (a) a country or territory within the common travel area;
 - (b) a country or territory listed in Schedule 3;

and any reference to a “non-exempt country or territory” is to be interpreted accordingly.”

(5) In regulation 12 (meaning of “last day of isolation” in Part 3), for “arrived in the common travel area from a place outside that area” substitute “was last in a non-exempt country or territory”.

(6) In Part 1 of the International Travel Regulations (provision of general application), in regulation 2 (interpretation), after paragraph (3) insert—

“(4) For the purposes of these Regulations, a person who arrives by ship or aircraft in a non-exempt country or territory (within the meaning of regulation 9(1)) is not to be treated as having been in that place unless—

- (a) the person disembarks from the aircraft or ship while it is at the place, or
- (b) where the person remains on the ship or aircraft while it is at the place, any other passengers embark on the aircraft or ship at the place.”

(7) In Schedule 1 to the International Travel Regulations (passenger information), after paragraph 2(i) insert—

- “(ia) any other country or territory P will be, or has been, in during the period of 14 days ending with the date of P’s arrival, or planned arrival, in the United Kingdom,
- (ib) where sub-paragraph (ia) applies, the dates on which P was or will be in the other country or territory,”.

(8) Paragraph 1 of the Schedule adds a new Schedule 3 to the International Travel Regulations.

Exceptions to isolation requirements: persons engaged in certain sporting activities

5.—(1) Regulation 10 of the International Travel Regulations (exceptions to isolation requirements) is amended in accordance with sub-paragraphs (a) to (c)—

- (a) in paragraph (3)—
 - (i) in the Welsh language text only, for the words from “i’r Deyrnas Unedig” to the end substitute “i Gymru dros dro at ddiben a awdurdodir gan baragraff (4)(b) i (k).”;
 - (ii) in the English language text only, for “(j)” substitute “(k)”;
- (b) after paragraph (4)(j) insert—

“(ja) where P is competing in a sporting event specified in Schedule 4 or providing coaching or other support to a person who is competing in such an event, to participate in the event or to

- undertake training or other activities connected to the event;
 - (jb) where P is officiating at, or is involved in running, such a sporting event, to attend the event or to undertake activities connected to officiating or running the event;
 - (jc) where P is, in the course of P's work, involved in broadcasting such a sporting event, to attend the event for the purpose of the broadcast or to undertake preparatory activities connected to broadcasting of the event;
 - (jd) where P is, in the course of P's work, involved in journalistic activity at such a sporting event, to attend the event for the purpose of undertaking that activity;
 - (je) where P is a Welsh resident elite athlete returning from an overseas elite competition, to train or compete;
 - (jf) where P provides coaching or other support to a Welsh resident elite athlete and P is returning from an overseas elite competition where P was providing coaching or other such support to an athlete, to provide that coaching or other support;
 - (jg) where P is returning from an overseas elite competition at which P was officiating, or involved in running, to officiate at, or be involved in running, a domestic elite competition;”
- (c) in paragraph (8)—
- (i) in the Welsh text only, the existing text that appears after the words “y rheoliad hwn—” becomes sub-paragraph (a),
 - (ii) after sub-paragraph (a) insert—
 - “(b) “domestic elite competition” means an elite competition taking place in the United Kingdom;
 - (c) “elite competition” means a sporting competition at which any of the participants compete—
 - (i) to derive a living, or
 - (ii) to qualify for, or as part of a selection process for, the Olympics, Paralympics or Commonwealth Games;
 - (d) “overseas elite competition” means an elite competition taking place outside the United Kingdom; and P is to be treated as having returned from such a

competition if P has within the period of 14 days ending with P's last day of isolation, been in a non-exempt country or territory for the purposes of such a competition;

- (e) "Welsh resident elite athlete" means a person who is habitually resident in Wales and—
- (i) derives a living from competing in a sport, or
 - (ii) is an elite athlete within the meaning given in regulation 1 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾."

(2) Paragraph 2 of the Schedule adds a new Schedule 4 to the International Travel Regulations.

Exemptions for persons engaged in certain activities

6.—(1) Schedule 2 to the International Travel Regulations (exempt persons) is amended in accordance with paragraphs (2) to (9).

(2) In paragraph 3—

- (a) omit the "or" after sub-paragraph (1)(a);
- (b) after that sub-paragraph insert—

"(aa) has travelled from an exempt country or territory on a vessel or aircraft operated by, or in support of, Her Majesty's armed forces or by, or in support of, a visiting force and that vessel or aircraft has not taken on any persons, docked in any port or landed in any non-exempt country or territory, or";

(c) in sub-paragraph (1)(b)—

- (i) after "Her Majesty's Naval Service" insert "or by, or in support of, a visiting force";

⁽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)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/497 (W. 118)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/529 (W. 124)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/557 (W. 129)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/619 (W. 141)) and the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/686 (W. 153)).

(ii) for “outside the common travel” substitute “in a non-exempt country or territory”.

(3) In paragraph 13(1)(b), omit the words from “but—” to the end.

(4) After paragraph 17 insert—

“17A.—(1) A worker engaged in essential or emergency works relating to flood and coastal erosion risk management on behalf of—

- (a) the Environment Agency;
- (b) Natural Resources Wales;
- (c) a lead local flood authority in Wales;
- (d) a lead local flood authority in England.

(2) In sub-paragraph (1), “flood and coastal erosion risk management” (*“rheoli’r risg o lifogydd ac erydu arfordirol”*) and “lead local flood authority” (*“awdurdod llifogydd lleol arweiniol”*) have the meaning given by the Flood and Water Management Act 2010⁽¹⁾.

17B. A worker engaged in essential or emergency works relating to current or former mining operations on behalf of—

- (a) the Coal Authority⁽²⁾;
- (b) a council for a county or county borough in Wales;
- (c) Natural Resources Wales.”

(5) In paragraph 24—

- (a) in sub-paragraph (1), in the words before paragraph (a), for “undertaking, or required to commence” substitute “required to undertake or commence within 14 days of their arrival in the United Kingdom”;
- (b) in sub-paragraph (1)(a), for “offshore installations” substitute “an offshore installation”;
- (c) in sub-paragraph (1)(c), for “offshore installations and wells that are being decommissioned or which are being” substitute “an offshore installation or well that is being decommissioned or”;
- (d) in sub-paragraph (2)(a), for “installations” substitute “installation”;
- (e) in sub-paragraph (2)(c), for “wells” substitute “well”.

(1) 2010 c. 29.

(2) The Coal Authority is a body corporate established under section 1 of the Coal Industry Act 1994 c. 21.

(6) In paragraph 27, for “(including commissioning,” substitute “(including construction, commissioning, installation,”.

(7) For paragraph 28 substitute—

“**28.**—(1) A person who has travelled to the United Kingdom for the purpose of transporting material which consists of, or includes, human cells or blood and which is to be used for the provision of a health service by a provider of health services.

(2) For the purposes of this paragraph—

“blood” (“*gwaed*”) includes blood components;

“health service” (“*gwasanaeth iechyd*”) has the meaning given by regulation 10(8).”

(8) Omit paragraph 29.

(9) After paragraph 36 insert—

“**37.** A person working on the making of—

(a) a film which is a British film for the purposes of Schedule 1 to the Films Act 1985(1), or

(b) a television programme which is a British programme for the purposes of Part 15A of the Corporation Tax Act 2009(2).”

Transitional provision: persons who arrived in the common travel area before 10 July 2020

7.—(1) Paragraph (2) applies where a person has, within the period of 14 days ending immediately before these Regulations come into force, arrived in the common travel area from a place outside that area.

(2) The International Travel Regulations apply to the person as if the amendments made by regulations 3 to 6 of these Regulations had not been made, but only in relation to the period of 14 days beginning with the day the person arrived in the common travel area.

(3) “Common travel area” in this regulation has the meaning given by the Immigration Act 1971(3).

(1) 1985 c. 21; Schedule 1 was substituted by the Finance Act 2006 (c. 25) and has been subject to a large number of amendments by the Corporation Tax Act 2009 (c. 4) and S.I. 2006/643, 2006/3430, 2012/1809, 2015/86 and 2018/1105.

(2) Part 15A was inserted by paragraph 1 of Schedule 1 to the Finance Act 2013 (c.39).

(3) 1971 c. 77. See section 1(3). It provides that the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland are collectively referred to in that Act as “the common travel area”.

Change to review period

8. In Part 6 of the International Travel Regulations (review and expiry), in regulation 19 (review of requirements), for paragraphs (b) and (c) substitute—

- “(b) by 27 July 2020;
- (c) at least once in the period of 28 days beginning with 28 July 2020;
- (d) at least once in each subsequent period of 28 days.”

Miscellaneous amendments

9.—(1) The International Travel Regulations are amended in accordance with paragraphs (2) to (4).

(2) In regulation 9(2)(a) (as renumbered by regulation 3(4)(a) of these Regulations), for “paragraph 2” substitute “paragraph 1(2)”.

(3) In regulation 17(10), for “paragraph (8)” substitute “paragraph (9)”.

(4) In Schedule 2—

- (a) in paragraph 1(2), in the words before paragraph (a), for “9(a)” substitute “9(2)(a)”;
- (b) in paragraph 21(1)—
 - (i) in the words before paragraph (a), after “person” insert “who is”;
 - (ii) in paragraph (b), for “is a spacecraft controller who is” substitute “a spacecraft controller”.

PART 3

Amendments to the Public Health Information Regulations

Provision of information during journey

10.—(1) Part 2 of the Public Health Information Regulations (requirement to provide information to passengers) is amended in accordance with paragraphs (2) to (4).

(2) In regulation 4(2) omit “orally”.

(3) In the Welsh language version of the on-board statement in the Schedule—

- (a) for “Llywodraeth Cymru a Iechyd Cyhoeddus Cymru” substitute “asiantaethau iechyd y cyhoedd y DU”;
- (b) omit “ar www.gov.uk”;
- (c) after “14 o ddiwrnodau ar ôl i chi gyrraedd” insert “, oni bai eich bod mewn categori esempt. Ewch i gov.uk i weld y rhestr esemptiadau.”;

- (d) omit the text from “Wedi cyrraedd,” to “www.llyw.cymru/coronafeirws”.

(4) In the English language version of the on-board statement in the Schedule—

- (a) for “Welsh Government and Public Health Wales” substitute “UK’s public health agencies”;
- (b) omit “at www.gov.uk”;
- (c) after “14 days after you arrive” insert “, unless you are in an exempt category. To view the exemptions list, visit gov.uk.”;
- (d) omit the text from “When you arrive” to “www.gov.wales/coronavirus”.

Change to review period

11. In Part 4 of the Public Health Information Regulations (miscellaneous), in regulation 9(1) (review of requirements), for sub-paragraphs (b) and (c) substitute—

- “(b) by 27 July 2020;
- (c) at least once in the period of 28 days beginning with 28 July 2020;
- (d) at least once in each subsequent period of 28 days.”

Miscellaneous amendment

12. In Part 2 of the Public Health Information Regulations (requirements to provide information to passengers), in regulation 3(2), in the words before sub-paragraph (a), for “paragraph (1)(a)” substitute “paragraph (1)”.

Mark Drakeford
The First Minister, one of the Welsh Ministers
At 10.20 a.m. on 9 July 2020

SCHEDULE Regulations 4(8) and 5(2)

**Addition of new Schedules 3 and 4 to the
International Travel Regulations**

1. After Schedule 2 to the International Travel Regulations (exempt persons) insert—

“SCHEDULE 3 Regulation 9(1)

**Exempt countries and territories
outside the common travel area**

PART 1

Countries and territories

Andorra

Antigua and Barbuda

Aruba

Australia

Austria

The Bahamas

Barbados

Belgium

Bonaire, Sint Eustatius and Saba

Croatia

Curacao

Cyprus

Czech Republic

Denmark

Dominica

Faroe Islands

Fiji

Finland

France

French Polynesia

Germany

Greece

Greenland
Grenada
Guadeloupe
Hong Kong
Hungary
Iceland
Italy
Jamaica
Japan
Liechtenstein
Lithuania
Luxembourg
Macau
Malta
Mauritius
Monaco
The Netherlands
New Caledonia
New Zealand
Norway
Poland
Reunion
Saint Barthelemy
Saint Kitts and Nevis
Saint Lucia
Saint Pierre and Miquelon
San Marino
Serbia
Seychelles
South Korea
Spain
Switzerland
Taiwan
Trinidad and Tobago
Turkey

Vatican City State

Vietnam

PART 2

United Kingdom Overseas Territories

The Sovereign Base Areas of Akrotiri and
Dhekelia in the Island of Cyprus

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

British Virgin Islands

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

Saint Helena, Ascension and Tristan da Cunha

South Georgia and the South Sandwich Islands

Turks and Caicos Islands.”

2. After Schedule 3 to the International Travel Regulations (as inserted by paragraph 1 of this Schedule) insert—

“**SCHEDULE 4** Regulation 10(4)

Specified sporting events

1. An event at which any of the participants compete—

- (a) to qualify, or
- (b) as part of a selection process,

for the Olympics, Paralympics or Commonwealth Games.

2. Cricket – test matches.

3. Darts—

- (a) Professional Darts Corporation Summer Series;
- (b) Betfred World Matchplay Darts.

4. Football – UEFA Champions League and Europa League fixtures.

5. Golf—

- (a) Professional Golfers' Association Betfred British Masters Championship;
- (b) European Tour – English Open;
- (c) European Tour – English Championship;
- (d) European Tour – United Kingdom Championship;
- (e) BMW Professional Golfers' Association Championship;
- (f) European Tour – Celtic Classic;
- (g) European Tour – Wales Open;
- (h) European Ladies Tour– Aberdeen Standard Investments Ladies Scottish Open;
- (i) European Ladies Tour – AIG Women's British Open;
- (j) European Tour – Alfred Dunhill Links Championship;
- (k) European Tour – Aberdeen Standard Investments Scottish Open.

6. Horse racing—

- (a) Moët & Chandon July Festival;
- (b) QIPCO King George Diamond Weekend;
- (c) Qatar Goodwood Festival;
- (d) Yorkshire Ebor Festival.

7. Motor racing—

- (a) Formula One Pirelli British Grand Prix;
- (b) Emirates Formula One 70th Anniversary Grand Prix.

8. Rugby football league – Betfred Super League fixtures.

9. Rugby football union – international fixtures.

10. Snooker – Betfred World Snooker Championship.”

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020.

Vaughan Gething,
Minister for Health and Social Services

9 July 2020

1. Description

Subject to specified exemptions, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the Travel Regulations”) require all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland); or where they have been outside of the Common Travel Area in the past 14 days, to provide their contact details and travel information and to isolate themselves for a period of 14 days.

These regulations amend the Travel Regulations so as to introduce an exemption from the isolation requirement for passengers arriving from specified countries. The regulations also amend and extend categories of person who are exempt from requirements to provide passenger information and/or isolate upon arrival into Wales.

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Passenger Information Regulations”) introduced requirements for operators of air and sea international passenger services to provide their passengers with information about coronavirus and related requirements (such as the duty to self-isolate when coming to Wales from outside the Common Travel Area), as well as information on public health guidance.

These regulations amend the content of the on-board statement set out in the Schedule to the Passenger Information Regulations, which must be made to passengers during their journey to Wales, and remove the requirement to provide that statement orally.

These regulations amend both the Travel Regulations and the Passenger Information Regulations so as to change the review period from a maximum of 21 days to a maximum of 28 days and set 27 July 2020 as the date by which the next review must be carried out.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying, on 10 July 2020.

On 6 July 2020 the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020 were made, with some provisions coming into force on 7 July and some on 10 July. Amending regulations are also being introduced on similar timelines amending the equivalent requirements for Scotland and Northern Ireland as part of a UK-

wide approach to avoiding the spread of infection or contamination from Covid-19 via any imported infections via travellers.

European Convention on Human Rights

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

Articles 5 (right to liberty and security), 8 (right to respect for private and family life) and A1P1 (right to peaceful enjoyment of possessions) are potentially engaged by the Travel Regulations. Article 14 (protection from discrimination) is also engaged in connection with the interference of the other rights identified.

These are all 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 necessary and proportionate.

Each of these Articles was considered to be engaged by the Regulations as originally made. The changes made by the amending Regulations do not alter that position.

The changes made by these amending Regulations are 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. The amendments widen and expand the exemptions from the requirements to isolate and remove the blanket requirement to isolate thus imposing less restrictive measures on persons entering Wales. Those who benefit from these amendments are those who (i) fall into an exempted category; or (ii) arrive from an exempted countries. These amendments remain a justifiable and proportionate interference with Article 8.

It was considered that the Passenger Information Regulations as originally made did not interfere with any ECHR rights. The changes these amending Regulations will make do not alter that position.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales.

Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 Passenger Information Regulations were made on 15 June 2020 and, save for the provisions which made minor amendments to the Travel Regulations which came into force on making, came into force on 17 June 2020.

The Welsh Ministers are under a duty to review the need for the requirements imposed by both the Travel and the Passenger Information Regulations at least once every 21 days, with the first review being carried out by 29 June 2020.

The Travel Regulations have been kept under review and, to ensure that the requirements are proportionate, these regulations amend the self-isolation requirement so that it applies only to individuals arriving in Wales from non-exempt countries. Exempt countries are those which are considered to present an acceptable level of risk from a public health perspective for passengers to enter the UK and which are listed in the Regulations. These regulations insert a new Schedule 3 into the International Travel Regulations, which provides a list of “exempt countries and territories” (from which persons travelling to Wales will

be exempt from the self-isolation requirements in regulations 7 and 8). The list in Schedule 3 will be kept under continual review in relation to the public health risks posed by persons travelling to England from outside the CTA.

These regulations also make a number of changes to the existing schedules to the Travel Regulations. It amends Schedule 1 to make certain changes to the passenger information that must be provided. They also amend regulation 3 and Parts 1 and 2 of Schedule 2, to make certain changes to the categories of persons who are exempt from the requirement in regulations 4 and 5 of the Travel Regulations to provide passenger information and/or from the requirement in regulations 7 and 8 of those regulations to self-isolate.

None of the amendments to the Travel Regulations will affect the requirements under the regulations for persons arriving into the common travel area before the coming into force of the amendments.

The Passenger Information Regulations are amended at Part 3 of these regulations so as to make minor changes to the content of the on-board statement made to passengers during their journey to Wales, so that the statement is consistent across the U.K. The requirement for operators to make the statement orally is also removed; instead, operators are simply required to deliver the statement, providing greater flexibility.

The Regulations amend both the Travel Regulations and the Passenger Information Regulations to provide that the statutory review period (at regulation 19 and [9] respectively) will be 28 days rather than 21 days, with the next reviews taking place no later than 27 July 2020. The same approach is being taken in England, Scotland and Northern Ireland and changing the Regulations for Wales will ensure that the review point remains consistent across all four nations of the UK for these Regulations

Finally, minor technical amendments are made to both sets of Regulations to correct previous drafting errors.

The Welsh Ministers consider that requirements imposed by the 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 Regulations.

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.



Ein cyf/Our ref : MA-FM-2236-20

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

9 July 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006), I am notifying you that this Statutory Instrument will come into force less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

In order to prevent the spread of infection or contamination from coronavirus or coronavirus disease, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 were made on 5 June, coming into force on 8 June. Following a review these Regulations are now being amended so as to introduce a list of countries and territories from which travellers to Wales would be exempt from the restrictions imposed by the Regulations as well as amending and extending categories of person who are exempt from those restrictions.

The Regulations made today also amend the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 that were made on 15 June and came into force on 17 June 2020 (save for the minor amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 which came into force on making). The amendments ensure the on-board statement that operators of air and sea international passenger services must provide to passengers during their journey to Wales is consistent across the UK and provide greater flexibility in how the statement can be delivered.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSMFT@gov.wales

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.

Not adhering to the 21 day convention allows the Regulations to come into force on 10 July 2020 and in view of the circumstances surrounding this disease the reduced period is considered necessary and justifiable in this case.

Equivalent Regulations were made in England on 6 July, coming into force in stages on 7 and 10 July and similar timeframes are being followed in Scotland and Northern Ireland as part of a 4 nations approach to avoiding the spread of infection or contamination from coronavirus or coronavirus disease in the UK via any imported infections via travellers.

Due to the immediacy of the Regulations they have not been subject to consultation however the Welsh Government has been in regular contact with the UK Government and the other Devolved Administrations in connection with the development and introduction of the Regulations.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

I am copying this letter to Mick Antoniw AM, 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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **International Travel Regulations**
DATE **9 July 2020**
BY **The First Minister**

Llywydd, at the request of the UK Government the Welsh Government has agreed to amend *The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020* to exempt travellers from a list of countries from the quarantine requirements put in place by the regulations. The original regulations were made on 5 June and came into force on 8 June; the amended regulations will come into force on 10 July. As a result of the amended regulations travellers arriving in Wales from countries listed below will no longer be required to isolate for a quarantine period.

The travel regulations require passengers arriving in Wales from outside of the Common Travel Area, or where they have been outside of the Common Travel Area in the past 14 days, to provide their contact details and travel information and to isolate themselves for a period of 14 days. The Regulations contain a number of exemptions for specified categories of people – such as air flight crew, for example. The amendments agreed now exempt travellers from the countries listed.

We are also taking the opportunity to amend the *Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020* to provide flexibility in how the public health statement delivered to passengers on-board aircraft may be delivered. We are harmonising this statement with that given on behalf of the other UK countries.

Llywydd, responsibility for managing UK borders rests with the UK Government. The Welsh Government has, throughout this process, aimed to be constructive in enabling the UK Government achieve its policy objective. The UK Government has shared its methodology with us and this has been reviewed by the Chief Medical Officer.

Below is the list of exempt countries included in the Regulations.

Andorra
Antigua and Barbuda
Aruba

Australia
Austria
The Bahamas
Barbados
Belgium
Bonaire, Sint Eustatius and Saba
Croatia
Curacao
Cyprus
Czech Republic
Denmark
Dominica
Faroe Islands
Fiji
Finland
France
French Polynesia
Germany
Greece
Greenland
Grenada
Guadeloupe
Hong Kong
Hungary
Iceland
Italy
Jamaica
Japan
The Republic of Korea
La Reunion
Liechtenstein
Lithuania
Luxembourg
Macau
Malta
Mauritius
Monaco
Netherlands
New Caledonia
New Zealand
Norway
Poland
San Marino
Serbia
Seychelles
Spain
Saint Barthelemy

Saint Kitts and Nevis
Saint Lucia
Saint Pierre and Miquelon
Switzerland
Taiwan
Trinidad and Tobago
Turkey
Vatican City
Vietnam

United Kingdom Overseas Territories

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
Saint Helena, Ascension and Tristan da Cunha
South Georgia and the South Sandwich Islands
Turks and Caicos Islands

SL(5)578 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include requiring people to self-isolate for a period of 14 days. The requirements are subject to exceptions, and certain categories of person are exempt from having to comply.

These Regulations amend the International Travel Regulations to remove Serbia from the Schedule 3 list of exempt countries and territories. As such, self-isolation requirements are being reintroduced for travellers coming into Wales from Serbia.

Procedure

Negative.

Technical Scrutiny

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

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

Regulation 1(3) of the English text defines the term “International Travel Regulations”. However, Regulation 2(1) then refers to the “The International Travel Amendments”. The Welsh text does not have this inconsistency.

Merits Scrutiny

The following 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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 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.

These Regulations were laid on 10 July, and came into force the following day, 11 July 2020. 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 10 July 2020. This states:



I wrote to you on 9 July to advise that we had laid the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020. Subsequent to those Regulations being made it has been necessary to urgently remove Serbia from the list of exempted countries and territories that are now set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. Not adhering to the 21 day convention allows these further amending Regulations to come into force at the earliest opportunity, and in view of the changing evidence on countries at risk in relation to this disease this is considered necessary and justifiable in this case.

2. 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

Schedule 3 of the International Travel Regulations, which provided for an exempt list of countries and territories, including Serbia, only came into force on 10 July 2020, as the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 Regulations, containing the Schedule 3 to the International Travel Regulations were made and laid on 9 July 2020. These Regulations were made at 3.45pm on the 10 July, and came into force on 11 July, removing Serbia from the list in Schedule 3.

The Explanatory Memorandum to these Regulations states that

"The Travel Regulations are kept under review. Subsequent to the list of exempt countries and territories being added to those Regulations, updated advice from the Joint Biosecurity Council and Public Health England has been received which indicates the risk to public health of inbound travel from Serbia has risen. On the basis of this advice the Welsh Government considers that self-isolation requirements should now be reintroduced for travellers coming into Wales from Serbia. The requirements will come into effect for any travellers entering the Common Travel Area from Serbia on or after 11 July 2020."

There is a need to remove from the list of exempt countries and territories, a country or territory from which inbound travel represents an increased risk to public health. However, these Regulations, which remove Serbia from the Schedule 3 list were made, and laid, on the same day that the list to exempt Serbia came into force. As such, there may be a risk of confusion to readers of the legislation.

3. 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

In respect of the human rights implications of these Regulations, the Welsh Government's Explanatory Memorandum states as follows:

The amendment contained in these Regulations does not change the engagement under the Travel 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.



Human rights are engaged under the International Travel Regulations, and these Regulations do not change the position in this regard. These Regulations remove one of the exempt countries from the list in Schedule 3 to the International Travel Regulations, requiring travellers from Serbia to self isolate.

4. 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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently.

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

27 July 2020



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. 726 (W. 163)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include requiring persons to isolate for a period of 14 days. The requirements are subject to exceptions, and certain categories of person are exempt from having to comply.

The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (“the amendment regulations”) amended the International Travel Regulations. By virtue of those amendments, persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations (as inserted by the amendment regulations) are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

These Regulations amend the International Travel Regulations to remove Serbia from the Schedule 3 list of exempt countries and territories.

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.

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. 726 (W. 163)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) Regulations
2020**

Made at 3.45 p.m. on 10 July 2020

Laid before *Senedd*
Cymru at 6.00 p.m. on 10 July 2020

Coming into force 11 July 2020

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

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 11 July 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(2).

Amendment to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2.—(1) The International Travel Amendments are amended as follows.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/714 (W. 160).

(2) In Part 1 of Schedule 3 (exempt countries and territories outside the common travel area), omit “Serbia”.

Persons departing Serbia on 10 July 2020

3.—(1) For the purposes of regulation 7(1)(b) and 8(1) of the International Travel Regulations, a person arriving in Wales after these Regulations come into force is not to be treated as having been in a non-exempt country or territory within the period of 14 days ending with the day of the person’s arrival in Wales if the person—

- (a) departs Serbia on 10 July 2020, and
- (b) has not been in another non-exempt country or territory within that 14 day period.

(2) In this regulation, “non-exempt country or territory” has the same meaning as in regulation 9(1) of the International Travel Regulations.

Mark Drakeford

The First Minister, one of the Welsh Ministers
At 3.45 p.m. on 10 July 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020

Vaughan Gething,
Minister for Health and Social Services

10 July 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to self-isolate themselves for a period of 14 days.

The Travel Regulations have been amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These regulations further amend the Travel Regulations so as to remove Serbia from the list of exempt countries and territories.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force on 11 July 2020, which is less than 21 days from the date of laying.

European Convention on Human Rights

The amendment contained in these Regulations does not change the engagement under the Travel 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales.

Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 Travel Regulations are kept under review. Subsequent to the list of exempt countries and territories being added to those Regulations, updated advice from the Joint Biosecurity Council and Public Health England has been received which indicates the risk to public health of inbound travel from Serbia has risen. On the basis of this advice the Welsh Government considers that self-isolation requirements should now be reintroduced for travellers coming into Wales from Serbia. The requirements will come into effect for any travellers entering the Common Travel Area from Serbia on or after 11 July 2020.

The Welsh Ministers consider that reintroducing the requirements imposed by the Travel Regulations in respect of travellers from Serbia is 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 Regulations.

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.



Ein cyf/Our ref: MA/FM/2271/20

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

10 July 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006), I am notifying you that this Statutory Instrument will come into force less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

I wrote to you on 9 July to advise that we had laid the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020. Subsequent to those Regulations being made it has been necessary to urgently remove Serbia from the list of exempted countries and territories that are now set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

Not adhering to the 21 day convention allows these further amending Regulations to come into force at the earliest opportunity, and in view of the changing evidence on countries at risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSMFT@gov.wales

I am copying this letter to Mick Antoniw AM, 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)588 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after being abroad. They include a requirement for persons arriving in Wales to isolate for a period of 14 days. The requirements are subject to exceptions, and persons entering Wales after being in one or more exempt countries and territories are not required to isolate. These Regulations amend the International Travel Regulations to remove Spain from the list of exempt countries and territories.

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

These Regulations came into force on the day before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 27 July 2020 that:

It has been necessary to urgently remove Spain from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 following advice which indicates the risk to public health of inbound travel from Spain has risen.

Not adhering to the 21 day convention, and bringing them into force before they were laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered 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 Senedd



On 8 June 2020, Vaughan Gething MS, Minister for Health and Social Care, gave evidence to us on the Wales restrictions. He said: "We actually want to have something that helps the public to understand how they can follow the rules, and that's why the guidance is really important as well".

At the time of writing, users of the Welsh Government website who click on the link for guidance on "*Foreign travel and returning home*", are directed to the UK Government website. The UK Government website gives advice on returning to the UK, and then directs the reader back to the Welsh Government website for guidance on self-isolating in Wales.

One of the links on the UK Government page is to the Welsh Government Guidance "*How to self-isolate when you travel to Wales: coronavirus (COVID-19)*". This can be also be accessed directly through the Welsh Government website as part of its suite of information on "Travel: coronavirus". It states that "*if you arrive in the UK and have been outside the Common Travel Area within the last 14 days, then you will need to self-isolate for the remainder of the 14 day period*". This guidance was last updated on 7 June 2020, however travellers from exempt countries outside the Common Travel Area have not had to isolate since 10 July 2020.

The Welsh Government guidance "*Travellers exempt from self-isolation: coronavirus (COVID-19)*" has however been updated and includes a list of exempt countries, which does not include Spain.

Whilst some people using the guidance may eventually be able to work out the law on returning to Wales from a foreign country, the guidance is not clear or easy to navigate, and is likely to cause confusion to some readers.

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 to the second merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

29 July 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

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Legislation, Justice and Constitution Committee

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. 804 (W. 177)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 2)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163).

The International Travel Regulations impose requirements on persons entering Wales after being abroad. They include a requirement for persons arriving in Wales to isolate for a period of 14 days.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 2 of these Regulations amends the International Travel Regulations to remove Spain from the list of exempt countries and territories.

Regulation 3 makes transitional provision. This relates to a person who had last been in Spain within the 14 days prior to their arrival in Wales and before the amendment made by regulation 2 came into force. If that person leaves Spain shortly before the amendment comes into force and arrives in Wales afterwards they are to be treated (for the purposes of regulation 7(1)(b) and 8(1) of the International Travel Regulations) as having been in a non-exempt country or territory. Similarly if that person leaves Spain at any time within the 14 days before the amendment comes into force and arrives in Wales from another place that is exempt (or from elsewhere in the UK) after the amendment comes into force, the person is also to be treated as having been in a non-exempt country or territory.

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.

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. 804 (W. 177)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 2)
Regulations 2020**

Made 25 July 2020

Coming into force 26 July 2020

Laid before Senedd Cymru 27 July 2020

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

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020.

(2) These Regulations come into force on 26 July 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020⁽²⁾.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/714 (W. 160) and S.I. 2020/726 (W. 163).

Amendment to the International Travel Regulations relating to Spain

2. In Schedule 3 to the International Travel Regulations omit “Spain”.

Transitional provision

3.—(1) Paragraph (2) applies to a person (“P”) who—

- (a) arrived in Wales after the amendment made by regulation 2 came into force, and
- (b) was last in Spain—
 - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
 - (ii) before that amendment came into force.

(2) For the avoidance of doubt, P is to be treated for the purposes of regulations 7(1)(b) and 8(1) of the International Travel Regulations as having been in a non-exempt country or territory when P was last in Spain.

(3) In this regulation, “non-exempt country or territory” has the same meaning as in regulation 9(1) of the International Travel Regulations.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
25 July 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.2) 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, International Travel) (Wales) (Amendment) (No.2) Regulations 2020

Vaughan Gething,
Minister for Health and Social Services

27 July 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to self-isolate themselves for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These regulations further amend the International Travel Regulations so as to remove Spain from the list of exempt countries and territories.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, the Llywydd has been informed that the Regulations came into force on 26 July 2020, which is before the date of laying.

European Convention on Human Rights

The amendment contained in these Regulations does not change the engagement under the International Travel 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales.

Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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 International Travel Regulations are kept under review. Subsequent to the list of exempt countries and territories being added to those Regulations, updated advice from the Joint Biosecurity Council has been received which indicates the risk to public health of inbound travel from Spain has risen. On the basis of this advice the Welsh Government considers that self-isolation requirements should now be reintroduced for travellers coming into Wales from Spain. The requirements will come into effect for any travellers entering the Common Travel Area from Spain on or after 26 July 2020.

The Welsh Ministers consider that reintroducing the requirements imposed by the International Travel Regulations in respect of travellers from Spain is 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 Regulations.

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.



Ein cyf/Our ref: MA/VG/2431/20

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

27 July 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 (as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006), I am notifying you that this Statutory Instrument came into force before it was laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

It has been necessary to urgently remove Spain from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 following advice which indicates the risk to public health of inbound travel from Spain has risen.

Not adhering to the 21 day convention, and bringing them into force before they were laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to Mick Antoniw AM, 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,

Rebecca Evans AS/MS
Minister for Finance and Trefnydd

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE Coronavirus quarantine measures for travellers arriving in Wales from Spain

DATE 25 July 2020

BY Vaughan Gething MS, Minister for Health and Social Services

This statement is being issued during recess in order to keep Members informed of the latest developments on international travel and the coronavirus. Should Members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Earlier this afternoon I attended a meeting of Ministers from all 4 UK countries to consider the public health risk posed by an increasing prevalence of COVID-19 in parts of Spain.

The Ministerial Group agreed today to remove all of Spain, including its islands, from the list of countries exempt from our health measures at the border with implementation to take effect at the beginning of Sunday, 26 July 2020.

I have therefore made an urgent amendment to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, meaning anyone who arrives from Spain (or who has been in Spain during the past 14 days) will be required to quarantine for 14 days as of tomorrow.

Similar action has been taken by Ministers in Northern Ireland, Scotland and England.

Agenda Item 3.5

SL(5)580 – The Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

The Regulations make temporary provision in relation to the administration of Local Access Forums ("LAFs") to ensure that they are able to continue to meet and take decisions during the period of disruption caused by COVID-19.

The measures employed to combat COVID-19 include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. The Countryside Access (Local Access Forums) (Wales) Regulations 2001 currently place requirements on LAFs to meet in person, to make meetings open to the public and to enable the public to inspect their annual reports in the offices of their respective governing authority. This runs counter to the measures in place for COVID-19.

The Regulations provide flexibility to enable LAFs to operate safely, effectively and lawfully by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

Procedure

Negative resolution.

Technical Scrutiny

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

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 Assembly.

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The explanatory memorandum states that "given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations" and that "the Welsh Government has been in regular contact with local authorities and National Resources Wales." The explanatory memorandum says that the measures taken are temporary and no substantive policy changes will be created by the legislation.

Implications arising from exiting the European Union

No implications are identified.

Government Response

A Welsh Government response is not required.





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. 723 (W. 161)

COUNTRYSIDE, WALES

**The Countryside Access (Local
Access Forums) (Wales)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make non-textual amendments to the Countryside Access (Local Access Forums) (Wales) Regulations 2001 (“the 2001 Regulations”) to ensure that Local Access Forums (“LAFs”) are able to continue to meet and take decisions during the period of disruption caused by the coronavirus pandemic. Other than Regulations 1 and 6, these Regulations cease to have effect on 30 April 2021. Regulation 1 and 6 cease to have effect two years after they come into force.

Regulation 2 of these Regulations enables LAFs to hold remote meetings as opposed to having to have them in a single physical location.

Regulation 3 makes provision about temporary appointments to LAFs, by giving the appointing authorities the power to choose not to exercise the requirements in regulations 7(a) and (b) in relation to appointments made during the period beginning with the day these Regulations come into force and ending at the end of 30 April 2021. It further provides that such appointments may only be made for a term of up to 9 months from the date of the appointment. The purpose of this provision is to allow any LAF members that have recently come to the end of their term of appointment to be reappointed quickly and simply if it is not possible to conduct a full recruitment round at present.

Regulation 4 allows papers for meetings to be sent electronically.

Regulation 5 allows the election of the Chair or Deputy Chair to be undertaken by means other than secret ballot, if that is not an option for them and allows the LAFs to decide on their own procedure.

Regulation 6 allows the person presiding to exclude the public from a particular item of business if he considers it appropriate to do so.

Regulation 7 provides that for the purpose of calculating the 12 month period for which a member has not attended meetings before membership may be terminated, the period between the day these Regulations come into force and ending with the first day after Day One on which a meeting of the forum, or any committee of the forum, is held is not to be taken into consideration.

Regulation 8 requires annual reports approved after 31 March 2020 and before 30 April 2021 to be published on the appointing authority's website.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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. 723 (W. 161)

COUNTRYSIDE, WALES

**The Countryside Access (Local
Access Forums) (Wales)
(Coronavirus) Regulations 2020**

<i>Made</i>	<i>9 July 2020</i>
<i>Laid before Senedd Cymru</i>	<i>13 July 2020</i>
<i>Coming into force</i>	<i>4 August 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 94 and 95(5) of the Countryside and Rights of Way Act 2000⁽¹⁾.

Title, application, commencement, expiry and interpretation

1.—(1) The title of these Regulations is the Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2020. These Regulations come into force on 4 August 2020.

(2) These Regulations, other than regulation 6 and this regulation, cease to have effect on 30 April 2021.

(3) Regulation 6 and this regulation cease to have effect two years after coming into force.

(4) In these Regulations, “the 2001 Regulations” means the Countryside Access (Local Access Forums) (Wales) Regulations 2001⁽²⁾.

Meetings held before the end of 30 April 2021

2. The 2001 Regulations are to be read as if after regulation 2 there were inserted—

-
- (1) 2000 c. 37. The powers of the National Assembly for Wales under section 94 of the Countryside and Rights of Way Act 2000 were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (2) S.I. 2001/4002 (W. 330).

“Remote attendance at meetings

2A.—(1) A meeting of a forum or a committee of a forum may be held by means of any equipment or other facility which enables persons who are not in the same place to speak to and be heard by each other (whether or not the equipment or facility also enables those persons to see each other).

(2) In these Regulations, references to the attendance or presence of a person at a meeting includes, in relation to a meeting which is held by the means described in paragraph (1), attendance by the use of those means.”

3. The 2001 Regulations are to be read as if after regulation 7 there were inserted—

“Temporary appointment provisions

7A.—(1) The following provisions relate to an appointment made during the period beginning with the day these Regulations come into force and ending at the end of 30 April 2021.

(2) In regulations 7(a) and (b) of the 2001 Regulations, “must” is to be read as “may”.

(3) If an appointing authority does not exercise either one or both powers in regulations 7(a) and (b), regulation 4(3) is to be read as if for the words “3 years from the date of the first meeting of the forum” there were substituted “9 months beginning with the first day of the person’s membership”.

4. Regulation 10(2)(c) (papers for meetings) is to be read, in relation to a meeting held before the end of 30 April 2021, as if for the words from “are delivered” to the end there were substituted “are sent by post to each member of the forum at such address as the member may specify for the purpose, so as to be delivered in the normal course of posting at least seven clear days before the date of a meeting; or are sent electronically to each member at least seven clear days before the date of a meeting.”

5. Regulation 12 (election of chair and deputy chair) is to be read as if—

- (a) in paragraph (2), for “by secret ballot” there were substituted “using such procedure as the forum may decide”;
- (b) paragraphs (4) to (6) were omitted.

6. Regulation 15 (conduct of meetings) is to be read as if—

- (a) in paragraph (2), for the words from “shall be open to the public” to the end there were

substituted “if the meeting is open to the public, the person presiding may, if a particular item of business to be considered at the meeting makes it appropriate for the public to be excluded during consideration of that item of business, rule that the public are to be excluded”;

(b) after paragraph (2) there were inserted—

“(2A) In paragraphs (1) and (2), the references to the place or places at which meetings are to be held are not limited to a single physical location.”;

(c) in paragraph (10), for “of those members present” there were substituted “, or such other method of voting as the forum may decide, by those members present”;

(d) after paragraph (10) there were inserted—

“(11) If a vote is necessary on the question of the method of voting the forum is to use, the person presiding is to determine the method of voting on that question.”

Failure of members to attend meetings

7. Regulation 14 of the 2001 Regulations (termination of membership of forums) is to be read as if, after paragraph (1) there were inserted—

“(1A) In relation to any particular member of a forum, the period of 12 months specified in paragraph (1)(g) is not to include the period—

- (a) beginning with the day on which the Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2020 come into force (“Day One”), and
- (b) ending with the first day after Day One on which a meeting of the forum, or any committee of the forum, is held.”

Annual reports by appointing authorities

8. Regulation 16 of the 2001 Regulations (annual reports) is to be read as if for paragraph (3) there were substituted—

“(3) An annual report approved after 31 March 2020 and before the end of 30 April 2021 must be published by the appointing authority on its website.”

Hannah Blythyn

Deputy Minister for Housing and Local Government,
under the authority of the Minister for Housing and
Local Government, one of the Welsh Ministers
9 July 2020

Explanatory Memorandum to the Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Housing and Local Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Countryside Access (Local Access Forums) (Coronavirus) (Wales) Regulations 2020.

Hannah Blythyn MS
Deputy Minister for Housing and Local Government
13 July 2020

PART 1

1. Description

The Regulations make temporary provision in relation to the administration of Local Access Forums (“LAFs”) to ensure that they are able to continue to meet and take decisions during the period of disruption caused by COVID-19.

The measures employed to combat COVID-19 include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. The Countryside Access (Local Access Forums) (Wales) Regulations 2001 currently place requirements on LAFs to meet in person, to make meetings open to the public and to enable the public to inspect their annual reports in the offices of their respective governing authority. This runs counter to the measures in place for COVID-19.

The Regulations provide flexibility to enable LAFs to operate safely, effectively and lawfully by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

There are no matters of special interest to the Legislation, Justice and Constitution Committee.

3. Legislative background

These Regulations are made using the powers in section 94 and 95(5) of the Countryside and Rights of Way Act 2000. The powers of the Senedd under that Act were transferred to the Welsh Ministers by s.162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

Existing legislation requires local authorities and National Park Authorities to have a LAF – an advisory body on public access to land for the purposes of open-air recreation.

These Regulations make non-textual amendments to the Countryside Access (Local Access Forums) (Wales) Regulations 2001 to ensure that Local Access LAFs are able to continue to meet and take decisions during the period of disruption caused by the coronavirus pandemic.

Regulation 1 sets out preliminary matters and defines terms used in the Regulations.

Regulation 2 allows meetings to be held remotely rather than in person to address the travel restrictions and social distancing requirements imposed by the pandemic.

Regulation 3 makes provision about temporary appointments to LAFs. It gives appointing authorities the power to choose not to undertake certain requirements of the recruitment process in regulation 7 of the 2001 Regulations if that would be difficult or impossible for them due to the current restrictions in place. This power is only available for appointments made in the period beginning with the day on which the Regulations come into force and ending with 30 April 2021. Should an appointing authority decide to exercise this power to undertake a simpler recruitment process, then that appointment may only be made of a maximum term of 9 months;

Regulation 4 enables papers to be delivered through electronic means to minimise potential issues with their postal or personal delivery;

Regulation 5 enables the elections of chairs and deputy chairs to be conducted via means other than a secret ballot, which may be difficult in a remote meeting context.

Regulation 6 provide LAFs with the flexibility to exclude the public from consideration of certain items at the meeting as the person presiding may decide.

Regulation 7 modifies the provision requiring automatic disqualification of membership due to failure to attend meetings for a period of 12 months period.

Regulation 8 substitutes the right of the public to inspect the annual reports of LAFs at the offices of their respective authorities with a requirement for the annual report to be published on a website.

5. Consultation

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

The Welsh Government has been in regular contact with local authorities and National Resources Wales.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation and the urgency required to make these Regulations. No significant, impact on the private, voluntarily or public

sector is foreseen. No substantive policy changes will be created by the legislation.

Agenda Item 3.6

SL(5)582 – The Relaxation of School Reporting

Requirements (Wales) (Coronavirus) Regulations 2020

Background and Purpose

The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020 (**these Regulations**) bring into force the necessary legislative changes which:

- amend the School Governors' Annual Reports (Wales) Regulations 2011;
- amend the Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011;
- amend the School Information (Wales) Regulations 2011;
- revoke the School Performance and Absence Targets (Wales) Regulations 2011; and
- amend the School Performance Information (Wales) Regulations 2011.

The purpose and intended effect of these Regulations is to relax burdens on schools, local authorities and governing bodies in Wales. The Welsh Government recognises that schools, local authorities and governing bodies may be unable to comply with certain statutory reporting requirements. Those requirements may also pose a disproportionate administrative burden on those responsible.

The legislative changes were communicated to stakeholders in May and a three week consultation on the legislative changes ran from 22 June to 10 July 2020.

Procedure

Negative.

Technical Scrutiny

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

Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this

1. Regulation 6 of the School Performance Information (Wales) Regulations 2011 (**the Performance Information Regulations**) requires a local authority to provide the Welsh Ministers with information prescribed in the Performance Information Regulations no later than 20 school days before the end of each summer term. There is no corresponding deadline for complying with the duties contained in regulations 5 and 8 of the Performance Information Regulations.

As the summer term has ended, it appears that the effect of the disapplication of regulation 6 in relation to the 2019-20 school year is to release local authorities that have not complied with their duty from continuing to be in breach of that duty. The effect appears to operate retrospectively because the deadline by which the local authority should have provided information to the Welsh Ministers has passed.



Merits Scrutiny

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

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

2. In footnote (1), on page 4 of these Regulations concerning the Education Act 1996, the reference to “*by Schedule 30 and paragraph 67 of Schedule 31 to the Schools Standards and Framework Act 1998*” should instead refer to “*by paragraph 67 of Schedule 30 and Schedule 30*”. The same typo exists in the Welsh version of these Regulations – “*gan Atodlen 30 a pharagraff 67 o Atodlen 31*” should instead refer to “*gan baragraff 67 o Atodlen 30 ac Atodlen 31*”.
3. In footnote (4), on page 5 of these Regulations concerning the Education Act 2002, section 210(7) of the 2002 Act is said to be amended by section 21(1)(3)(c)(i) of the Learner Travel (Wales) Measure 2008. There is no section 21(1)(3)(c)(i) – it appears to the Committee that this reference should be to section 21(1) and (3)(c)(i). The same typo exists in the Welsh version of these Regulations – “*adran 21(1)(3)(c)(i)*” should instead refer to “*adran 21(1) a (3)(c)(i)*”.
4. The Explanatory Memorandum states that the Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. Although the Explanatory Memorandum states that these Regulations needed to be put in place quickly, the Explanatory Memorandum also states in the first sentence of paragraph 18 that the Regulatory Impact Assessment was not considered necessary “*Due to the likely costs and benefits of complying with these Regulations*”. That latter ground is not an exclusion recognised by the Welsh Ministers’ Code, although needing to put in place the Regulations quickly is an exclusion.

Standing Order 21.3(v) - that it imperfectly achieves its policy objectives

5. A school’s governing body is required to secure that parents and employees are given (free of charge) a copy of the governors’ report required under the School Governors’ Annual Reports (Wales) Regulations 2011 (**the Annual Report Regulations**). Regulation 5(2) of the Annual Report Regulations disapplies that duty where the governing body takes such steps as are reasonably practicable to secure that a copy of the certain information that is contained in the report, including information required by paragraphs 6 and 7 of Schedule 2 to the Annual Report Regulations, is provided free of charge instead.

The operation of regulation 5(2) of the Annual Report Regulations therefore operates to require a governing body to provide the information prescribed by paragraphs 6 and 7 of Schedule 2 to the Annual Report Regulations if it wished to rely on the regulation 5(2), even though that information for the 2019-20 school year would not be included in the governors’ report.

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 in relation to points 1 and 5.



Legal Advisers
Legislation, Justice and Constitution Committee
27 July 2020



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. 729 (W. 164)

EDUCATION, WALES

**The Relaxation of School Reporting
Requirements (Wales)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of regulations so as to relax a number of requirements on schools as a result of the coronavirus pandemic.

The School Governors' Annual Reports (Wales) Regulations 2011 ("the Annual Report Regulations") set out the information that must be published by a school governing body in an annual report. Therefore, regulation 2(2) of these Regulations inserts a new regulation into the Annual Report Regulations the effect of which is that the following information for the 2019-2020 school year is not required to be published in any governors' annual report—

- (a) paragraph 6 of Schedule 2 to the Annual Report Regulations (the summary of secondary school performance),
- (b) paragraph 7 of Schedule 2 to the Annual Report Regulations (the numbers of authorised and unauthorised pupil absences), and
- (c) paragraph 8(b) of Schedule 2 to the Annual Report Regulations (further information relating to authorised and unauthorised pupils absences).

The Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011 ("the Reporting Regulations") make provision as to the report the head teacher of a maintained school is required to send to parents and adult pupils each school year and the additional information a parent may request from the head teacher. Not all children are attending school and many pupils and teachers are working and studying remotely. This presents challenges for teachers in respect of providing the report to parents and adult pupils. Therefore regulation 3 of these Regulations

inserts a new provision into the Reporting Regulations the effect of which is to amend the obligations on the head teachers so that they are obligated to use their reasonable endeavours to comply with those obligations.

The School Information (Wales) Regulations 2011 (“the School Information Regulations”) prescribe the school information that must be published by local authorities and schools in a school prospectus. Not all children are attending school and many pupils and teachers are working and studying remotely. It is likely that will have a negative impact on the quality of some of the data regulated by the School Information Regulations. It is considered that the data on pupil absences is particularly affected and should not therefore be published in a school prospectus. Therefore, regulation 4 of these Regulations inserts a provision into the School Information Regulations the effect of which is to disapply the obligation on a school governing body to include in any school prospectus the data set out in paragraph 30 of Schedule 3 to those Regulations (data relating to pupil absences) in respect of the 2019-2020 school year.

The School Performance and Absence Targets (Wales) Regulations 2011 (“the School Targets Regulations”) set out the school performance targets that must be set by a school governing body. The targets are set for a 3 year period and the revised targets provide the basis for targets for the following year. The data that will inform those targets is adversely affected by the fact that many pupils and children are not attending schools and are instead working remotely. This presents a particular problem with setting targets for a school year and how that will work with the 3 year cycle of targets and revision of those targets. Therefore regulation 5 of these Regulations revokes the School Targets Regulations. It is anticipated that a new set of these Regulations will be made following the introduction of the new curriculum and assessment arrangements from 2022 onwards.

The School Performance Information (Wales) Regulations 2011 (“the School Performance Regulations”) regulate the transfer of information relating to the educational performance of pupils from head teachers to school governing bodies, local authorities and the Welsh Ministers. As noted above not all children are attending school and many pupils and teachers are working and studying remotely. It is likely that will have a negative impact on the quality of some of the data regulated by the School Performance Regulations. Many schools will not have completed the foundation phase and key stage assessments and the collection of this data by Welsh Ministers, via local authorities, will not take place for the 2019-2020

school year. Therefore, regulation 6(2) of these Regulations inserts a provision into the School Performance Regulations the effect of which is to disapply the obligations on a school to supply the prescribed information relating to the 2019-2020 school year to local authorities, and on local authorities to supply that information to the Welsh Ministers.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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. 729 (W. 164)

EDUCATION, WALES

**The Relaxation of School Reporting
Requirements (Wales)
(Coronavirus) Regulations 2020**

Made 13 July 2020

Laid before Senedd Cymru 15 July 2020

Coming into force 7 August 2020

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 29(3) and (5), 408(1), 537(1), (4) and (7), 537A(1), (2) and (3) and 569(4) of the Education Act 1996⁽¹⁾, sections

(1) 1996 c. 56. Section 29(3) was amended by Schedule 30 and paragraph 67 of Schedule 31 to the School Standards and Framework Act 1998 (c. 31). The heading of section 29 and subsections (1), (3) and (5) were amended by S.I. 2010/1158. There are other amendments which are not relevant to these Regulations. Section 408(1) was amended by paragraph 30(a) of Schedule 7 to the Education Act 1997 (c. 44), paragraph 106(a) of Schedule 30 and Schedule 31 to the School Standards and Framework Act 1998, paragraphs 1 and 57(1) and (2) of Schedule 9 to the Learning and Skills Act 2000 (c. 21), paragraph 46(1) and (2) of Schedule 21 to the Education Act 2002 (c. 32), paragraphs 9 and 11(1) and (2) of Schedule 12 to the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), paragraphs 5 and 7 of Schedule 8 to the Education Act 2011 (c. 21), paragraph 1(1) and (2)(a) of Schedule 4 to the Qualifications Wales Act 2015 (anaw 5) and by S.I. 2010/1158. There are other amendments which are not relevant to these Regulations. Section 537(1) was amended by paragraph 152(a) of Schedule 30 to the School Standards and Framework Act 1998, by paragraph 9(1) and (15) of Schedule 13 to the Education Act 2011 and by S.I. 2010/1158. Subsection (4) was amended by paragraph 37 of Schedule 7 to the Education Act 1997. Subsection (7) was amended by paragraph 152(b) of Schedule 30 and Schedule 31 to the School Standards and Framework Act 1998, by paragraphs 1 and 60 of Schedule 9 to the Learning and Skills Act 2000, by paragraph 6(1) and (5) of Part 2 of Schedule 7 to the Education Act 2002 and by S.I. 2010/1158. Section 537A was inserted by section 20 of the Education Act 1997, substituted by paragraph 153 of Schedule 30 to the School Standards and Framework Act 1998 and further amended by S.I. 2010/1158 and by S.I. 2012/976. Section 569(4) was amended by section 8(1) and (5) of the Education (Wales) Measure 2009 (nawm 5). There are other amendments which

19(1) and 54(3) of the Education Act 1997(1) and sections 63(1) and 138(7) of the School Standards and Framework Act 1998(2), and now vested in them(3), and in exercise of the powers conferred on the National Assembly for Wales by sections 30(1) and 210(7) of the Education Act 2002 and now vested in them(4), and after consulting with those persons with whom consultation appeared to the Welsh Ministers to be desirable pursuant to section 408(5) of the Education Act 1996, make the following Regulations:

Title and coming into force

1.—(1) The title of these Regulations is the Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 7 August 2020.

Amendment of the School Governors’ Annual Reports (Wales) Regulations 2011

2.—(1) The School Governors’ Annual Reports (Wales) Regulations 2011(5) are amended as follows.

(2) After regulation 1 insert—

-
- are not relevant to these Regulations. For the definitions of “prescribed” and “regulations” see section 579(1) of the Education Act 1996.
 - (1) 1997 c. 44. Subsection (3) of section 19 of the Education Act 1997 was substituted by paragraph 213 of Schedule 30 to the School Standards and Framework Act 1998. Section 19 was repealed in relation to England by section 66(1) and other amendments are made to subsection (1) by section 66(1) and (2) of the Deregulation Act 2015 (c. 20). For the definitions of “prescribed” and “regulations” see section 56(1) of the Education Act 1997.
 - (2) 1998 c. 31. Subsections (1), (3) and (4) of section 63 were amended by section 53(1) to (4) and Part 3 of Schedule 22 to the Education Act 2002, and subsection (3A) was inserted by section 53(1) and (3) of the Education Act 2002. Subsection (7) was amended by paragraphs 3(1) and (4) of Schedule 17 to the Education and Inspections Act 2006 (c. 40). For the definitions of “prescribed” and “regulations” see section 142(1) of the School Standards and Framework Act 1998.
 - (3) The functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
 - (4) 2002 c. 32. Subsections (1), (2) and (3) of section 30 were amended by section 103(1)(a) and (b) of the Education Act 2005 (c. 18). Subsection (7) was amended by section 21(1)(3)(c)(i) of the Learner Travel (Wales) Measure 2008 (nawm 2). There are other amendments which are not relevant to these Regulations. The functions of the National Assembly for Wales under section 30 of the Education Act 2002 were transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006. For the definitions of “prescribed” and “regulations” see section 212(1) of the Education Act 2002.
 - (5) S.I. 2011/1939 (W. 207), amended by S.I. 2013/437 (W. 53), S.I. 2013/1561 (W. 142), S.I. 2014/2677 (W. 265) and S.I. 2018/766 (W. 153).

“Disapplication of certain requirements for the 2019-2020 school year

1A. The information specified in paragraphs 6, 7 and 8(b) of Schedule 2 and relating to the 2019-2020 school year⁽¹⁾ must not be included in any governors’ report.”

(3) Paragraph 10 of Schedule 2 is revoked.

Amendment of the Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011

3. After regulation 1 of the Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011⁽²⁾ insert—

“Modification of duties for school year 2019-2020

1A. Any duty imposed on a head teacher by these Regulations in respect of the 2019-2020 school year⁽³⁾, except the duty in regulation 5(1), is to be treated as discharged if the head teacher has used reasonable endeavours to discharge the duty.”

Amendment of the School Information (Wales) Regulations 2011

4. After regulation 1 of the School Information (Wales) Regulations 2011⁽⁴⁾ insert—

“Disapplication of certain duties for the 2019-2020 school year

1A. The information specified in paragraph 30 of Schedule 3 and relating to the 2019-2020 school year⁽⁵⁾ must not be included in any school prospectus.”

Revocation of the School Performance and Absence Targets (Wales) Regulations 2011

5. The following are revoked—

-
- (1) For the definition of “school year” see section 579 of the Education Act 1996. The definition was inserted by paragraph 43 of Schedule 7 to the Education Act 1997.
- (2) S.I. 2011/1943 (W. 210), amended by S.I. 2013/437 (W. 53), S.I. 2014/1998 (W. 199), S.I. 2016/236 (W. 88), S.I. 2016/837 (W. 211) and S.I. 2018/766 (W. 153).
- (3) For the definition of “school year” see section 579 of the Education Act 1996. The definition was inserted by paragraph 43 of Schedule 7 to the Education Act 1997.
- (4) S.I. 2011/1944 (W. 211), amended by S.I. 2013/437 (W. 53), S.I. 2016/211 (W. 84) and S.I. 2018/766 (W. 153).
- (5) For the definition of “school year” see section 579 of the Education Act 1996. The definition was inserted by paragraph 43 of Schedule 7 to the Education Act 1997.

- (a) the School Performance and Absence Targets (Wales) Regulations 2011⁽¹⁾,
- (b) regulation 13 of the Qualifications Wales Act 2015 (Consequential Amendments) Regulations 2016⁽²⁾,
- (c) regulation 6 of the Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018⁽³⁾, and
- (d) the School Performance and Absence Targets (Wales) (Amendment) Regulations 2019⁽⁴⁾.

Amendment of the School Performance Information (Wales) Regulations 2011

6.—(1) The School Performance Information (Wales) Regulations 2011⁽⁵⁾ are amended as follows.

(2) After regulation 1 insert—

“Disapplication of certain duties for the 2019-2020 school year

1A. The information provided pursuant to regulations 5, 6 and 8 must not include any information relating to the 2019-2020 school year⁽⁶⁾.”

(3) In regulations 4, 5 and 6, after “each” insert “school”.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

13 July 2020

(1) S.I. 2011/1945 (W. 212).
(2) S.I. 2016/236 (W. 88).
(3) S.I. 2018/766 (W. 153).
(4) S.I. 2019/993 (W. 174).
(5) S.I. 2011/1963 (W. 217), amended by S.I. 2013/437 (W. 53), S.I. 2016/236 (W. 88) and S.I. 2016/837 (W. 211).
(6) For the definition of “school year” see section 579 of the Education Act 1996. The definition was inserted by paragraph 43 of Schedule 7 to the Education Act 1997.

Explanatory Memorandum to the Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department 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 Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education

15 July 2020

Description

1. These Regulations amend a number of current school reporting requirements in response to the impact on schools of coronavirus.

Matters of special interest to the Legislation, Justice and Constitution Committee

2. None

Legislative background

3. The legal powers for making the proposed Regulations are section 29(3) and (5), 408(1), 537(1), (4) and (7), 537A (1), (2) and (3) and 569(4) of the Education Act 1996, sections 19(1) and 54(3) of the Education Act 1997, section 63(1) and 138(7) of the School Standards and Framework Act 1998 and sections 30(1) and 210(7) of the Education Act 2002. The above functions in the Education Act 1996, the Education Act 1997 and the School Standards and Framework Act 1998 were conferred on the Secretary of State and were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The above functions in the Education Act 2002 were conferred on the National Assembly for Wales. All of the above are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
4. These sections give the Welsh Ministers the power to make Regulations in relation to the provision of information by local authorities, by maintained schools and in respect of individual pupils respectively.
5. The Regulations are being made under the negative resolution procedure.

Purpose and intended effect of the legislation

6. At a time when we are all responding to the coronavirus pandemic, the Welsh Government recognises that schools, local authorities and governing bodies may be unable to comply with certain statutory reporting requirements. They may also pose a disproportionate administrative burden on those responsible.
7. The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2020 bring into force the necessary legislative changes which:
 - **Revoke the School Performance and Absence Targets (Wales) Regulations 2011.**
 - **Amend the Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011.**

- Amend **the School Information (Wales) Regulations 2011**.
- Amend **the School Performance Information (Wales) Regulations 2011**.
- Amend **the School Governors' Annual Reports (Wales) Regulations 2011**.

The School Performance and Absence Targets (Wales) Regulations 2011 (“the Targets Regulations”)

8. The Targets Regulations require schools to set and publish targets which are agreed by local authorities. Due to the closure of schools, and disruption to assessments, tests and examinations, this year’s attainment and attendance will either be unavailable or incomparable to previous years. It is inappropriate for schools to be required to report against targets previously set for the 2019/20 academic year or set future targets for the next academic year based on these outcomes. The Targets Regulations need to be revoked to ensure that schools are able to undertake their self-evaluation and forward planning for 2020/21 appropriately and effectively, given current circumstances. The target setting cycle, as prescribed by the Targets Regulations, occurs over a three year period. The implications of current disruption for performance and absence data affects both the reviewing, finalising and reporting against targets set in previous years, as well as the process for setting, reviewing and finalising targets for future years. This presents a particular problem with amending existing requirements; revoking the Targets Regulations is considered the only viable and practical solution. Evaluation and improvement arrangements are being developed to align to the new curriculum and will set out, following further consultation, the future approach to school improvement priorities.

The Head Teachers' Reports to Parents and Adult Pupils (Wales) Regulations 2011 (“the Reporting Regulations”)

9. The Reporting Regulations require head teachers to make a report available to all parents or adult pupils about the educational achievements of pupils, each school year. For the 2019/20 school year, some information that would ordinarily be included in a report, will be either unavailable, not meaningful, or considered inappropriate. It may also be difficult for head teachers to produce reports before the end of the academic year, or to do so in written form. It is proposed that the Reporting Regulations are amended to a “reasonable endeavours” basis. This means that any duties the Reporting Regulations impose on head teachers for reports relating to the 2019/20 school year are to be treated as discharged, if the head teacher has used reasonable endeavours to discharge the duty. The exception to “reasonable endeavours” is regulation 5(1) of the Reporting Regulations; **the requirement to provide a school leaver’s report, which needs to remain an absolute duty**, so that this cohort of learners are not disadvantaged this year. The school year runs from the period beginning with the first school

term to begin after July and ending with the beginning of the first such term to begin after the following July (section 579(1) of the Education Act 1996)

The School Information (Wales) Regulations 2011 (“the School Information Regulations”)

10. The School Information Regulations require local authorities to publish a composite school prospectus and schools to publish their own individual prospectus, and prescribes the school information that must be included. It is proposed that provision is made to exclude data on authorised and unauthorised absences in respect of the 2019/20 school year from being published in any school prospectus.

The School Governors’ Annual Reports (Wales) Regulations 2011 (“the Annual Report Regulations”)

11. The Annual Report Regulations require school governing bodies to produce an annual report, including information about school performance against published targets. Whilst governing bodies will still be able to produce a report, it would be inappropriate for reports to include data in respect of the 2019/20 school year to include performance and attendance data, as it will not be comparable to previous years. It is proposed that the Annual Report Regulations are amended to modify the content of reports produced in relation to the 2019/20 academic year so that information may not be included in any school governors’ report. **The statutory duty for governing bodies to produce a report will remain.**

12. Information to be disapplied/excluded in relation to the school in the 2019/20 school year:

- the most recent Summary of Secondary School Performance (SSSP);
- the number of authorised and unauthorised absences in the school year; and
- any information in relation to performance and absence targets, including improvements set by the governing body in respect of performance of learners, or for reducing the level of absence.

The School Performance Information (Wales) Regulations 2011 (“the Performance Regulations”)

13. The Performance Regulations provide for the reporting of teacher assessment and examination outcomes (from schools and governing bodies to local authorities and Welsh Ministers). There has been disruption to the undertaking of foundation phase and key stage teacher assessments during the 2019/20 summer term, due to school closures, and the associated Welsh Government statutory data collection was cancelled. It is, therefore, proposed that amendments are made to remove the duties on governing bodies and local authorities to provide data to local authorities and Welsh Ministers, respectively, on teacher assessment outcomes and authorised or

unauthorised absence for data in respect of the 2019/20 school year. The Welsh Government will not be reporting on 2019/20 school performance measures, including them in All Wales Core Data Sets ('data packs'), or publishing them on the My Local School website. We will, however, need to retain provision that allows Welsh Government to receive results of approved qualifications, for other purposes not related to school performance or accountability.

14. The purpose and intended effect of these legislative changes were communicated to stakeholders in May, to provide timely advice ahead of formal public consultation.

Consultation

15. A three week consultation on the legislative changes ran from 22 June to 10 July 2020. The consultation was drawn to the attention of key stakeholders including local authorities, regional consortia, school governors and the teacher unions.
16. 50 responses were received and a clear majority were in agreement with the proposed legislation. No amendments were considered necessary to the draft Regulations. A summary of the consultation responses is available on the Welsh Government website: <https://gov.wales/relaxation-school-reporting-requirements>.

Regulatory Impact Assessment

17. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these amendments.
18. Due to the likely costs and benefits of complying with these Regulations, it is not considered necessary to carry out a Regulatory Impact Assessment. The Regulations need to be put in place quickly to ensure the removal of inappropriate or impractical burdens on schools and local authorities in response to the coronavirus pandemic.

SL(5)585 – The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations temporarily extend from three months to six months the notice periods that landlords must give tenants under section 8(4A) or (4B) of the Housing Act 1998 (“the 1998 Act”) (notice of proceedings for possession: assured tenancies), and under section 21(1) or (4) of the 1998 Act (recovery of possession on expiry of assured shorthold tenancy). These notice periods had already been extended to three months by Schedule 29 to the Coronavirus Act 2020.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following three 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 “made 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 23 July 2020 that:

There is an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible, so as to continue with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need and therefore come into force on the day after the day on which they are made.

Whilst we recognise that a number of measures have had to be put in place urgently during the Coronavirus pandemic, we are not clear why these Regulations in particular had to come into force so urgently as to breach the 21-day rule when the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the Coronavirus Act 2020 was passed).

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

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). A1P1 states:



Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The Regulations increase, in certain cases, the notice period that a landlord must give a tenant from three months to six months. The effect of the amendments therefore is to restrict a landlord's use and enjoyment of their property for an additional three months. A1P1 is a qualified right and so controlling the landlord's use of their property is permitted if it is deemed necessary in the general interest.

In considering whether an interference is justified, the State must show that the regulations have a legitimate aim sufficient to justify the limitation of landlords' rights, that the regulations are rationally connected to that aim, that a less intrusive measure couldn't be used, and that there is a reasonable relationship of proportionality between the means employed to achieve that aim, and the aim pursued.

It is concerning that there is no analysis in the Explanatory Memorandum ("EM") of landlords' A1P1 rights and how interference with these rights is justified. In the absence of such justification these Regulations run the real risk of breaching A1P1 rights. The timing of the introduction of these Regulations, coupled with the fact that restrictions are being eased in other parts of the housing sector is a real concern. Whilst the aims behind these Regulations can be ascertained from the EM (containing and slowing the virus, easing the burden on frontline staff and supporting people), the Welsh Government is asked to justify how these Regulations are proportionate to achieving those aims.

In particular, how does the Welsh Government justify interfering with landlords' A1P1 rights when:

1. they have had the power to put these measures in place since 25 March 2020, but did not do so when the incidence and spread of coronavirus was much higher;
2. other restrictions that were put in place to deal with the Coronavirus pandemic are being eased; and
3. restrictions are being lifted in the housing market allowing estate agents to open and for house viewings and house sales to take place, which seems at odds with the policy pursued in these Regulations?

3. 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

Whilst the Welsh Government have not been able to carry out a quantified regulatory impact assessment, the EM provides an assessment of the likely qualitative impacts of the Regulations. However, these Regulations were laid late on 23 July 2020 and came into force on 24 July 2020 giving landlords only a matter of hours notice of this substantive change to the law and their rights. The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment further undermines any justification that these Regulations represent a proportionate response by the Welsh Government.



Implications arising from exiting the European Union

No implications are identified for reporting.

Government Response

A Welsh Government response is required to the three merits points raised.

Legal Advisers

Legislation, Justice and Constitution Committee

30 July 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. 778 (W. 172)

HOUSING, WALES

**The Coronavirus Act 2020 (Assured
Tenancies and Assured Shorthold
Tenancies, Extension of Notice
Periods) (Amendment) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 29 to the Coronavirus Act 2020 (“the Act”) in respect of assured tenancies and assured shorthold tenancies in Wales. They amend paragraph 6(c) and (d) and paragraph 7(a) and (b) of Schedule 29 to the Act to extend the notice period a landlord must give a tenant under section 8(4A) or (4B) and section 21(1) or (4) of the Housing Act 1988 (“the 1988 Act”).

By virtue of paragraphs 6 and 7 of Schedule 29 to the Act, the extended notice periods apply during the relevant period. The “relevant period” is defined in paragraph 1 of Schedule 29 to the Act and may be amended in relation to Wales by the Welsh Ministers.

Regulation 2 amends the periods set out in paragraph 6(c) and (d) and paragraph 7(a) and (b) of Schedule 29 to the Act so that the period of notice required to be given under section 8(4A) or (4B) and section 21(1) or (4) of the 1988 Act is extended from three to six months. The extended notice period applies to notices given under section 8(4A) or (4B) and section 21(1) or (4) of the 1988 Act on or after the date that these Regulations come into force.

These Regulations also amend the notice periods set out in paragraph 11(a) and (b) of Schedule 29 to the Act. This has the effect of requiring the relevant references in Form 3 in the Schedule to the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997, which is used when serving notice under section 8 of the 1988 Act, to be read as being 6 months.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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. 778 (W. 172)

HOUSING, WALES

**The Coronavirus Act 2020 (Assured
Tenancies and Assured Shorthold
Tenancies, Extension of Notice
Periods) (Amendment) (Wales)
Regulations 2020**

<i>Made</i>	<i>21 July 2020</i>
<i>Laid before Senedd Cymru</i>	<i>23 July 2020</i>
<i>Coming into force</i>	<i>24 July 2020</i>

The Welsh Ministers make these Regulations in exercise of the power conferred by paragraph 13(1) of Schedule 29 to the Coronavirus Act 2020⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020.

(2) These Regulations come into force on 24 July 2020.

Amendment of Schedule 29 to the Coronavirus Act 2020

2.—(1) Schedule 29 to the Coronavirus Act 2020 is amended as follows.

(2) In paragraph 6, in sub-paragraphs (c) and (d), after ““three months”” insert “in relation to a dwelling-house in England and “six months” in relation to a dwelling-house in Wales”.

(3) In paragraph 7—

(1) 2020 c. 7. Schedule 29 is introduced by section 81 of the Act. By virtue of paragraph 1(3)(b) of Schedule 29, the Welsh Ministers are the “relevant national authority” in relation to Wales.

- (a) in sub-paragraph (a), after ““three months”” insert “in relation to a dwelling-house in England and “six months” in relation to a dwelling-house in Wales”;
 - (b) in sub-paragraph (b), after ““three months”” insert “in relation to a dwelling-house in England and “six months” in relation to a dwelling-house in Wales”.
- (4) In paragraph 11—
- (a) in sub-paragraph (a), for ““3 months”” substitute ““6 months””;
 - (b) in sub-paragraph (b)—
 - (i) in paragraph (i), for ““3 months”” substitute ““6 months””, and
 - (ii) in paragraph (ii), for ““three months”” substitute ““six months””.

Julie James
Minister for Housing and Local Government, one of
the Welsh Ministers
21 July 2020

Explanatory Memorandum to the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before the 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 Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020.

Julie James
Minister for Housing and Local Government
23 July 2020

1. Description

- 1.1 These Regulations temporarily extend from three months to six months the notice period that landlords must give tenants under section 8(4A) or (4B) of the Housing Act 1988 and under section 21(1) or (4) of that Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 There is an urgent need to ensure that the number of people under immediate threat of eviction from their homes is kept low, in order to contribute to the measures already in place to respond to the virus. Consequently, the Regulations come into force on the day after the day on which they are made and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force. This will minimise the number of possession notices with notice periods of only three months that can be issued and thereby help to reduce the risk of increased evictions during the period of the pandemic.
- 2.2 In accordance with section 11A(4) of the Statutory Instruments Act 1946 (inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.3 Even though the Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to the Regulations in that notice periods in existing assured and assured shorthold tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date the Regulations come into force.

3. Legislative background

- 3.1 These Regulations are made under paragraph 13(1) of Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”).
- 3.2 Section 81 and Schedule 29 to the 2020 Act delay when landlords may evict tenants by either amending the notice period a landlord is required to serve on a tenant to at least 3 months or, in some cases, creating a three months’ notice requirement when such a requirement does not currently exist. Notices served in respect of protected tenancies, statutory tenancies secure tenancies, assured tenancies, assured shorthold tenancies, introductory tenancies and demoted tenancies during the “relevant period” are subject to an extended notice period. The relevant period ends on 30 September 2020, but may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales).

- 3.3 Schedule 29 applies to all landlords who have granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Three months' notice is required for notices served in respect of protected and statutory tenancies, secure tenancies, assured tenancies, assured shorthold tenancies, introductory and demoted tenancies.
- 3.4 The vast majority of current tenancies granted by registered social landlords and private landlords are under the Housing Act 1988 ("the 1988 Act"). In relation to the 1988 Act, possession notices caught by the provisions of Schedule 29 to the 2020 Act include those issued under section 8 and section 21.
- 3.5 Paragraph 13 of Schedule 29 provides the Welsh Ministers with power to alter a reference to three months in Schedule 29 to a reference to six months, or a reference to any other specified period which is less than six months or to alter a reference which has been altered by virtue of paragraph (a) or (b) but not so as to result in the reference being to a specified period of more than six months (paragraph 13(1)(b)). The amendments in Schedule 29 are not intended to be permanent changes and the process will return to the current position once the specified period has ended. The period specified ends with 30 September, however, a later date may be specified.
- 3.6 Paragraph 14(1)(b) of Schedule 29 states that regulations under Schedule 29... "may be exercised so as to make different provision for different purposes or different areas...". Paragraph 14(3) states that a statutory instrument containing regulations of the Welsh Ministers under paragraph 13 is subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative resolution procedure).
- 3.7 The six month notice period will apply to the possession notices served on or after the date the Regulations come into force.

4. Purpose & intended effect of the legislation

- 4.1 The Regulations amend the notice periods set out in paragraph 6(c) and (d) and paragraph 7(a) and (b) of Schedule 29 to the 2020 Act so that the period of notice required to be given under section 8(4A) or (4B) and section 21(1) or (4) of the Housing Act is extended from three to six months.
- 4.2 In the period since the Coronavirus 2020 Act was commenced, it has become apparent that the public health emergency and its effects are likely to last for many months with continuing restrictions required on various aspects of normal life. Temporarily extending to six months the notice period that must be given in relation to notices issued under section

21(1) or (4) of the Housing Act 1988 and notices issued under section 8 (specifying any of the grounds under subsections (4A) or (4B)) of that Act, this is intended to support three of the overarching aims of the Coronavirus Act, that is:

- containing and slowing the virus
- easing the burden on frontline staff; and,
- supporting people.

4.3 The temporary extension will support these three aims through:

- **Reduced house moves** - Fewer people would be required to move home, and fewer evictions would take place during the ongoing public health emergency. Seeking, and moving to, a new home are likely to involve multiple interactions with persons from outside one's immediate household, with the associated increased risk of virus transfer. It may also transfer the virus between localities as people may need to travel outside of their immediate locality in order to find and move to a new home. If a person becomes homeless, their potential exposure to the virus and the likelihood of them spreading it is increased further ("*containing and slowing the virus*"). Even where that does not occur, aspects of homelessness constitute a public health risk in themselves, and any steps that combat that risk have merit in their own right.
- **Reduced pressure on services** - Fewer people would be evicted into homelessness, or be at risk of being evicted into homelessness, at a time when local authorities are less able to respond to these situations as a result of pressures on services created by coronavirus, including finding suitable homes for those currently residing in temporary accommodation. Diverting resources away from other vital aspects of local authorities' response to the public health risk posed by Covid-19, will potentially weaken the effectiveness of that response ("*easing the burden on frontline staff*");
- **Increased security and reduced anxiety** - Those renting their homes under certain types of less secure tenancies will benefit from the knowledge that they will not face the threat of eviction at short notice. As well as increased security, this will reduce levels of anxiety amongst tenants who in many cases are already being affected in other ways by the ongoing uncertainties caused by the coronavirus outbreak ("*supporting people*"). Reducing anxiety in the general population also has a clear public health benefit and reduces pressures on public services including mental health services ("*easing the burden on frontline staff*"); and,

- **Increased scope to support individuals at risk of eviction** - An extension of notice periods to six months would also provide additional time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears which may accrue as a result of the coronavirus outbreak (“supporting people”).

Constraints

- 4.4 Maximising the benefits of extending notice periods would involve extending **all** notice periods covered by Schedule 29 of the Coronavirus Act 2020 to six months. However, the benefits of doing so are outweighed in those cases where harm is being caused by tenants who are engaged in anti-social behaviour to the health and well-being of those around them, that is, on the public health of the local community. That harmful impact is in turn likely to place pressure on public services, for example, through local authority landlords needing to act to rehouse the neighbours of those engaged in anti-social behaviour.
- 4.5 Given that such behaviour and the harm it causes would directly undermine the three overarching aims of the Coronavirus Act set out above, further extending notice periods where such behaviour is the basis for possession of a property would be inappropriate.
- 4.6 In the case of secure, protected and statutory tenancies, it is not possible to separate the anti-social behaviour grounds to subject them from a different notice period. In the case of demoted and introductory tenancies, notices that need not specify grounds but may nevertheless be issued because of a tenant’s anti-social behaviour. Given the potential harm caused by extending notice periods that relate to anti-social behaviour, notice periods for these tenancies remain unchanged.
- 4.7 In relation to assured tenancies, the regulations do not amend paragraphs 6(a) and (b) of Schedule 29 to the 2020 Act which relate to Grounds 7A and 14 of Schedule 2 to the Housing Act 1988 (the mandatory ground for serious offences/anti-social behaviour and the nuisance and annoyance grounds) and the notice period remains at three months where these grounds are specified.
- 4.8 In relation to assured shorthold tenancies, notices do not require the landlord to demonstrate any fault on the part of the tenant after six months – so there would be no specific anti-social behaviour ground (unless possession is sought on that ground within the fixed term) to consider - and extending the notice period would contribute directly to the benefits of extending notices set out in 3 above.

4.9 Taking all the above into account, the Regulations will extend the notice period from three months to six months for assured tenancies where a notice is served under section 8 under the grounds in sub-sections (4A) or (4B), that is where the following grounds are specified:

Ground 1 - Landlord is previous owner-occupier or needs premises as home

Ground 2 - Tenancy subject to Ground 1 and lender taking possession

Ground 2A - Lender a fully mutual housing association

Ground 3 - Property is an out of season holiday let

Ground 4 - Property is student accommodation let to non-students

Ground 5 - Accommodation for Minister of Religion

Ground 6 - Landlord wishes to demolish or reconstruct property

Ground 7 - Tenant dies and no right of succession

Ground 8 - Mandatory rent arrears ground

Ground 9 - Suitable alternative accommodation is available

Ground 10 - Rent arrears

Ground 11 - Persistent delay in paying rent

Ground 12 - Other breach of tenancy

Ground 13 - Tenant has caused damage to premises

Ground 14A - Domestic violence has caused partner to leave property

Ground 15 - Tenant has caused Deterioration of furniture

Ground 16 - Employment related accommodation

Ground 17 - Tenancy granted because of false statement

The Regulations also extend the notice period for assured shorthold tenancies where a notice is served under section 21(1) or (4) of the Housing Act 1988.

5. Consultation

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

6. Regulatory Impact Assessment

- 6.1 The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative description of the likely impacts.

Options

Three options have been considered:

Option 1: Do Nothing – in which case all notice periods set by Schedule 29 to the Coronavirus Act at three months would remain at three months for notices served during the “relevant period” which is the period ending with 30 September 2020.

Option 2: Increase notice periods for all tenancies to six months – in which case regulations would extend to six months’ notice periods for all those tenancies in Schedule 29, which extends the notice periods to three months.

Option 3: 2020: Increase notice periods for tenancies except those that would or might relate to anti-social behaviour.

Costs and Benefits

Option 1: Do Nothing

There are no additional costs or benefits associated with this option.

Option 2: Increase notice periods for all tenancies to six months

The administrative and transitional costs to landlords of extending the minimum notice period for notices from three months to six month are expected to be negligible. Where a landlord is seeking possession of property on the rent arrears grounds, there is, however, a potential additional cost arising from the extra three months delay there would be to the landlord making a claim to the court and the arrears that may build up during that time. Balanced against this is the fact that this additional delay will allow more time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. Furthermore, there

may be savings to local authorities and organisations providing support to individuals faced with eviction with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.

A more significant cost to increasing all notice periods to six months would arise from the additional harm that might be caused by tenants who are engaged in anti-social behaviour. As described earlier, the impact this might have on those around them would place pressure on public services, for example, through local authority landlords needing to act to rehouse the neighbours of those engaged in anti-social behaviour. Therefore the extra cost of continued anti-social behaviour would be on financial resources as well as the well-being of the local community. As a result, the benefits of increasing all notice periods to six months does not clearly outweigh the costs.

Option 3: Increase notice periods for all tenancies except those that would or might relate to anti-social behaviour

As with option 2, the administrative and transitional costs to landlords are expected to be negligible but there are potential additional costs arising from the extra three months delay there would be to making a claim to the court in relation to cases of rent arrears. Again however, this is mitigated by the additional time there will be for arrangements to support tenants to better manage their finances and repay any rent arrears and there may be savings to those providing support to individuals faced with eviction.

The main difference compared with option 2, is that under option 3, the negative impact on community well-being and the financial costs associated with continued anti-social behaviour do not arise. As a consequence, it is considered that the benefits of pursuing this option do, clearly, outweigh the costs.

Competition Assessment

- 6.2 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, the changes are being applied to all landlords that rent out a property as a home. This broad application means that no changes to the overall structure or size of the private rented sector are expected. In addition no change is expected in terms of competitiveness of businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition.

Specific Impact Tests

- 6.3 *Equal opportunities*
These provisions do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the extension of the section notice periods to six months may be

particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction when they have not breached the terms of their tenancy and forced to find alternative accommodation at short notice during the current public health emergency. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the private rented sector and therefore vulnerable to eviction, e.g. some Black, Asian and Minority Ethnic groups.

6.4 *Children's rights*

No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. Given that a significant proportion of households in the rented sector are families with dependent children, a six month rather than three month notice period may help reduce the disruption caused to children by a home move – including potentially having to change school – by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

6.5 *Welsh language*

These Regulations should not give rise to any negative impacts in relation to cultural wellbeing or the Welsh language.

6.6 *Local Government*

These Regulations may have a limited, positive, impact on local authorities, if demand on crisis homelessness services reduces as a result of fewer possession notices being served, and also because longer notice periods should allow those faced with a possession notice more time to find alternative accommodation themselves without recourse to homelessness services.

6.7 *Economic effects*

As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from the extra three months delay. However, the financial impact of this may be balanced out by the additional time landlords, tenants and support agencies have to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. Any negative economic impact caused should therefore be slight. In more general economic terms, the greater security of tenure provided by the increased notice periods may have beneficial impacts. For example it may provide tenants with a more stable set of circumstances, improving their ability to secure or sustain employment.

6.8 *Impact on Privacy*

The Regulations do not produce any new requirements relating to privacy or the sharing of information.

6.9 *Rural proofing*

These Regulations will apply to homes rented by people living in rural, as well as urban areas. As such, the impacts – and benefits – will be no different for rural areas than for urban areas.

6.10 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction in the number of households having to relocate during the current pandemic, it is also well-recognised that good quality and secure housing is a significant determinant of individuals' general health and wellbeing. These Regulations should therefore support health and wellbeing for individual tenants by providing reassurance that they will not face eviction at short notice during the pandemic.

6.11 *Impact on the Justice System*

The net effect of changes resulting from this legislation, alongside the Welsh Government's policy on reducing social landlord possession claims, is expected to be neutral or even positive on the basis that allowing tenants more time to resolve financial issues may result in fewer rent arrears cases proceeding to court.



Our ref: MA/JJ/2224/20

Elin Jones MS
Presiding Officer
Senedd Cymru
Cardiff Bay
CF99 1NA

23 July 2020

Dear Llywydd,

The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument (SI) will come into force less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations amend paragraphs 6, 7 and 11 of Schedule 29 to the Coronavirus Act 2020 ("the 2020 Act") in relation to assured tenancies and assured shorthold tenancies. Amendments being made include altering the references to "three months" in paragraph 6(a) and (b) and paragraph 7 of Schedule 29 to the Coronavirus Act 2020 to a reference to "six months" in relation to a dwelling-house in Wales. The Regulations also amend the notice periods set out in paragraph 11(a) and (b) of Schedule 29 which has the effect of requiring the relevant references in Form 3 in the Schedule to the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1977, which is used when serving notice under section 8 of the 1988 Act, to be read as being 6 months.

The effect of these changes will be to temporarily extend from three months to six months (if a notice is served on or after the coming into force of the Regulations) the period of notice that landlords must give to:

- a) assured tenants when issuing a possession notice under section 8 specifying any of the grounds in section 8(4A) or (4B) of the Housing Act 1998 ("the 1988 Act"); and

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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.

- b) assured shorthold tenants when issuing a possession notice under section 21(1) or (4) of the 1988 Act.

There is an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible, so as to continue with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need and therefore come into force on the day after the day on which they are made.

Due to the urgent timetable there has been no time to carry out a meaningful consultation or a Regulatory impact Assessment. However, an Explanatory Memorandum has been prepared and is attached for your information. This has been laid, together with the Regulations, in Table Office.

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

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans MS
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Use of powers under the Coronavirus Act 2020: Temporary increase in notice periods from three months to six months that landlords must give tenants under section 8 (certain grounds only) and section 21 of the Housing Act 1988**

DATE **23 July 2020**

BY **Minister for Housing and Local Government**

As part of the work to prepare for and respond to the outbreak of covid-19, the four Governments across the UK came together to prepare overarching emergency legislation. The Coronavirus Act 2020 ('the 2020 Act') received Royal Assent on 25 March, and included a range of powers for the Welsh Ministers to both respond to and manage the transmission of the virus.

In relation to housing law, section 81 and Schedule 29 to the 2020 Act delays when a landlord is able to evict a tenant but does not prevent a landlord from serving a notice seeking possession. The Schedule applies to all landlords who have granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Three months' notice is required for notices served in respect of protected and statutory tenancies, secure tenancies, assured tenancies, assured shorthold tenancies, introductory tenancies and demoted tenancies.

Paragraph 13(1) of Schedule 29 to the 2020 Act gives the Welsh Ministers (as the "relevant national authority") the power to amend Schedule 29 to alter a reference to three months into a reference to six months, or a reference to any other specified period which is less than six months.

Schedule 29 applies to notices served during the relevant period, which currently ends with the 30 September. The relevant period may be extended by the Welsh Ministers beyond 30 September 2020 using the power set out in paragraph 1(2) of Schedule 29.

During the debate on the Legislative Consent Motion for the 2020 Act, which was held on 24 March 2020, the Minister for Health and Social Services gave a commitment to provide a

public statement on each use of the powers under the Act. I can now confirm that, as Minister for Housing and Local Government, I have made Regulations under paragraph 13(1) of Schedule 29 to the 2020 Act. The Regulations temporarily increase from three months to six months the notice to end a tenancy that landlords must give assured tenants under section 8 of the Housing Act 1988 (but excluding notices specifying Grounds 7A and 14) and to assured shorthold tenants under section 21 of that same Act.

The purpose of these temporary alterations is to ensure landlords give increased notice to tenants facing eviction from rented properties before landlords can issue proceedings for possession. The effect will be to further delay evictions during the ongoing public health emergency; fewer people will face eviction into homelessness at a time when local authorities are less able to respond to these situations; those renting their homes will benefit from increased security and reduced anxiety; and individuals at risk of eviction will be provided with increased time to seek support to resolve any problems.

These Regulations apply to notices served on or after the date the Regulations come into force. The convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force has not been followed in this case. This reflects the urgent need to provide greater security of tenure at this time, thus contributing to the measures already in place in response to the virus.

A copy of the Regulations and the accompanying Explanatory Memorandum can be viewed [here](#) and [here](#)

<https://senedd.wales/laid%20documents/sub-ld13365/sub-ld13365%20-e.pdf>

<https://senedd.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>

Agenda Item 3.8

SL(5)581 – The Representation of the People (Electoral Register Publication Date) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations are to be made by the Welsh Ministers under sections 13(1)(a) and 201(1) and (3) of the Representation of the People Act 1983 (the "1983 Act"). The Regulations set a revised date of 1 February 2021 for the end of the period during which revised versions of the electoral registers of local government electors for the county or county borough local government areas in Wales must be published in accordance with section 13(1)(a) of the 1983 Act. The current deadline is 1 December 2020.

The Explanatory Memorandum to the Regulations notes, at section 1 of Part 1, that the Regulations will provide Electoral Registration Officers with "*an additional two months if needed to complete the 2020 annual canvass and publish their revised electoral register to take account of the impact on local authorities of the Covid-19 pandemic*".

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

We note that the revised publication deadline for the registers of local government electors is approximately three months prior to the next scheduled Senedd election (on 6 May 2021). In accordance with section 12(1)(b) of the Government of Wales Act 2006, a person must be registered in the relevant register of local government electors in order to be entitled to vote at Senedd elections.

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

23 July 2020



Draft Regulations laid before Senedd Cymru under section 201(2) of the Representation of the People Act 1983, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Representation of the People
(Electoral Register Publication
Date) (Wales) (Coronavirus)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set a revised date for the end of the period during which a revised version of the electoral register of local government electors for the county or county borough local government areas in Wales for 2020 must be published in accordance with section 13(1)(a) of the Representation of the People Act 1983 (“the 1983 Act”).

Regulation 2(1) applies to the publication by a registration officer (see section 8 of the 1983 Act) for a county or county borough area in Wales of the revised register of local government electors maintained by that officer under section 9(1)(b) of the 1983 Act.

Regulation 2(2) sets the date by which that register must be published as 1 February 2021.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations as they implement a routine technical amendment which has no impact, or no significant, impact on the private, voluntary or public sectors.

Draft Regulations laid before Senedd Cymru under section 201(2) of the Representation of the People Act 1983, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Representation of the People
(Electoral Register Publication
Date) (Wales) (Coronavirus)
Regulations 2020**

Made ***

Coming into force ***

The Welsh Ministers make the following Regulations in exercise of the power conferred on the Secretary of State by sections 13(1)(a) and 201(1) and (3) of the Representation of the People Act 1983(1) (“the 1983 Act”) and now exercisable by them(2).

The Welsh Ministers have consulted the Electoral Commission in accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000(3).

-
- (1) 1983 c. 2. Section 13(1) was substituted by section 5(1) of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33). See section 202(1) for the meaning of “prescribed”. Section 201(1) was amended by paragraph 6(1) and (7)(a) of Schedule 21 to the Political Parties, Elections and Referendums Act 2000 (c. 41). Section 201(3) was inserted by paragraphs 1 and 21 of Schedule 1 to the Representation of the People Act 2000 (c. 2), and amended by paragraph 6(1) and (7)(d) of Schedule 21 to the Political Parties, Elections and Referendums Act 2000.
- (2) The power of the Secretary of State was transferred, in relation to Wales, to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644).
- (3) 2000 c. 41.

A draft of these Regulations was laid before, and approved by resolution of Senedd Cymru in accordance with section 201(2)(1) of the 1983 Act(2).

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Representation of the People (Electoral Register Publication Date) (Wales) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 1 October 2020.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “the 1983 Act” means the Representation of the People Act 1983.

Date for publication of revised register for 2020

2.—(1) This regulation applies to the requirement under section 13(1)(a) of the 1983 Act for registration officers to publish, for the year 2020, a revised version of the register maintained in respect of county or county borough local government areas in Wales under section 9(1)(b) of the 1983 Act(3).

(2) The date for the end of the period described in section 13(1)(a) of the 1983 Act, being the period during which the revised register must be published, is 1 February 2021.

Name

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

Date

-
- (1) The reference to each House of Parliament in section 201(2) of the Representation of the People Act 1983 is to be read as a reference to the National Assembly for Wales by virtue of paragraph 9(2)(b) of Schedule 3 to the Government of Wales Act 2006 (c. 32). The National Assembly for Wales was renamed Senedd Cymru by virtue of section 2 of the Senedd and Elections (Wales) Act 2020 (anaw 1).
- (2) Section 201(2) was substituted by section 24 of, and paragraph 69 of Schedule 4 to, the Representation of the People Act 1985 (c. 50), and was amended by paragraph 6(1) and (7)(b) of Schedule 21 to the Political Parties, Elections and Referendums Act 2000.
- (3) Section 9 was substituted by paragraphs 1 and 3 of Schedule 1 to the Representation of the People Act 2000.

Explanatory Memorandum to The Representation of the People (Electoral Register Publication Date) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by Local Government and Democracy Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Representation of the People (Electoral Register Publication Date) (Wales) (Coronavirus) Regulations 2020.

Julie James, Minister for Housing and Local Government
14 July 2020

PART 1

1. Description

These regulations set the final publication date by which an Electoral Registration Officer (ERO) must publish the revised local government electoral register in Wales following the 2020 annual canvass, in accordance with section 13(1)(a) of the Representation of the People Act 1983 (“the 1983 Act”). The regulations move that date from 1 December 2020 to 1 February 2021. This effectively allows EROs an additional two months if needed to complete the 2020 annual canvass and publish their revised electoral register to take account of the impact on local authorities of the Covid-19 pandemic.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The requirement for an annual canvas to take place is set out in Section 9A (Registration officers: duty to take necessary steps) and section 9D (Maintenance of registers: duty to conduct canvass in Great Britain) of the 1983 Act.

Section 9D of the 1983 Act places a duty on EROs in Great Britain to conduct an annual canvass in the area for which they act. The purpose of the canvass is to ascertain the names and addresses of persons entitled to be registered and those who are registered but not entitled to be.

Section 9A of the 1983 Act places a duty on EROs to take all the necessary steps to maintain their registers and ensure, where reasonably practicable, all persons who are entitled to be registered are registered. Taking all necessary steps includes sending the canvass form and making household visits on one or more occasions.

Section 13(1)(a) of the 1983 Act places a duty on EROs to publish a revised version of their electoral register after the end of the annual canvas for that year and by no later than 1 December in each year, or by a later date which may be prescribed by regulations. The only exception, under section 13(1A) of the 1983 Act, is that, should an election be held between 1 July and 1 December in the ERO’s area, the final publication date for the revised electoral register automatically becomes 1 February of the following year.

These regulations are being made under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

The current canvass gathers information on potential additions to, changes to,

and deletions from, the electoral register. Since the introduction of Individual Electoral Registration (“IER”) in 2014, EROs must individually invite potential new electors to apply to register to vote, and verify their identity, before they can be added to the electoral register. This process sits separately to the annual canvass but can, and generally does, occur concurrently.

The annual canvass period runs from 1 July to 1 December, and is driven by a requirement for EROs to publish a revised electoral register for their area by 1 December. The only exception to this is where an election is held in their area between 1 July and 1 December, when the deadline for publication of the revised electoral register is automatically extended to 1 February the following year. This gives EROs an additional two months to complete their canvass and compile their revised electoral register.

The Covid-19 pandemic has had a significant impact on the work of local authorities and on democratic services teams with some staff being redeployed to areas of need and many more staff working from home. These arrangements can make it difficult to carry out normal functions, including printing, receipt of forms, phone call canvassing etc. While the annual canvass process has recently been modernised elements remain paper based and are reliant on the work of staff in electoral services teams in local authorities to send out and receive paper correspondence.

The public health social distancing arrangements currently in place introduce uncertainty in relation to the ability of EROs to successfully canvass and register electors. The purpose of these regulations is to recognise the impact of Covid-19 and provide flexibility by extending the final publication date of the 2020 revised electoral register. This will allow EROs more time to conduct canvass activities, if necessary, enabling them to tailor the timing of the canvass and the publication of the 2020 revised electoral register to take account of their local circumstances.

Regulation 2 provides that the final date by which EROs in Wales must publish the 2020 revised local government register is 1 February 2021.

5. Consultation

The Electoral Commission was consulted in line with Sections 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000. The Electoral Commission did not recommend any changes to the policy. The Wales Electoral Co-ordination Board were consulted and agreed the additional flexibility would be welcomed and took into account that the current public health arrangements, could prevent the completion of the 2020 annual canvass in the usual timeframe.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as EROs will be required to undertake the same activities as they would normally, but they will be given an additional two months to complete them if necessary. As such we do not expect there to be

any cost impact associated with this legislation.

One minor impact could be in relation to credit reference agencies who use the electoral register to update information held on individuals' Credit Reference files. While electoral registers are updated and published on a monthly basis, these monthly updates are not usually published in the two months before the publication of the final revised electoral register, which in this instance could mean that the records held by credit reference agencies may not be updated in December 2020 or January 2021. However, this would also be true where an election is held in an ERO's area between 1 July and 1 December (see above). We therefore do not expect this to have a significant impact on the work of credit reference agencies.



Ein cyf/Our ref MA/JJ/2228/20

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

17 July 2020

Dear Mick,

Thank you for your letter of 1 July regarding the draft regulations I intend to lay before the Senedd in relation to the 2020 Electoral Register. To assist the Committee in its forthcoming scrutiny of the regulations, I have answered the questions raised in your letter below.

- (i) What is your assessment of the potential risks to the electoral arrangements for next year's May elections if electoral registration officers do not publish registers until 1 February 2021?

I do not consider there to be any risks to electoral arrangements for 2021 arising specifically from extending the deadline for publishing registers. Electoral registration officers (ERO) and their staff are experienced at performing this annual task and I am confident in their ability to produce accurate registers ahead of the May election. We have consulted the Electoral Commission and the Wales Electoral Coordination Board and no risks were raised by them. It is also our understanding that EROs will seek to meet the 1 December publication date as usual but welcome the additional flexibility these regulations provide to ensure that EROs can meet their statutory duty to ensure the register is as complete and accurate as possible.

- (ii) What consultations have you undertaken in relation to the proposed regulations?

The Electoral Commission was consulted on this in line with Sections 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000. The Electoral Commission did not recommend any changes. The Wales Electoral Co-ordination Board were consulted and agreed the additional flexibility provided by these regulations would be welcomed in the event that the current public health arrangements could prevent the completion of the 2020 annual canvass in the usual timeframe.

- (iii) What other publication deadlines did you consider setting and why was a date of 1 February 2021 considered to be the best option?

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.

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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 annual canvass period usually runs from 1 July to 1 December, and is driven by a requirement for EROs to publish a revised electoral register for their area by 1 December. The only exception to this is where an election is held in their area between 1 July and 1 December, then the deadline for publication of the revised electoral register is automatically extended to 1 February the following year under section 13(1A) of the Representation of the People Act 1983. This gives EROs an additional two months to complete their canvass and compile their revised electoral register.

1 February 2021 was chosen as appropriate date for publication for the purposes of these regulations to ensure an up to date register is published in advance of the scheduled May 2021 elections, but is also already a deadline which EROs are familiar with and have had to work to in other circumstances. It is consistent with similar regulations being made by both the UK and Scottish Governments.

I hope this letter adequately addresses the queries you raised. Further details on the rationale and policy intentions behind this legislation can be found in the explanatory memorandum which accompanies the Regulations. I look forward to receiving the Committee's comments in due course.

Yours sincerely



Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Agenda Item 3.9 SE(15)579 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulation 2020

Background and Purpose

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the Regulations”) are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 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 which causes the disease known as COVID-19 or “coronavirus”.

The Regulations revoke the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and all the regulations which have amended them (together the “Original Regulations”).

The Regulations:

- restate certain provisions of the Original Regulations, such as the requirement to keep certain businesses, premises, facilities, footpaths and land closed, albeit the list of place which must remain closed is not as extensive as required by the Original Regulations. Places which are now permitted to open include businesses which sell food for consumption on the business’ outdoor premises, hair salons and barbers, self-contained accommodation; places of worship and outdoor cinemas;
- require certain steps to be taken by those businesses which are permitted to open, in order to minimise the risk of transmission of the coronavirus. These steps include the continuation of the requirements to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, and where persons are required to wait to enter the premises, that a distance of 2 metres is maintained. Additionally, the Regulations now also require a range of other reasonable measures intended to minimise exposure to the virus, for example measures which limit close face to face interaction and maintain hygiene. The Welsh Ministers may issue guidance on taking measures to minimise the risk of exposure to coronavirus to which persons responsible for taking reasonable measures under the Regulations must have regard.; and
- restrict gatherings, but with changes to some of the restrictions which were set out in the Original Regulations. These Regulations now also provide that individuals, including members of a household (extended or otherwise), may also gather with other individuals if they are participating in an organised outdoor activity, providing that no more than 30 individuals in total are involved in that activity. The Explanatory Memorandum states that the intended effect of this provision is that people may join together outside to take part in an activity, for example sport or perhaps a tour of an outdoor attraction, where there is an organiser of the event who has undertaken appropriate risk assessments and during the activity takes all reasonable measures to minimise the risk of exposure to coronavirus for the participants.

The Regulations are subject to review on or before 30 July 2020 and thereafter at least every 21 days. The Regulations expire on 8 January 2021.



Procedure

Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

1. Standing Order 21.2(iv): that it appears to have retrospective effect where the authorising enactment does not give express authority for this

The Regulations are expressed to come into force in accordance with regulations 1(3) and 1(4).

Regulation 1(3) sets out a list of individual Regulations which Regulation 1(3) purports to have brought into force on 11 July 2020. The list includes:

- Regulation 2, which sets out the meaning of certain words and phrases used in the Regulations;
- Regulation 3, which revokes the Original Regulations, but only insofar as revoking the provisions relating to the closure of certain businesses, premises and holiday accommodation and contravention of those provisions;
- Regulation 8, which requires the closure of holiday accommodation except for self contained accommodation, caravan pitches and certain other businesses;
- Regulation 9, which deals with businesses which form part of other businesses, but only insofar as it applies to Regulation 8;
- Regulations 12 (reasonable measures to minimise the risk of exposure to coronavirus) and 13 (guidance on minimising exposure), insofar as they apply to people responsible for holiday accommodation; and
- Regulations 17 to 22, which deal with the enforcement of restrictions and requirements, but only insofar as they apply to Regulation 8.

Regulation 1(4) states that for all other purposes the remainder of the Regulations which are not listed in Regulation 1(3) came into force on 13 July 2020.

The list of Regulations which Regulation 1(3) seeks to bring into force on 11 July 2020 does not include Regulation 1 itself. Therefore, pursuant to Regulation 1(4), the whole of Regulation 1 came into force on 13 July 2020.

The effect of this is that when Regulation 1 came into force on 13 July 2020, it retrospectively brought into force all of the Regulations listed in Regulation 1(3) with effect from 11 July 2020. Sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 do not give express authority for the Regulations to have retrospective effect.

In addition, under Regulations 17 to 22, which also came into force retrospectively insofar as they apply to Regulation 8, any failure to comply with Regulation 8 is a criminal offence punishable by a fine. Article 7 of the European Convention of Human Rights states that "No one shall be held guilty of any criminal



offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed". In essence, this means that criminal law must not come into force retrospectively.

A Welsh Government explanation is required to deal with the matters raised in this reporting point.

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

The Regulations are expressed to come into force in accordance with regulations 1(3) and 1(4). Regulation 1(3) sets out a list of individual Regulations which Regulation 1(3) purports to have brought into force on 11 July 2020. This list does not include Regulation 1 itself. Regulation 1(4) states that for all other purposes the remainder of the Regulations, which includes Regulation 1 itself, came into force on 13 July 2020. This means that Regulation 1(3), which purports to have brought some of the Regulations into force on 11 July 2020, did not itself come into force until after this date on 13 July 2020. A response is required from the Welsh Government to fully explain this drafting irregularity.

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

- a) There are some typographical errors in the explanatory note to the Regulations. The fifth paragraph uses 'pebaent' instead of 'pe baent', and the sixth paragraph (penultimate word) has spelt 'fynd' incorrectly. However whilst saying this, in relation to the last few words of the sixth paragraph, we consider the meaning of "and land accessible by the public" is better reflected in the Welsh text as "a thir sy'n hygyrch i'r cyhoedd" (as was used in SI 2020/353 (W. 80)) rather than "a thir y gall y cyhoedd fynd iddynt".
- b) In the italicised text before the Preamble in the Welsh text, the date the Regulations were laid before Senedd Cymru is incomplete.
- c) There are also typographical errors in the body of the Regulations – regulation 8(4)(a)(iii) should say 'wedi' instead of 'wed'; there seems to be a rogue 'y' in "neu y 8(1)" in regulation 9; and regulation 12(3)(d) should say 'iddi' instead of 'iddit'.
- d) A number of cross references in the Welsh text are not included but instead say "Error! Reference source not found." This happens in regulations 9, 12(3)(g), 12(3)(h) and 20(1)(a).
- e) In regulation 11(2)(a) we do not consider the meaning of "to be liable to large numbers of people congregating" is accurately reflected in the Welsh text. The Welsh text says "eu bod yn debygol o ddenu niferoedd mawr o bobl yn ymgynnull" which translates as "likely to attract large numbers of people congregating". We consider the meaning is better reflected as "sydd â thuedd i niferoedd mawr o bobl yn ymgynnull arnynt" (which was the approach taken in SI 2020/334 (W. 76)).
- f) The English text of regulation 12(2)(a)(ii) refers to persons waiting to enter premises and says "a distance of 2 metres is maintained **between them**" (emphasis added) whilst the Welsh text translates as "a distance of 2 metres is maintained".
- g) The Welsh text in regulation 20(6) refers to paragraph 20(1) whilst the English text refers to paragraph (1).



- h) Regulation 20(11) talks about Partnership **assets**, whilst regulation 20(12) talks about an unincorporated association's **funds** (emphasis added). The Welsh text uses 'gronfeydd' for both 'assets' and 'funds', but we consider 'asedau' better reflects the English word 'assets'.
- i) The meaning of 'fixed penalty notice' in the Welsh text at regulation 21(2) appears to be written in the wrong order. It translates as "A notice is a fixed penalty notice offering the person to whom it is issued..." whilst the English text, which seems to make more sense, is "A fixed penalty notice is a notice offering the person to whom it is issued..."

Merits Scrutiny

The following six 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

Human Rights

The Explanatory Memorandum makes reference to the impact that the Regulations have on human rights. It is stated that the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. The Explanatory Memorandum goes on to list the rights which are engaged as Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property). All of these are references to Articles in the European Convention of Human Rights ("ECHR") and no further reference is made to the European Charter of Fundamental Rights. The Explanatory Memorandum does not elaborate on how each of the rights under the ECHR that it mentions are engaged, but states that:

"Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued easing of the restrictions made under the original Regulations by these Regulations, is a proportionate response. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence."

The explanation as to how these rights are qualified and how interference is justified in respect of Articles 5, 8, 9 and 11 is welcomed. However, in order to provide a fuller understanding of the position regarding human rights, the Welsh Government is asked to provide:

- a) a more specific analysis as to how Articles 5, 8, 9 and 11 and Article 1 of the First Protocol to the ECHR are engaged by the Regulations;
- b) details of any justification for interference with the protection of property under Article 1 of the First Protocol to the ECHR, as justification for interference in respect of this right differs from the others cited in the Explanatory Memorandum – such interference is only permitted if it is in the public interest and in accordance with the general principles of international law; and



- c) further information as to what rights under the European Charter of Fundamental Rights it considers are engaged and in what way, and how interference with such rights is justified.

In addition, we refer further to the issue of retrospectively effective criminal law, as referenced in technical reporting point 1. Under Regulations 17 to 22, which came into force retrospectively insofar as they apply to Regulation 8, any failure to comply with Regulation 8 is a criminal offence punishable by a fine. Article 7 of the European Convention of Human Rights states that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed". In essence, this means that criminal law must not come into force retrospectively.

Confirmation is required from the Welsh Government as to whether it considers that Article 7 of the ECHR is engaged by the drafting issues raised regarding Regulation 1 and, if so, how it proposes to rectify this.

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

Cross-border issues

The Explanatory Memorandum makes specific reference to preservation of the concept of 'extended households' in the Regulations, where two households are permitted to form a single household and be able to meet indoors and have physical contact.

The Explanatory Memorandum states that "The two households may not necessarily both reside in Wales but in that situation they will be treated as single household as far as these Regulations are concerned and if one of the households sought to form an extended household with a third household outside of Wales that would not be permitted under these Regulations, even if it were to be permitted under the law applicable in the other territory where the third household resided." (our emphasis)

As the Public Health (Control of Disease) Act 1984 states that the Wales restrictions apply "as respects Wales", can the Welsh Government provide a practical explanation as to how this works in the context of the underlined wording in the preceding paragraph?

3. 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

Regulation 8 permits self-contained accommodation to open, as long as (amongst other requirements) it is only let to members of the same household. Regulation 2(4) confirms that for the purposes of the Regulations, references to "households" would include extended households, the creation of which is permitted. Failure to comply with Regulation 8 is an offence which is punishable by the imposition of a fine. However, it is not clear from the Regulations what the owner of any self-contained accommodation must do in order to satisfy themselves that they are actually letting the property to members of the same household, whether extended or not. For example, will it be enough to simply ask a person at the time of booking whether they are booking it for members of the same household, or will the owner need to request some form of evidence in order to protect themselves against a fine, should it transpire that the person(s) letting the property are not doing so for members of the same household? Clarification is requested from the Welsh Government as to how it envisages that the requirement to let to members of



the same household, whether extended or not, is to be applied in practice by the owner of self-contained accommodation so that they can protect themselves against a potential fine.

4. 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

Inconsistency between the Regulations and the Explanatory Memorandum

Regulation 5(1) states that these Regulations expire at the end of the day on 8 January 2021. It is stated on page 5 of the Explanatory Memorandum that the Regulations expire on 9 January 2021. Although this may be a typographical error, given the gravity and far-reaching extent of these Regulations, the expiry date is likely to be an important point for many people in Wales and care must be taken to ensure that it is accurately reflected, especially in explanatory documents which are intended to assist understanding of the Regulations.

5. 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

These points were highlighted in a note prepared for Members of the Senedd dated 15 April 2020 in relation to the Health Protection (Coronavirus Restrictions)(Wales) Regulations 2020. The Welsh Government responded to other matters raised in that note on 28 April 2020 but was not specifically required to respond to these points and so did not, nor have these points been addressed in these Regulations. They are therefore repeated here in the context of these Regulations.

Power of entry

A person exercising a power of entry under regulation 19 of these Regulations is required to provide evidence of their identity and outline the purpose for which they power is exercised. Although this may imply that the person must provide evidence of their authority to exercise the power of entry (particularly when they are a person designated by the Welsh Ministers, a local authority, a National Park authority in Wales or Natural Resources Wales), it is not clear that the evidence of identity expressly includes evidence of authority to exercise the power. A requirement to provide evidence of authority is common when exercising powers of this nature.

Further, although providing an outline of the purpose for which the power is exercised may also require a person to provide the reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, it would be reasonable to expressly set out a requirement to provide that information.

Although the omission of express wording does not materially adversely affect these Regulations, inclusion of appropriate express wording would provide additional protections, and greater clarity, for those that are subjected to the power of entry.

Fixed Penalty Notice

The following points are noted by the Committee in relation to fixed penalty notices under these Regulations:

- a notice must specify the local authority, or person designated by the Welsh Ministers to receive payment, to whom a fixed penalty must be paid, but in relation to a contravention of regulation 11(4) of these Regulations in a National Park, it is not clear whether payment of a fixed penalty



would be made to the National Park authority or the county or county borough council in which that National Park is located;

- regulation 21(9) of these Regulations provides each authority with discretion to offer a discount for early payment under a fixed penalty notice – this could create inequality between areas in Wales in some authorities adopt the discount but others do not;
- it is unclear if it will be possible to identify whether a person has already received a fixed penalty notice under these Regulations for the purposes of imposing a higher fixed penalty under regulation 21(10) of these Regulations – as it is possible for at least 30 organisations to be administering fixed penalty notices, there is potential for inequality of treatment of offenders across Wales; and
- the only method of payment of a fixed penalty notice expressly required under the Regulations is by way of payment by post addressed to the local authority in question, even though many local authorities in Wales may have limited staff working at their offices – although authorities can, and most likely will, offer payment by telephone or online, those would be helpful options to be expressly referenced in these Regulations.

6. 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

Equality

The Committee notes that its previous comments regarding the failure to address equality in any of the Explanatory Memoranda to the Original Regulations have been taken into account. The inclusion in the Explanatory Memorandum for these Regulations of a summary of the equalities impact assessment undertaken in respect of the Regulations is welcomed.

Implications arising from exiting the European Union

None

Government Response

A Welsh Government response is required to all points save for the final merits reporting point (number 6).

Legal Advisers

Legislation, Justice and Constitution Committee

27 July 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. 725 (W. 162)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

The Regulations replace the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (S.I. 2020/353 (W. 80)) as they were amended by S.I. 2020/399 (W. 88), S.I. 2020/452 (W. 102), S.I. 2020/497 (W. 118), S.I. 2020/529 (W. 124), S.I. 2020/557 (W. 129), S.I. 2020/619 (W. 141) and S.I. 2020/686 (W. 153).

There are 5 Parts to the Regulations.

Part 1 contains defined terms (regulation 2); requires the Welsh Ministers to review the proportionality of, and the need for, the restrictions and requirements at least once every 21 days

(regulation 4); and provides that these Regulations expire on 8 January 2021 (regulation 5). This Part also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. This allows members of two households to agree to form a single (extended) household, which means that members of those households can interact with each other as if they were members of one household.

Part 2 requires certain business and premises to close. These are listed in Schedule 1 (premises selling food and drink), Schedule 2 (generally indoor leisure or cultural facilities and beauty services) and Schedule 3 (holiday accommodation). The requirements to close are, however, subject to numerous exceptions. These include providing food and drink to take away and consuming food and drink on premises that are outdoors (regulation 6); allowing premises to be used for certain listed purposes (regulation 7); allowing self-contained accommodation at hotels and holiday sites to be open, and allowing other forms of such accommodation to open at the request of the Welsh Ministers or a local authority (regulation 8). Regulation 10 makes specific provision about crematoriums and community centres which must close subject to certain exceptions, and regulation 11 requires local authorities, National Park authorities, Natural Resources Wales and the National Trust to close certain public paths and land accessible by the public.

Part 3 imposes obligations on persons responsible for premises open to the public, or for work being carried out at any premises, for the purpose of minimising risk of exposure to coronavirus at the premises. Regulation 12 requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken - for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. Regulation 13 provides for guidance to be issued about the practical application of the requirements imposed by regulation 12, and those subject to the requirements must have regard to that guidance. For these purposes premises includes vehicles used as taxis and for public transport.

Part 4 imposes limits on gathering with other people. These provide (at regulation 14) that a person may only gather indoors with someone other than a member of their household or their carer, or the person they care for, if they have a reasonable excuse for doing so (examples of which are listed). The same rule

applies to gathering outdoors except that gathering with members of one other household is also allowed. Regulation 15 provides an exception to the rule in regulation 14 for organised outdoor activities involving no more than 30 people. Regulation 16 provides that a person who is working or providing voluntary or charitable services must do so from their home, if it is reasonably practicable for them to do so.

Part 5 relates to the enforcement of the restrictions and requirements. Regulation 17 makes provision about those who can take enforcement action, while regulation 18 relates to the actions themselves. Regulation 19 contains a power to enter premises. Regulation 20 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 21 allows for offences to be punished by way of a fixed penalty notice (the amount of which doubles on each of a person's second and subsequent penalty notices, up to a maximum of £1920) and regulation 22 relates to prosecutions of offences under the regulations.

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.

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

PART 1

Introduction

Title, application and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) The following provisions of these Regulations come into force on 11 July 2020—

- (a) regulation 2;
- (b) regulation 8;
- (c) regulation 9 so far as it applies to a requirement under regulation 8(1);
- (d) regulations 12 and 13 so far as they apply to a person responsible for premises of a business listed in Schedule 3;
- (e) regulations 17 to 22 so far as they apply to a contravention (or alleged contravention) of regulation 8(1);
- (f) regulation 3 so far as it relates to the following provisions of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾—
 - (i) paragraphs (4) to (6) of regulation 4 so far as they apply to a person responsible for carrying on a business listed in Part 3 of Schedule 1;
 - (ii) regulation 5;
 - (iii) regulation 7A so far as it applies in relation to a requirement or restriction imposed by regulation 4(5B) or 5(3C) on a person responsible for carrying on a business listed in Part 3 of Schedule 1;
 - (iv) regulations 10 to 14 so far as they apply to a contravention (or alleged contravention) of regulation 4(4) or 5(3C) by a person responsible for carrying on a business listed in Part 3 of Schedule 1.

(4) These Regulations come into force for all other purposes on 13 July 2020.

(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), S.I. 2020/529 (W. 124), S.I. 2020/557 (W. 129), S.I. 2020/619 (W. 141) and S.I. 2020/686 (W. 153).

Interpretation

2.—(1) In these Regulations—

- (a) “burial” includes the interment of a dead person’s ashes;
- (b) “carer” means a person who provides care for the person assisted where—
 - (i) the carer is entitled to an assessment under section 24 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾,
 - (ii) the care is part of the provision of community care services under Part 4 of the Social Services and Well-being (Wales) Act 2014, or
 - (iii) the care is provided by a care provider registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽²⁾;
- (c) “cemetery” includes a burial ground and any other place for the interment of the dead;
- (d) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (e) “elite athlete” means an individual designated as such for the purposes of these Regulations by the Sports Council for Wales;
- (f) “local authority” means the council of a county or county borough in Wales;
- (g) “open premises” has the meaning given by regulation 12(3);
- (h) “parental responsibility” has the same meaning as in the Children Act 1989⁽³⁾;
- (i) a “person responsible for carrying on a business” includes the owner, proprietor, and manager of that business;
- (j) “premises” includes any building or structure and any land;
- (k) “vulnerable person” includes—
 - (i) any person aged 70 or older;
 - (ii) any person under 70 who has an underlying health condition;
 - (iii) any person who is pregnant;
 - (iv) any child;
 - (v) any person who is a vulnerable adult within the meaning given by section

(1) 2014 anaw 4.

(2) 2016 anaw 2.

(3) 1989 c. 41. See Part 1 of the Act, to which there have been various amendments, including by the Human Fertilisation and Embryology Act 2008 (c. 22) and S.I. 2019/1458.

60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

(2) For the purposes of the definition of “elite athlete” in paragraph (1)—

- (a) an individual is designated by the Sports Council for Wales only if the individual has been nominated for designation by a relevant sporting body and the Council has accepted the nomination, and
- (b) “relevant sporting body” means the national governing body of a sport which may nominate athletes to represent—
 - (i) Great Britain and Northern Ireland at the Olympic or Paralympic Games, or
 - (ii) Wales at the Commonwealth Games.

(3) For the purposes of these Regulations—

- (a) there is a gathering when two or more people are in the same place in order to do something together;
- (b) premises are indoors if they are enclosed or substantially enclosed within the meaning given by regulation 2 of the Smoke-free Premises etc. (Wales) Regulations 2007⁽²⁾.

(4) If two households agree to be treated as a single (extended) household for the purposes of these Regulations, any reference in these Regulations (other than in paragraphs (5) to (7)) to a “household” is to be read as including both households.

(5) To agree to be treated as a single household all of the adults of the two households must agree.

(6) But—

- (a) a household may only agree to be treated as a single household with one other household, and
- (b) if two households cease to agree to be treated as a single household, neither household may agree to be treated as a single household under paragraph (4) with any other household.

(7) If two households have agreed to be treated as a single (extended) household for the purposes of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 they are to be treated as also having agreed for the purposes of these Regulations.

Revocation

3.—(1) The following Regulations are revoked—

(1) 2006 c. 47, as amended by section 65 of the Protection of Freedoms Act 2012 (c. 9).
(2) S.I. 2007/787 (W. 68)

- (a) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾;
- (b) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020⁽²⁾;
- (c) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020⁽³⁾;
- (d) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020⁽⁴⁾;
- (e) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020⁽⁵⁾;
- (f) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020⁽⁶⁾;
- (g) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020⁽⁷⁾;
- (h) the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020⁽⁸⁾.

(2) Despite the revocation of those Regulations, they continue in force in relation to any offence committed under the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 before these Regulations came into force.

Review

4. The Welsh Ministers must review the need for restrictions and requirements imposed by these Regulations, and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) by 30 July 2020;
- (b) at least once in the period of 21 days beginning with 31 July 2020;
- (c) at least once in each subsequent period of 21 days.

(1) S.I. 2020/353 (W. 80)
(2) S.I. 2020/399 (W. 88).
(3) S.I. 2020/452 (W. 102).
(4) S.I. 2020/497 (W. 118).
(5) S.I. 2020/529 (W. 124).
(6) S.I. 2020/557 (W. 129).
(7) S.I. 2020/619 (W. 141).
(8) S.I. 2020/686 (W. 153).

Expiry

5.—(1) These Regulations expire at the end of the day on 8 January 2021.

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

PART 2

Closure of businesses and premises

Closure of indoor bars and restaurants etc.

6.—(1) A person responsible for carrying on a business which is listed in Schedule 1 must close any part of its premises which is indoors and used for the consumption of food or drink.

(2) But paragraph (1) does not prevent the provision of room service at a hotel or other accommodation.

(3) And paragraph (1) applies subject to the need to carry out maintenance and repairs and other work to ensure premises are suitable for use when paragraph (1) no longer applies to the business.

(4) For the purposes of paragraph (1), an indoor area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

Closure of other businesses and services

7.—(1) A person responsible for carrying on a business or providing a service which is listed in Schedule 2 must cease to carry on that business or to provide that service.

(2) But paragraph (1) does not prevent the use of—

- (a) premises used for the businesses or services listed in paragraphs 1, 2, 4, 5, 6 or 12 of Schedule 2 to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast);
- (b) premises for any purpose as may be requested by the Welsh Ministers or a local authority;
- (c) premises for training for elite athletes;
- (d) premises used as a museum or gallery, or for providing archive services, for the provision of information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or

(iii) by post.

(3) And paragraph (1) applies subject to the need to carry out maintenance and repairs and other work to ensure premises are suitable for use when paragraph (1) no longer applies to the business or service.

Closure of holiday accommodation

8.—(1) A person responsible for carrying on a business which is listed in Schedule 3 must cease to carry on that business.

(2) But paragraph (1) does not prevent the use of premises—

- (a) for the provision of self-contained accommodation,
- (b) for the provision of pitches for self-contained caravans at holiday sites or camping sites,
- (c) for the purposes of a business listed in Schedule 1 (but see regulation 6), or
- (d) for any purpose as may be requested by the Welsh Ministers or a local authority.

(3) And paragraph (1) applies to a person responsible for carrying on a business subject to the need to—

- (a) provide accommodation for any persons staying in that accommodation when these Regulations come into force and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;
- (b) carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post;
- (c) carry out maintenance and repairs and other work to ensure premises are suitable for use when paragraph (1) no longer applies to the business.

(4) For the purposes of paragraph (2)—

- (a) accommodation is self-contained if—
 - (i) it is provided to persons who are members of the same household,
 - (ii) toilets and washing facilities are provided in connection with the accommodation which are not shared with anyone who is a member of another household, and

- (iii) if facilities for the preparation or consumption of food or drink are provided in connection with the accommodation, they are not shared with anyone who is a member of another household;
- (b) a caravan is self-contained if—
 - (i) the persons occupying the caravan are members of the same household,
 - (ii) the caravan contains its own toilet and washing facilities, and
 - (iii) the persons occupying the caravan do not share facilities for the preparation or consumption of food or drink at the holiday site or camping site with anyone who is a member of another household;
- (c) “caravan” has the same meaning as in Part 1 of the Caravan Sites and Control of Development Act 1960⁽¹⁾.

(5) In this regulation and in Schedule 3, a “holiday site” means any land in Wales on which a mobile home or caravan is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), in respect of which the relevant planning permission or the site licence for the land—

- (a) is expressed to be granted for holiday use only, or
- (b) requires that there are times of the year when no mobile home or caravan may be stationed on the site for human habitation.

(6) For the purpose of determining whether or not a site is a holiday site, any provision of the relevant planning permission or of the site licence which permits the stationing of a mobile home on the land for human habitation all year round is to be ignored if the mobile home is authorised to be occupied by—

- (a) the person who is the owner of the site, or
- (b) a person employed by that person but who does not occupy the mobile home under an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013⁽²⁾ applies.

Businesses forming part of a larger business

9. Where—

- (a) a person responsible for carrying on a business (“business A”) is required, by virtue

⁽¹⁾ 1960 c. 62. See section 29(1) (interpretation of Part 1).

⁽²⁾ 2013 anaw 6, as amended by the Housing (Wales) Act 2014 (anaw 7).

of regulation 6(1), 7(1) or 8(1) to cease carrying on business A, and

- (b) business A forms part of a larger business (“business B”),

the requirement in regulation 6(1), 7(1) or 8(1) is complied with if the person responsible for carrying on business B ceases to carry on business A.

Closure of crematoriums and community centres

10.—(1) A person responsible for a crematorium must ensure that the crematorium is closed to members of the public, except for the use permitted by paragraph (2).

(2) The crematorium may open to members of the public for funerals or burials (and to broadcast a funeral or burial whether over the internet or otherwise).

(3) Paragraph (2) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.

(4) A person responsible for a community centre must ensure that the community centre is closed except where it is used to provide—

- (a) essential voluntary services, or
- (b) public services upon the request of the Welsh Ministers or a local authority.

Closure of certain public paths and access land

11.—(1) Where paragraph (2) applies to a public path or access land in the area of a relevant authority, the relevant authority must—

- (a) close the public path or access land, and
- (b) keep it closed until the time when the authority considers that closure is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection with coronavirus in its area.

(2) This paragraph applies to the public paths and access land in its area a relevant authority considers—

- (a) to be liable to large numbers of people congregating or being in close proximity to each other, or
- (b) the use of which otherwise poses a high risk to the incidence or spread of infection with coronavirus in its area.

(3) Where a public path has been closed under—

- (a) regulation 4 of the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020⁽¹⁾, or
- (b) regulation 9 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽²⁾,

the path is to be treated as if it were closed under paragraph (1) of this regulation.

(4) No person may use a public path or access land closed by virtue of paragraph (1) unless authorised by the relevant authority.

(5) The relevant authority must—

- (a) publish a list of public paths or access land closed in its area on a website;
- (b) erect and maintain notices in prominent places informing the public of the closure of a public path or access land.

(6) For the purposes of this regulation references to a public path or access land include parts of a public path or access land.

(7) In this regulation—

- (a) the “relevant authority” means—
 - (i) a local authority,
 - (ii) a National Park authority in Wales,
 - (iii) Natural Resources Wales, or
 - (iv) the National Trust;
- (b) “public path” means a footpath, bridleway, byway, restricted byway or cycle track and—
 - (i) “footpath”, “bridleway” and “cycle track” have the same meaning as in section 329(1) of the Highways Act 1980⁽³⁾;
 - (ii) “byway” means a byway open to all traffic within the meaning given by section 66(1) of the Wildlife and Countryside Act 1981⁽⁴⁾;
 - (iii) “restricted byway” has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000⁽⁵⁾;
- (c) “access land” includes land to which the public has access by virtue of its ownership by the National Trust, but otherwise has the

⁽¹⁾ S.I. 2020/334 (W. 76).

⁽²⁾ S.I. 2020/353 (W. 80).

⁽³⁾ 1980 c.66. Section 329 was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

⁽⁴⁾ 1981 c. 69.

⁽⁵⁾ 2000 c. 37.

same meaning as in section 1(1) of the Countryside and Rights of Way Act 2000(1).

PART 3

Minimising risk of exposure to coronavirus at open premises and while working

Reasonable measures to minimise risk of exposure to coronavirus

12.—(1) Paragraph (2) applies to a person responsible for—

- (a) open premises, or
- (b) work carried out at any other premises where a person is working.

(2) For the purposes of minimising the risk of exposure to coronavirus at the premises, the person must—

- (a) take all reasonable measures to ensure—
 - (i) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer);
 - (ii) where persons are required to wait to enter the premises, that a distance of 2 metres is maintained between them (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) take any other reasonable measures for that purpose, for example measures which limit close face to face interaction and maintain hygiene such as—
 - (i) changing the layout of premises including the location of furniture and workstations;
 - (ii) controlling use of entrances, passageways, stairs and lifts;
 - (iii) controlling use of shared facilities such as toilets and kitchens;
 - (iv) otherwise controlling the use of, or access to, any other part of the premises;
 - (v) installing barriers or screens;
 - (vi) providing or requiring use of personal protective equipment, and

(1) 2000 c. 37. Section 1(1) was amended by section 302(2)(a) of the Marine and Coastal Access Act 2009 (c. 23).

- (c) provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.

(3) In these Regulations “open premises” means—

- (a) premises of a business or service listed in Schedule 4;
- (b) places of worship;
- (c) cemeteries;
- (d) premises of a business listed in Schedule 1 which are not required to be closed by virtue of regulation 6;
- (e) premises of a business listed in Schedule 2 which are permitted to be open by virtue of regulation 7(2);
- (f) premises of a business listed in Schedule 3 which are permitted to be open by virtue of regulation 8(2) or (3);
- (g) crematoriums permitted to open by virtue of regulation 10(2);
- (h) community centres permitted to open by virtue of regulation 10(4).

(4) For the purposes of this regulation “premises” also includes a vehicle used to provide a service for the carriage of passengers by road, rail, tramway, air or sea.

Guidance on minimising exposure

13.—(1) A person required to take reasonable measures under regulation 12 must have regard to guidance issued by the Welsh Ministers about those measures.

(2) The Welsh Ministers—

- (a) may revise guidance issued under paragraph (1), and
- (b) must publish the guidance (and any revisions).

(3) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).

PART 4

Gathering with other people

Restrictions on gatherings

14.—(1) No person may, without a reasonable excuse—

- (a) gather outdoors with any other person apart from—
 - (i) members of their household or of no more than one other household,
 - (ii) their carer, or
 - (iii) a person they are providing care to;
- (b) gather in premises indoors with any other person apart from—
 - (i) the members of their household,
 - (ii) their carer, or
 - (iii) a person they are providing care to.

(2) A reasonable excuse includes the need to do the following—

- (a) obtain medical assistance, including accessing any of the services referred to in paragraph 10 of Schedule 4 or accessing veterinary services;
- (b) 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;
- (c) provide or receive emergency assistance;
- (d) donate blood;
- (e) work or provide voluntary or charitable services;
- (f) where the person is an elite athlete, train or compete;
- (g) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending.
- (h) attend a funeral—
 - (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;
- (i) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (j) access or receive critical public services, including—

⁽¹⁾ 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

- (i) childcare or educational services;
- (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);
- (k) 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;
- (l) move home;
- (m) prepare a residential property for persons to move in;
- (n) undertake the following activities in connection with the purchase, sale, letting or rental of unoccupied residential property—
 - (i) visiting estate or letting agents, developer sales offices or show homes;
 - (ii) viewing such a property;
- (o) avoid injury or illness or escape a risk of harm.

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

(4) For the purposes of paragraph (2)(n), a property is unoccupied if no person occupies the property as a residence.

Exception for organised outdoor activities

15.—(1) Despite the meaning of “gathering” given by regulation 2(3)(a), regulation 14(1) does not apply to any organised outdoor activity consisting of no more than 30 persons.

(2) For the purposes of paragraph (1), an activity is an “organised outdoor activity” if—

- (a) it takes place outdoors,
- (b) it is organised by—
 - (i) a business,
 - (ii) a public body or a charitable, benevolent or philanthropic institution,
 - (iii) a club or political organisation, or
 - (iv) the national governing body of a sport or other activity, and
- (c) the person organising it has—

- (i) carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999⁽¹⁾, whether or not the person is subject to those Regulations, and
 - (ii) complied with the requirements of regulations 12(2) and 13(1).
- (3) For the purposes of paragraph (2)(c)—
- (a) regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies as if the activity were an undertaking conducted by the person organising it;
 - (b) regulation 12(2) of these Regulations applies as if the place where the activity takes place were open premises for which the person organising the activity is responsible.

Requirement to continue to work from home where practicable

16.—(1) 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.

PART 5

Enforcement

Enforcement officers

17.—(1) For the purposes of regulations 18 to 21, an “enforcement officer” means—

- (a) a constable,
- (b) a police community support officer,
- (c) a person designated by—
 - (i) the Welsh Ministers,
 - (ii) a local authority,

(1) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

- (iii) a National Park authority in Wales, or
 - (iv) Natural Resources Wales,
- for the purposes of regulations 18 to 21 (but see paragraphs (2) and (3)), or
- (d) a person designated under regulation 10(11)(c) of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ as a relevant person (within the meaning given by that regulation) by—
 - (i) the Welsh Ministers,
 - (ii) a local authority,
 - (iii) a National Park authority in Wales, or
 - (iv) Natural Resources Wales,(but see paragraphs (2) and (3)).

(2) A person designated by a local authority may exercise an enforcement officer's functions only in relation to a contravention (or alleged contravention) of a requirement in regulation 6(1), 7(1), 8(1), 10(1) or (4), 11(4) or 12(2).

(3) A person designated by a National Park authority or Natural Resources Wales may exercise an enforcement officer's functions only in relation to a contravention (or alleged contravention) of the requirement in regulation 11(4).

Enforcement actions

18.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person is contravening a requirement in regulation 6(1), 7(1), 8(1), 10(1) or (4) or 12(2).

(2) A compliance notice may specify measures that the person to whom it is given must take as soon as is reasonably practicable so as to prevent that person from continuing to contravene the requirement.

(3) If an enforcement officer has reasonable grounds to suspect that a person ("P") is contravening (or is about to contravene) regulation 11(4), the officer may remove P from a public path or access land (within the meaning given by regulation 11(7)) which is closed (or is being closed) by virtue of regulation 11(1), and may use reasonable force, if necessary, to do so.

(4) Where an enforcement officer has reasonable grounds for suspecting that people are gathered together in contravention of regulation 14(1), the officer may—

- (a) direct the gathering to disperse;

(1) S.I. 2020/353 (W. 80).

- (b) direct any person in the gathering to return to the place where they are living;
- (c) remove any person in the gathering to the place where they are living.

(5) An enforcement officer may—

- (a) when exercising the power in paragraph (4), direct a person to follow such instructions as the officer considers necessary;
- (b) use reasonable force in the exercise of the power in paragraph (4)(a) or (c).

(6) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is in a gathering in contravention of regulation 14(1) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(7) For the purposes of paragraph (6), I has responsibility for a child if I—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child.

(8) An enforcement officer may take other action to facilitate the exercise of a power conferred on the officer by this regulation or regulation 19.

(9) An enforcement officer may only exercise a power under this regulation or regulation 19 if the officer considers that it is necessary and proportionate to do so.

(10) In this regulation and regulations 19 and 20 references to a requirement include references to a restriction.

Power of entry

19.—(1) An enforcement officer may enter premises, if the officer—

- (a) has reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been or is about to be contravened.

(2) An enforcement officer entering premises in accordance with paragraph (1) may—

- (a) use reasonable force to enter the premises if necessary;

- (b) take such other persons, equipment and materials onto the premises as appears to the officer to be appropriate.

(3) An enforcement officer entering premises in accordance with paragraph (1)—

- (a) if asked by a person on the premises, must show evidence of the officer's identity and outline the purpose for which the power is exercised;
- (b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the officer found them.

Offences and penalties

20.—(1) A person who—

- (a) without reasonable excuse, contravenes a requirement in regulation 6(1), 7(1), 8(1), 10(1) or (4), 11(4), 12(2) or 16(1), or
- (b) contravenes a requirement in regulation 14(1),

commits an offence.

(2) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(3) A person who, without reasonable excuse—

- (a) contravenes a direction given by an enforcement officer under regulation 18(4), 18(5)(a) or 18(6), or
- (b) fails to comply with a compliance notice given by an enforcement officer under regulation 18(1),

commits an offence.

(4) An offence under these Regulations is punishable on summary conviction by a fine.

(5) Section 24 of the Police and Criminal Evidence Act 1984(1) applies in relation to an offence under this regulation as if the reasons in subsection (5) included—

- (a) to maintain public health;
- (b) to maintain public order.

(6) If an offence under paragraph (1) committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

(1) 1984 c. 60. Section 24 was substituted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).

the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(7) In paragraph (6), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(8) Proceedings for an offence under these Regulations alleged to have been committed by a partnership may be brought in the name of the partnership instead of in the name of any of the partners.

(9) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated body other than a partnership may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.

(10) Section 33 of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates’ Courts Act 1980⁽²⁾ apply in proceedings for an offence brought against a partnership or an unincorporated association other than a partnership as they apply in relation to a body corporate.

(11) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(12) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under these Regulations is to be paid out of the funds of the association.

Fixed penalty notices

21.—(1) An enforcement officer may issue a fixed penalty notice to anyone that the officer reasonably believes—

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) a local authority, or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,

as the notice may specify.

(1) 1925 c. 86.

(2) 1980 c. 43.

(3) The Welsh Ministers may designate themselves under paragraph (2)(b).

(4) A person designated by the Welsh Ministers for the purposes of receiving payment under regulation 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ is to be treated as if designated for the purposes of receiving payment under this regulation.

(5) Where a local authority is specified in the notice it must be the authority (or as the case may be, any of the authorities) in whose area the offence is alleged to have been committed.

(6) Where a person is issued with a notice under this regulation in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(7) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which (because of paragraph (6)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment.

(8) The amount specified under paragraph (7)(c) must be £60 (subject to paragraphs (9) and (10)).

(9) A fixed penalty notice may specify that if £30 is paid before the end of the period of 14 days following the date of the notice, that is the amount of the fixed penalty.

(10) If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under these Regulations—

- (a) paragraph (9) 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;

⁽¹⁾ S.I. 2020/353 (W. 80). Regulation 13 was amended by S.I. 2020/399 (W. 88) and S.I. 2020/529 (W. 124).

- (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.

(11) In calculating how many fixed penalty notices a person has received, fixed penalty notices issued to that person under the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ are to be taken into account.

(12) Whatever other method may be specified under paragraph (7)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (7)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(13) Where a letter is sent as mentioned in paragraph (12), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(14) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of the person with responsibility for the financial affairs of—
 - (i) the local authority, or
 - (ii) the person designated under paragraph (2)(b),specified in the fixed penalty notice to which the proceedings relate, and
- (b) which states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

(15) Where a fixed penalty is issued in respect of the alleged offence of contravening the requirement in regulation 11(4), references in this regulation to a “local authority” are to be read as including references to a National Park authority in Wales.

Prosecutions

22.—(1) No proceedings for an offence under these Regulations may be brought other than by the Director of Public Prosecutions or any person designated by the Welsh Ministers.

(2) A person designated by the Welsh Ministers under regulation 14 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations

(1) S.I. 2020/353 (W. 80).

2020(1) is to be treated as if designated under this regulation.

Mark Drakeford
First Minister, one of the Welsh Ministers
At 3.40 p.m. on 10 July 2020

(1) S.I. 2020/353 (W. 80).

SCHEDULE 1

Regulation 6

Premises selling food and drink for consumption on the premises

1. Restaurants, including restaurants and dining rooms in members' clubs and on the premises of businesses listed in Schedule 3.

2.—(1) Cafés, including workplace canteens (subject to sub-paragraph (2)) and cafés on the premises of businesses listed in Schedule 3, but not including—

- (a) cafés or canteens at a hospital, care home or school;
- (b) canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;
- (c) services providing food or drink to the homeless.

(2) Workplace canteens may remain open where—

- (a) there is no practical alternative for staff at that workplace to obtain food, and
- (b) all reasonable measures are taken to ensure that a distance of 2 metres is maintained between any person using the canteen.

3. Bars, including bars in members' clubs and on the premises of businesses listed in Schedule 3.

4. Public houses.

SCHEDULE 2

Regulation 7

Businesses and services required to be closed

1. Indoor cinemas.

2. Theatres.

3. Nightclubs.

4. Bingo halls.

5. Concert halls.

6. Casinos.

7. Massage parlours.

8. Nail and beauty salons.

9. Establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture.

10. Skating rinks.

11. Swimming pools.

12. Indoor fitness studios, gyms, spas or other indoor leisure centres or facilities.

13. Bowling alleys, amusement arcades and indoor play areas.

14. Museums, galleries and archive services.

15. Any part of a visitor attraction which is underground (but not including any part of an attraction which is underground only by virtue of it being a basement or other part of a building which is below ground level).

16. Funfairs (whether outdoors or indoors).

17. Playgrounds and outdoor gyms.

18. Auction houses (except for livestock auctions).

SCHEDULE 3 Regulation 8

Holiday accommodation

1. Holiday sites.

2. Camping sites.

3. Hotels and bed and breakfast accommodation.

4. Other holiday accommodation (including holiday apartments, hostels and boarding houses).

SCHEDULE 4 Regulation 12

Businesses and services which may open subject to protective measures

1. Any business selling goods or services for sale or hire in a shop.

2. Pharmacies (including non-dispensing pharmacies) and chemists.

3. Petrol stations.

4. Car repair and MOT services.

5. Taxi or vehicle hire businesses.

6. Banks, building societies, credit unions, short term loan providers, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.

7. Post offices.

8. Funeral directors.

9. Laundrettes and dry cleaners.

10. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.

11. Veterinary surgeons and pet shops.

12. Livestock markets or auctions.

13. Storage and distribution facilities, including delivery drop off points.

14. Car parks.

15. Public toilets.

16. Libraries.

17. Estate or letting agents, developer sales offices and show homes.

18. Car dealerships.

19. Outdoor markets.

20. Betting shops.

21. Indoor shopping centres and indoor shopping arcades.

22. Outdoor cinemas.

23. Hair salons and barbers.

24. Visitor attractions (but only to the extent that paragraph 15 of Schedule 2 does not apply).

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

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

10 July 2020

1. Description

These Regulations revoke the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the original Regulations”) and all the Regulations which have amended the original Regulations.

These Regulations make fresh provision about the restrictions and requirements necessary 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. In particular, the Welsh Ministers consider it important to relax the restrictions originally contained in the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 as soon as it is considered no longer necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions as now set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by 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

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued easing of the restrictions made under the original Regulations by these Regulations, is a proportionate response. It balances the need to maintain an appropriate response to

the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to 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, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

These Regulations make provision in three key areas:

- a) requiring certain business and premises to close;
- b) requiring steps to be taken, by businesses and in premises allowed to open, to minimise the risk of exposure to coronavirus;
- c) restricting gatherings.

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

Although these Regulations revoke the original Regulations they also reinstate (with some easing – see below) requirements for the closure of businesses selling food or drink, holiday accommodation, and other businesses, to protect against the risks to public health arising from coronavirus. They also continue the duty on local

authorities, National Park authorities, National Resources Wales and The National Trust to close footpaths or access land to prevent large numbers of people congregating or being in close proximity to each other, and to publish a list of closures on their websites.

Originally businesses selling food or drink could only open for that purpose if the food and drink was to be consumed off the premises. This remains the case in these Regulations, but in addition businesses may now also sell food for consumption on any part of their premises which is outdoors.

By also changing the list of business which must close, the effect is that hair salons and barbers, and self-contained accommodation may now reopen. Places of worship may also open subject to taking reasonable measures to minimise the risk of exposure to coronavirus for those on the premises. Outdoor cinemas may open (but indoor cinemas must remain closed).

Concerns remain that for certain types of business and/or premises there are increased risks of the virus being transmitted. This is particularly the case where it could be difficult to ensure physical distancing of visitors, premises which have poor ventilation or cramped tight spaces which are difficult to navigate, and/or an underlying environment which is damp and noisy, and those with lots of surface areas that are frequently touched. These business and premises must therefore remain closed for the time being.

Where businesses or premises can open, or where people are working, Part 3 of the Regulations sets out reasonable measures which must be taken to minimise exposure to coronavirus.

These Regulations continue the requirements established in the original Regulations that all reasonable measures must be taken to ensure that a distance of 2 metres is maintained between persons on the premises and where persons are required to wait to enter the premises, that a distance of 2 metres is maintained. Additionally, the Regulations now also require a range of other reasonable measures intended to minimise exposure to the virus, for example measures which limit close face to face interaction and maintain hygiene.

The Welsh Ministers may issue guidance on taking measures to minimise the risk of exposure to coronavirus to which persons responsible for taking reasonable measures under the Regulations must have regard.

Part 4 of the Regulations cover gatherings with other persons – either in a work or social context. As in the original Regulations, an individual must continue to work from home where it is practicable for them to do so. A person must continue to only gather indoors with someone other than a member of their household or their carer, or the person they care for, if they have a reasonable excuse for doing so (examples of which are set out in the Regulations). The same rule applies to gathering outdoors except that gathering with members of one other household is also allowed. These regulations also continue the concept of ‘extended households’ which have been permitted in Wales from 6 July 2020. In effect people in two households may agree to become part of a single household and enjoy the same legal freedoms a

household has – they will be able to meet indoors and have physical contact. Where two households have made that agreement under the original regulations they will be treated as being a single household under these Regulations (meaning that they cannot establish a different extended household). The two households may not necessarily both reside in Wales but in that situation they will be treated as single household as far as these Regulations are concerned and if one of the households sought to form an extended household with a third household outside of Wales that would not be permitted under these Regulations, even if it were to be permitted under the law applicable in the other territory where the third household resided.

These Regulations now also provide that individuals, including members of a household (extended or otherwise) may also gather with other individuals if they are participating in an organised outdoor activity, providing that no more than 30 individuals in total are involved in that activity. The intended effect of this provision is that people may join together outside to take part in an activity, for example sport or perhaps a tour of an outdoor attraction, where there is an organiser of the event who has undertaken appropriate risk assessments and during the activity takes all reasonable measures to minimise the risk of exposure to coronavirus for the participants.

The enforcement regime (including fine levels) established in the original Regulations has been continued in these Regulations. However enforcement officers (previously referred to as ‘relevant persons’) may now issue ‘compliance notices’. Such notices could, for example, set out the types of reasonable measures which a business etc. should adopt in order to minimise the risk of exposure to coronavirus and therefore be compliant with the requirement in Regulation 12.

These Regulations also make necessary savings provisions in light of the revocation of the original Regulations and their subsequent amendments.

These new Regulations expire on 9 January 2021. As the ongoing threat of coronavirus continues, it is considered necessary and proportionate to put these regulations in place for 6 months. In particular this provides workers and the general public with reassurance that premises open to them will be required to continue to take reasonable measures to minimise their risk of exposure to coronavirus.

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 these 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 Regulations. Individuals and businesses were informed about the restrictions in the original 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, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to those original Regulations. The First Minister and other Ministers have signalled through numerous press conferences and statements since 19 June the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed that the changes would be made in his press conference of 10 July.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

A summary equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.



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

10 July 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations will come into force in part at the beginning of 11 July 2020, with the remaining provisions coming into force on 13 July 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 1 October 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.

These Regulations will revoke the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, and the subsequent amending Regulations which have been made. This will mean the approval of the Senedd for both the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020 will no longer be required. The Minister for Finance and Trefnydd will withdraw the motions due to be considered on 15 July, and appropriate revisions to the Business Statement will be made.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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, slightly slanted style.

MARK DRAKEFORD



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Review of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020
DATE	10 July 2020
BY	Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the Regulations) place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They also impose requirements on businesses, which are open to take reasonable measures to ensure physical distancing between people. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Under regulation 3(2), Welsh Ministers are required to review the need for the requirements and restrictions in the regulations, and their proportionality, every 21 days. The fifth review of these regulations was carried out this week.

The scientific and medical advice shows a coronavirus is continuing to decline in Wales. The number of new confirmed cases has fallen, following a recent increases linked to the two outbreaks at meat and food processing plants in Wrexham and Anglesey and an incident in Merthyr Tydfil.

Our Test Trace and Protect system is working well and – it has played a critical role in our response to the coronavirus pandemic since its launch and will be vital as we continue to ease restrictions.

As I have previously set out, the UK Scientific Advisory Group for Emergencies (SAGE) and the Welsh Government's Technical Advisory Cell (TAC) advise that each and every change to the lockdown measures has a cumulative effect. They should therefore be introduced in a phased fashion and carefully monitored. We have already made a number of significant changes to the restrictions in Wales over recent review cycles, including in the last week to lift the stay local requirement and to introduce extended households.

We will continue with our step-by-step approach to enable public services to resume more essential services – all pupils currently have the opportunity to return to school to check in and catch up ahead of the summer holiday, for example.

We will also use some of our existing headroom to enable the NHS to provide more essential care and treatment – cancer screening services have resumed; dental and optometry services have moved into the amber phase and health boards now have quarter two plans. We are rolling out video consultation technology, which helped thousands of people to access primary and secondary care at the height of the pandemic, to dental practices, optometrists, and community pharmacies so people can access healthcare in a timely and safe way.

Having reviewed all the evidence and the indicators, the conditions support making further step-by-step easements to the lockdown restrictions across a number of areas.

We will once again take a week-by-week approach to the further lifting of restrictions in Wales.

In the first week, self-contained accommodation without shared facilities will reopen from Saturday 11 July.

From Monday 13 July the following sectors and businesses will be able to open, subject to following guidance about coronavirus-safe ways to operate:

- Hairdressing salons and barbershops, including mobile hairdressers.
- Pubs, bars, restaurants and cafes outdoors.
- Outdoor cinemas.
- Indoor visitor attractions, with the exception of a small number of underground visitor attractions, which must remain closed for the time being because of the higher risks associated with those environments. The Welsh Government will continue to work with these attractions towards safe re-opening.
- Places of worship. Faith leaders can begin to gradually resume services when they are ready to do so safely.

We are making changes to the regulations to allow larger gatherings outdoors of up to 30 people where these are organised and supervised by a responsible person. This will allow sports and leisure activities, such as fitness and dance classes, to take place outdoors, as well as collective worship. This will include charities, businesses, and sports clubs and a risk assessment will need to be carried out.

In the second week, from 20 July, we will remove the current restrictions on playgrounds and outdoor gyms. These will reopen gradually over the following weeks as and when safety checks and other measures are put in place. We will also publish guidance to support community centres to restart more public services at the discretion of local authorities. This will enable them to operate in a coronavirus-safe way.

This should have positive impacts by expanding valuable public services in the community, including supporting safeguarding efforts to respond to the many problems that sadly may have been hidden or exacerbated during lockdown. One such vital service is that delivered by voluntary and local authority youth work services. We are working closely with young people and the sector to develop specific guidance to support their wider re-opening and this will follow shortly thereafter. Re-opening community centres will also help local authorities provide summer holiday play schemes and childcare.

In the third week, we will look again at the latest health advice and evidence and consider the following areas for reopening from 27 July. A final decision will depend on the health conditions at the time and the necessary preparations being in place:

- Close contact services, including nail and beauty salons and businesses providing tanning services, massages, body piercings, tattooing, electrolysis or acupuncture
- All remaining tourist accommodation, which has been closed because of the additional risks of shared facilities, such as camping sites. Opening would be from 25 July in this case.
- Indoor cinemas, museums, galleries and archive services.
- Fully reopening the housing market to allow viewings in occupied properties.

The next formal review of the regulation is due by 30 July. We are already having detailed discussions with industry about how indoor hospitality can operate in a coronavirus-safe way. We are considering this for reopening from 3 August, subject to the conditions and measures in place.

In advance of the next review we will also work with local authorities and other operators to understand how gyms, leisure centres, fitness studios and swimming pools can make mitigations for a future opening. I have asked for some specific work to be carried out about swimming pools and coronavirus.

We have also reviewed the evidence about the 2m requirement, which is set out in our regulations.

The advice we have received from the Chief Medical Officer for Wales is that the evidence for 2m social distancing is clear in respect of the immediate health impacts: maintaining a 2m distance provides more protection than 1m – approximately two to five times the protective value in the absence of any other measures to protect a person.

There are, however, a number of measures which can be put in place to reduce the risk of coronavirus being transmitted in those places where maintaining a 2m distance is not always practical, such as on public transport or where a business is not viable with 2m distancing.

We will publish guidance next week what these additional measures are so that in those exceptional circumstances where 2m distancing cannot be maintained, we are clear what is expected of people. This guidance must be adhered to and will be referenced in the regulations.

I am very grateful to stakeholders and representative groups from across Wales and the many different sectors, which have worked with the Welsh Government over recent months and weeks to prepare for these significant easements, including helping to develop guidance.

I am similarly grateful to the people of Wales for their continued efforts and support in tackling this pandemic. Together, we will continue to keep Wales safe.

SL(5)584 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the principal Regulations").

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") 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".

Specifically, these Regulations:

- allow the re-opening of funfairs, playgrounds and outdoor gyms (but those responsible for the premises must take all reasonable measures under regulation 12 of the principal Regulations to minimise the risk of exposure to coronavirus on the premises); and
- clarify that persons who attend a place of worship have a reasonable excuse to gather (in accordance with the requirements of regulation 12 of the principal Regulations).

Procedure

Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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:

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 Assembly.

1. The footnote to regulation 2(1) refers to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 but appears to cite the wrong SI number. We assume it should be "S.I. 2020/725 (W.162)" [*emphasis added*] and not "S.I. 2020/725 (W.163)".

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the reference could be updated to reflect the correct regulations.



2. There appears to be wording missing from the beginning of first paragraph of the Explanatory Note, as it currently begins "sAct 1984". We assume that the paragraph should begin with the words "Part 2A of the Public Health (Control of Disease) Act 1984..." (which it does in the Welsh version of these Regulations).

3. The Explanatory Memorandum contains four references to "the original Regulations". The term is not defined, but it appears to be referring to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020.

Given that "the original Regulations" is used to define the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 in the Explanatory Memorandum to the principal Regulations, we consider that it would assist the reader if the same definition is used in the Explanatory Memorandum to these Regulations.

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

27 July 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

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Legislation, Justice and Constitution Committee

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. 752 (W. 169)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

sAct 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) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”).

The amendments consist of provision—

- (a) enabling funfairs, outdoor playgrounds and outdoor gyms to open, but those responsible for these premises must take all reasonable measures under regulation 12 of the principal Regulations to minimise the risk of exposure to coronavirus on the premises;
- (b) clarifying that persons who attend a place of worship have a reasonable excuse to gather (again in accordance with the requirements of regulation 12).

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. 752 (W. 169)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) Regulations 2020**

Made at 1.55 p.m. on 17 July 2020

*Laid before Senedd
Cymru* at 3.30 p.m. on 17 July 2020

Coming into force 20 July 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) (No. 2) (Wales) (Amendment) Regulations 2020 and they come into force on 20 July 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 14(2) after paragraph (h) insert—

“(ha) attend a place of worship;”

(3) In Schedule 2 omit paragraphs 16 and 17.

(4) In Schedule 4 insert—

“25. Funfairs.

26. Playgrounds and outdoor gyms.”

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No.2) (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

At 1.55 p.m. on 17 July 2020

(1) S.I. 2020/725 (W. 163).

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

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
17 July 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”) by allowing the re-opening of funfairs, playgrounds and outdoor gyms. They also amend the principal Regulations to make it clear that it is a reasonable excuse for faith communities to gather in places of worship, hence the proposed wider wording. There is no numerical limit on gathering at places of worship but those responsible for places of worship are also required to take reasonable measures to minimise the risk of spread of coronavirus (social distancing, limiting face to face interaction, improved hygiene etc.).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. In particular, the Welsh Ministers consider it important to relax the restrictions originally contained in the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 as soon as it is considered no longer necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions as now set out in the principal Regulations as more particularly amended in line with these Regulations are necessary and proportionate as a public health response to the current threat posed by 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

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued easing of the restrictions made under the original Regulations by these Regulations, is a proportionate response. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses,

in a manner which remains proportionate to the need to 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, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

These Regulations amend the principle Regulations:

- to clarify that it is a reasonable excuse to gather in a place of worship;
- to allow for the re-opening of playgrounds and outdoor gyms; and
- to allow the re-opening of funfairs.

These Regulations continue the requirements established in the original Regulations that all reasonable measures must be taken to ensure that a distance of 2 metres is maintained between persons on the premises and where persons are required to wait to enter the premises, that a distance of 2 metres is maintained. Additionally, the Regulations now also require a range of other reasonable measures intended to minimise exposure to the virus, for example measures which limit close face to face interaction and maintain hygiene.

The Welsh Ministers may issue guidance on taking measures to minimise the risk of exposure to coronavirus to which persons responsible for taking reasonable measures under the Regulations.

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 lifting of the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. Individuals and businesses were informed about the restrictions in the original 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, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to those original Regulations. The First Minister and other Ministers have signalled through numerous press conferences and statements since 19 June the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 10 July.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

<https://gov.wales/21-day-reviews-measures-manage-covid-19-18-june-review-equality-impact-assessment>

<https://gov.wales/assessment-additional-measures-proposed-manage-covid-19-wales-6-july-equality-impact-assessment>

A summary equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected

disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.



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

17 July 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 20 July 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 8 October 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 intend to schedule these Regulations for debate in the recall Plenary on Wednesday 5 August.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Interim Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

DATE 17 July 2020

BY Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the regulations) place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They also impose requirements on businesses, which are open to take reasonable measures to ensure physical distancing between people. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Under regulation 4, Welsh Ministers are required to review the need for the requirements and restrictions in the regulations, and their proportionality, every 21 days. The next 21-day review of the regulations will take place by 30 July.

My Written Statement on 10 July set out my intention to take a week-by-week approach to use the headroom we have to further lift the restrictions in Wales over this three-week period.

During this second week, we will remove the current restrictions on playgrounds and outdoor gyms. Given the medical and scientific advice shows coronavirus is continuing to decline in Wales, these places will be able to reopen from 20 July. The removal of restrictions enables these places to reopen but does not require it. The specific timings for reopening may vary from place to place as local authorities and other operators ensure risk assessments and measures are in place to reduce the risk of transmission of the virus.

Funfairs – indoors and outdoors – have taken appropriate steps to enable them to reopen. The regulations will be amended to remove the restrictions on funfairs from 20 July, following the earlier reopening of indoor and outdoor attractions in recent weeks.

We will revisit the evidence again next week to confirm whether we are able to reopen close contact services, indoor cinemas, museums, galleries, archive services and fully reopen the housing market.

I would again like to put on record my thanks to the people of Wales for helping to keep Wales safe.

<https://gov.wales/cmo-advice-indoor-gyms-indoor-and-outdoor-playgrounds-and-funfairs>

SL(5)587 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) 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 amendments made by regulation 2 of these Regulations (which came into force on 25 July 2020) consist of provision-

- permitting underground visitor attractions to open (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- removing the requirement to close holiday accommodation that is not self-contained (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- removing the requirement imposed on individuals to work from home where reasonably practicable; and
- clarifying that a reasonable excuse for gathering with other persons may include accessing any public services and childcare, as well as taking part in supervised children’s recreation.

The amendments made by regulation 3 of these Regulations (which came into force on 27 July 2020) consist of provision-

- permitting the opening of crematoriums (in all circumstances), indoor cinemas, nail and beauty salons, massage parlours, establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture, amusement arcades, museums, galleries and archive services (the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises);
- requiring passengers travelling on public transport services to wear a face covering (subject to certain exceptions); and
- relaxing the restriction on gatherings to allow a wider range of activities relating to the sale and letting of residential property, such as viewings of occupied properties.

Procedure

Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.



Technical Scrutiny

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:

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

1. Regulation 3(12)(ii) of these Regulations amends regulation 20(1)(a) of the principal Regulations so that it reads:

“(a) without reasonable excuse, contravenes a requirement in regulation 6(1), 7(1), 10(4), 11(4) or 12(2) or 12A(1),” *[emphasis added]*

The amendment creates polysyndeton (the conjunction is repeated unnecessarily). Although this does not result in defective drafting, we consider that it would assist the reader if unusual sentence structures are avoided so far as possible.

2. No public consultation or regulatory impact assessment has been carried out in respect of these Regulations. The Explanatory Memorandum to these Regulations explains that this is due to the need to put these Regulations in place urgently to deal with the serious and imminent threat to public health arising from coronavirus.

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 in relation to the first merits reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

29 July 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. 803 (W. 176)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 2) 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.

Regulations 2 and 3 of these Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020. The amendments made by regulation 2 come into force on 25 July 2020; those made by regulation 3 come into force on 27 July 2020.

The amendments made by regulation 2 consist of provision—

- (a) permitting underground visitor attractions to open, but the persons responsible for the premises will be required to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises;

- (b) removing the requirement to close holiday accommodation that is not self-contained (but again the requirement to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises will apply);
- (c) removing the requirement imposed on individuals to work from home where reasonably practicable;
- (d) clarifying that a reasonable excuse for gathering with other persons may include accessing any public services and childcare, as well as taking part in supervised children's recreation.

The amendments made by regulation 3 consist of provision—

- (a) permitting the opening of crematoriums (in all circumstances), indoor cinemas, nail and beauty salons, massage parlours, establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture, amusement arcades, museums, galleries and archive services (but as above, the requirement to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises will apply);
- (b) requiring passengers travelling on public transport services to wear a face covering, subject to exceptions which are listed, and making provision for the enforcement of this duty;
- (c) relaxing the restriction on gatherings to allow a wider range of activities relating to the sale and letting of residential property, such as viewings of occupied properties.

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. 803 (W. 176)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 2) Regulations
2020**

Made at 1.50 p.m. on 24 July 2020

*Laid before Senedd
Cymru at 5.00 p.m. on 24 July 2020*

*Coming into force in accordance with
regulation 1(2), (3) and (4)*

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,

(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.

it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020.

(2) This regulation comes into force immediately after the Regulations are made.

(3) Regulations 2 and 4 come into force on 25 July 2020.

(4) Regulation 3 comes into force on 27 July 2020.

Amendments coming into force on 25 July 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) Omit regulation 8.

(3) In regulation 9, for “, 7(1) or 8(1)”, in both places it occurs, substitute “or 7(1)”.

(4) In regulation 12(3), omit sub-paragraph (f).

(5) In regulation 14(2)—

(a) in sub-paragraph (j), omit “critical” and the words from “, including” to the end;

(b) after that sub-paragraph insert—

“(ja)access childcare or participate in supervised activities for children;”.

(6) Omit regulation 16.

(7) In regulation 17(2), omit “8(1),”.

(8) In regulation 18(1), omit “8(1),”.

(9) In regulation 20(1)(a)—

(a) omit “8(1),”;

(b) for “, 12(2) or 16(1)” substitute “or 12(2)”.

(10) In Schedule 1, in paragraphs 1, 2(1) and 3, for “Schedule 3” substitute “Schedule 4”.

(11) In Schedule 2, omit paragraph 15.

(12) Omit Schedule 3.

(13) In Schedule 4—

(a) in paragraph 24, omit the words in brackets;

(b) after paragraph 26 insert—

“**27.**—(1) Holiday sites.

(1) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)).

(2) In this paragraph, a “holiday site” means any land in Wales on which a mobile home or caravan is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), in respect of which the relevant planning permission or the site licence for the land—

- (a) is expressed to be granted for holiday use only, or
- (b) requires that there are times of the year when no mobile home or caravan may be stationed on the site for human habitation.

(3) For the purpose of determining whether or not a site is a holiday site, any provision of the relevant planning permission or of the site licence which permits the stationing of a mobile home on the land for human habitation all year round is to be ignored if the mobile home is authorised to be occupied by—

- (a) the person who is the owner of the site, or
- (b) a person employed by that person but who does not occupy the mobile home under an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013(1) applies.

28. Camping sites.

29. Hotels and bed and breakfast accommodation.

30. Other holiday accommodation (including holiday apartments, hostels and boarding houses).”

Amendments coming into force on 27 July 2020

3.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 are amended as follows.

(2) In regulation 1(2) after “Wales” insert “(which, for the purposes of Part 3, includes the airspace above Wales)”.

(3) In regulation 2(1), after sub-paragraph (k) insert—

- “(l) “face covering” means a covering of any type which covers a person’s nose and mouth;
- (m) “public transport service” means a service provided for the carriage of

(1) 2013 anaw 6, as amended by the Housing (Wales) Act 2014 (anaw 7).

passengers by road, railway, tramway, air or water;

(n) “vehicle” includes an aircraft, a cable car, a train, a tram and a vessel.”

- (4) In regulation 7(2)—
 - (a) in sub-paragraph (a), omit “1,”;
 - (b) omit sub-paragraph (d).
- (5) In regulation 10—
 - (a) omit paragraphs (1) to (3);
 - (b) in the heading, omit “crematoriums and”.
- (6) In regulation 12—
 - (a) in paragraph (3)(g), omit “permitted to open by virtue of regulation 10(2)”;
 - (b) in paragraph (4), for “service for the carriage of passengers by road, rail, tramway, air or sea” substitute “public transport service”.
- (7) After regulation 12 insert—

“Requirement to wear face covering on public transport

12A.—(1) A person (“P”) who is travelling as a passenger on a vehicle used to provide a public transport service must wear a face covering.

(2) But this is not required—

- (a) where an exemption applies under paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) on a vehicle providing a school transport service;
- (c) on a ferry where—
 - (i) the part of the ferry which is open to passengers is entirely outdoors, or
 - (ii) a distance of at least 2 metres can be maintained between persons on the part of the ferry which is open to passengers;
- (d) on a cruise ship;
- (e) where P is allocated a cabin, berth or other similar accommodation on the vehicle, at any time when P is in that accommodation—
 - (i) alone, or

- (ii) only with members of P's household or a member of the household's carer;
 - (f) where—
 - (i) P is permitted, or ordinarily required, to board and to stay in a vehicle when using the public transport service,
 - (ii) the vehicle is not itself used for the provision of a public transport service, and
 - (iii) P stays in that vehicle;
 - (g) on an aircraft which neither took off from, nor is to land at, a place in Wales;
 - (h) on a vessel which does not dock at a port in Wales.
- (4) The circumstances in which P has a reasonable excuse to not wear a face covering include—
- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010⁽¹⁾);
 - (b) where P has to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
 - (c) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
 - (d) where P is travelling to avoid injury, or to escape a risk of harm, and does not have a face covering;
 - (e) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, if this is allowed on the vehicle and is reasonably necessary (for example due to the length of the journey);
 - (f) where P is asked to remove the face covering by—
 - (i) an enforcement officer, or

⁽¹⁾ 2010 c. 15.

- (ii) the operator of the public transport service, an employee of the operator or a person authorised by the operator.

(5) An operator of a public transport service to which paragraph (1) applies must provide information to passengers about the requirement to wear face coverings on their vehicles.

(6) For the purposes of this regulation a “school transport service” means any transport service provided solely for the purpose of—

- (a) carrying a person to and from the school or other place at which the person receives education or training, or
- (b) otherwise facilitating a person’s attendance at a school or other place at which the person receives education or training.”

(8) In regulation 13—

- (a) after paragraph (1) insert—

“(1A) An operator of a public transport service to which regulation 12A applies must have regard to guidance issued by the Welsh Ministers about—

- (a) the requirement to wear a face covering in accordance with paragraphs (1) to (4) of regulation 12A and the enforcement of that requirement under regulation 18;
- (b) providing information to passengers in accordance with paragraph (5) of regulation 12A.”;

- (b) in paragraph (2)(a) after “paragraph (1)” insert “or (1A)”.

(9) In regulation 14—

- (a) in paragraph (2), for sub-paragraphs (m) and (n) substitute—

“(m)undertake activities in connection with the purchase, sale, letting, or rental of residential property;”;

- (b) omit paragraph (4).

(10) In regulation 17(2), for “10(1) or (4)” substitute “10(4)”.

(11) In regulation 18—

- (a) in paragraph (1), for “10(1) or (4) or 12(2)” substitute “10(4), 12(2) or 12A(5)”;
- (b) after paragraph (3) insert—

“(3A) If an enforcement officer has reasonable grounds to suspect that a person

("P") is contravening (or is about to contravene) regulation 12A(1), the officer may—

- (a) direct P not to board the vehicle providing the public transport service in question;
- (b) remove P from the vehicle, and may use reasonable force, if necessary, to do so.

(3B) If the operator of a public transport service, an employee of the operator or a person authorised by the operator, has reasonable grounds to suspect that a person ("P") is about to contravene regulation 12A(1), the operator, employee or authorised person may direct P not to board the vehicle providing the public transport service in question.”;

(c) after paragraph (6) insert—

“(6A) Where an enforcement officer has reasonable grounds to believe that a child is failing to comply with the requirement in regulation 12A(1), the officer may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with the requirement.”;

(d) in paragraph (7) after “paragraph (6)” insert “and (6A)”.

(12) In regulation 20—

(a) in paragraph (1)(a)—

- (i) for “10(1) or (4)” substitute “10(4)”;
- (ii) after “12(2)” insert “or 12A(1)”;

(b) in paragraph (3)—

- (i) in sub-paragraph (a), after “regulation” insert “18(3A)(a),”;
- (ii) omit the “or” after sub-paragraph (a);
- (iii) after that sub-paragraph insert—

“(aa) contravenes a direction given by the operator of a public transport service, an employee of the operator or a person authorised by the operator, under regulation 18(3B), or”.

(13) In Schedule 2—

- (a) omit paragraphs 1, 7, 8 and 9;
- (b) in paragraph 13, omit “, amusement arcades”;
- (c) omit paragraph 14.

(14) In Schedule 4—

(a) for paragraph 22 substitute—

“**22.** Cinemas.”;

(b) after paragraph 30 insert—

“**31.** Massage parlours.

32. Nail and beauty salons.

33. Establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture.

34. Amusement arcades.

35. Museums, galleries and archive services.”

Savings for offences and penalties in relation to prior acts

4. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 1.50 p.m. on 24 July 2020

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

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
24 July 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions and the new requirements on face-coverings as now set out in the principal Regulations are necessary and proportionate as a public health response to the current threat posed by 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

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued easing of the restrictions made under the principal Regulations by these Regulations, is a proportionate response, as is the new requirement to wear face-coverings on public transport. These provisions balance the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to 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, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The amendments to the principal Regulations will come into force in two parts. The first set of amendments will come into force at the beginning of 25 July, and will –

- permit holiday accommodation, including hostels and hostel type accommodation, hotels and other serviced accommodation, with shared facilities, such as shower blocks, to reopen but shared rooms being open only to members of the same or extended households and subject to requirements related to physical distancing.
- clarify that a reasonable excuse for gathering with other persons may include access any public services and supervised children’s recreation. This will allow, for example, families to access summer camps and children’s clubs during the holiday period.
- reopen underground attractions. Operators of such attractions must take all reasonable measures to minimise the spread of coronavirus;
- remove the requirement to work from home where it is practicable to do so. There is evidence of the well-being benefits for some of working from offices and other locations away from the home, and this coupled with the obligations on employers to take all reasonable measures to prevent the spread of coronavirus, means it is no longer proportionate to maintain this requirement. However there are also clear benefits from home working, so employers are being encouraged to continue to facilitate this.

The second set of amendments to the principal Regulations will come into force at the beginning of 27 July, and will –

- enable businesses such as nail and beauty salons; massage parlours; and establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture, to reopen. Supporting guidance explains the need to limit face to face interaction, as well as underpinning the duty to take reasonable measures to minimise the risk of exposure to coronavirus, including –
 - maintain hygiene
 - provide information to people on minimising the risk of exposure to coronavirus, and
 - take all reasonable measures to ensure 2 metres distance is kept between people on premises and people waiting to enter premises.

This guidance forms part of a wider set of documents about how to work safely in different types of close contact service workplaces in Wales.

- allow crematoriums to open to the extent they are not already and enable (indoor) cinemas as well as museums, galleries and archive services to open to customers and visitors. The requirements to take all reasonable measures to minimise the risk of exposure to coronavirus on the premises will apply to the operators of these businesses and services.
- allow amusement arcades to open. This sector includes Family Entertainment Centres which provide family entertainment both at the seaside and inland venues and high street Adult Gaming Centres which provide amusement machine-based entertainment to adults. There have been concerns about the risks associated with the number and flow of people around these sort of attractions, coupled with the number of shared surfaces and machines that visitors would touch. The British Amusement Catering Trade Association has worked with the Government to produce guidance for operators to implement a range of business specific mitigations in readiness for opening.
- permit house rental and sales activity to take place in occupied properties. The housing sector has been able to undertake viewings and associated activity in unoccupied premises since 22 June. Based on the experiences gathered from this limited re-opening and work undertaken with industry bodies and local government on revised guidance to include mitigations to the risks to households, professionals and property viewers, it is now considered proportionate to reopen the sector fully.
- require face coverings to be worn by people using public transport (including taxis). The requirement will be subject to certain exemptions. For example children under the age of 11; ferries where passengers are fully outdoors or social distancing can be maintained; passengers on aircraft passing over Wales (but which neither takes off nor stops in

Wales). Individuals may also have a reasonable excuse not to wear a face covering, including because of physical or mental illnesses or impairments, or disability; removal to take medication; where a person is asked to remove the mask by an enforcement officer or someone operating or employed by the public transport service.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that easing and adapting the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. Individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 9 July the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 24 July.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

A summary equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.



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

24 July 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.2) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.2) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force in part on 25 July and in full on 27 July 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 11 October 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 intend to schedule these Regulations for debate in the recall Plenary on Wednesday 5 August.

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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Interim Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

DATE 24 July 2020

BY Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They also require businesses that are open to take reasonable measures to minimise the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions in the regulations, and their proportionality, every 21 days. The next 21-day review of the regulations will take place by 30 July.

At the last review of the regulations, on 10 July, we decided to take a phased approach to lifting restrictions in Wales in relation to leisure, tourism and hospitality businesses over this three-week period, provided the spread of coronavirus remained under control in Wales, which is the case.

We are therefore bringing forward amendments to the regulations to remove restrictions on all accommodation with shared facilities from tomorrow (25 July). This will enable campsites to re-open, and hostels and other types of accommodation to let rooms that are not ensuite, to people from the same household or extended household.

We will remove the restriction on underground attractions – this means that all visitor attractions in Wales will be able to open from tomorrow provided they have the necessary measures in place to protect staff and visitors from coronavirus.

From Monday, (27 July) we will remove the current restrictions on indoor cinemas, museums, archives and galleries. This will enable these places to reopen but does

not require it. The timings for reopening will vary from place to place, given the diversity of the sector.

Amusement arcades, which includes adult gaming centres and family entertainment centres, will also be able to reopen from Monday (27 July).

We will lift the restrictions to enable close contact services to re-open. These include nail salons, massage parlours, businesses offering beauty and other wellbeing treatments and tattoos. At this stage, however, they should not provide any facial treatments because of the increased risk of transmission face-to-face contact involves. We will continue to work with these sectors to keep this under review.

We are bringing forward amendments to allow viewings to take place in unoccupied properties. This will allow for the full re-opening of the housing market.

Amendments will be made to provide clarity to ensure supervised recreation for children and young people under 18 is permitted.

The Welsh Government's policy remains clear that people should continue to work from home wherever they can. The increase in remote and flexible working has been one of the few positives we can take away from the coronavirus pandemic and for public health and other reasons I am keen that this continues – and the Welsh Government will lead by example. However, in order to provide the flexibility needed to sustain this policy we will lift the legal requirement to work from home from the regulations. Guidance will be provided to ensure that home working remains a cornerstone of our approach to recovery in Wales. Employers will also have responsibilities to support home working.

Finally, we will amend the regulations to make the wearing of a face covering compulsory on public transport, including taxis, from Monday (27 July).

We are able to lift restrictions in part because businesses and other organisations are making changes and adaptations to their premises and their ways of working to help people stay 2m apart from each other and to minimise the risk of the transmission of coronavirus.

Coronavirus has not gone away. These measures are being put in place to protect us all and prevent the spread of infection. We are reviewing the enforcement powers that local authorities and others have, but my intention is that we will take action and close any business or premises that poses a threat to public health.

As more of our society and economy opens up we all need to do our part to prevent a resurgence of the virus by maintaining social distancing; by washing our hands often and by complying with the new ways of working and doing business.

I want to thank the very many businesses and organisations who have worked with the Welsh Government to develop the guidance, which has supported many tens of thousands of small and large firms to open their doors to customers and visitors once again.

I also want to thank everyone in Wales whose ongoing efforts have helped us reach this point. Together we can keep Wales safe.

SL(5)586 – Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (“the 2018 Regulations”) to provide for a temporary variation to the tax bands and percentage tax rates of land transaction tax applicable to certain residential property transactions.

Regulation 2 applies the temporary variation to residential property transactions with an effective date on or after 27 July 2020, but before 1 April 2021. Where a contract is substantially performed before 1 April 2021, but completion takes place on or after that date, no additional tax will be chargeable by virtue of section 10 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTT Act”) as long as the only reason additional tax is chargeable is because completion has occurred on or after that date.

A chargeable transaction is a residential property transaction if it falls within the description contained in section 24(6) of the LTT Act.

Regulation 3 specifies the tax bands and percentage tax rates applicable to those transactions specified by regulation 2.

The 2018 Regulations continue to make provision for the tax rates and tax bands applicable to chargeable transactions which do not fall within the description of a residential property transaction, or take place before 27 July 2020 or on or after 1 April 2021.

Procedure

Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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 following helpful explanation in the Explanatory Memorandum:

“4.2 The effect of these Regulations is to increase the threshold between the zero rate band and first tax band applicable to residential property transactions. Currently, this is set at £180,000, but, as a



result of these Regulations, will increase to £250,000 from 27 July. This new threshold is £70,000 higher than the current starting threshold for residential property transactions subject to the main rates and it will effectively remove the former first band, charging 3.5% on consideration of more than £180,000 but not more than £250,000...

4.3 These Regulations do not make any changes to the tax bands and percentage tax rates applicable to higher rates residential property transactions, non-residential property transactions, or transactions where the chargeable consideration consists of rent. The higher rates and thresholds for buyers of properties such as buy to let or as a second home therefore remain unchanged. This targeted tax reduction will support taxpayers who are paying the main rates of land transaction tax (broadly, those buying their homes) and who may need additional support in deciding to buy their homes as a result of the uncertainty as we move from the peak of the pandemic and towards our economic recovery."

We also note paragraph 3.2 of the Explanatory Memorandum and what would happen if the Senedd voted against keeping the Regulations in force. It is our understanding that the Regulations would cease to have effect at the end of the day on which such a vote took place, and that anything done under the Regulations before then would not be affected.

Therefore, if a person had paid less tax during the time the Regulations were in force, then that person would have paid the correct tax that applied at that time. It would not be a case of that person having underpaid tax, as suggested in paragraph 3.2.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

24 July 2020



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any 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. 794 (W. 174)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax
(Temporary Variation of Rates and
Bands for Residential Property
Transactions) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) (“the 2018 Regulations”) to provide for a temporary variation to the tax bands and percentage tax rates of land transaction tax applicable to certain residential property transactions.

Regulation 2 applies the temporary variation to residential property transactions with an effective date on or after 27 July 2020, but before 1 April 2021. Where a contract is substantially performed before 1 April 2021, but completion takes place on or after that date, no additional tax will be chargeable by virtue of section 10 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTT Act”) as long as the only reason additional tax is chargeable is because completion has occurred on or after that date.

A chargeable transaction is a residential property transaction if it falls within the description contained in section 24(6) of the LTT Act.

Regulation 3 specifies the tax bands and percentage tax rates applicable to those transactions specified by regulation 2.

The 2018 Regulations continue to make provision for the tax rates and tax bands applicable to chargeable transactions which—

- (a) do not fall within the description of a residential property transaction, or
- (b) take place before 27 July 2020 or on or after 1 April 2021.

Tax is to be calculated in accordance with sections 27 and 28 of the LTT Act.

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 been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any 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. 794 (W. 174)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax
(Temporary Variation of Rates and
Bands for Residential Property
Transactions) (Wales) Regulations
2020**

<i>Made</i>	<i>22 July 2020</i>
<i>Laid before Senedd Cymru</i>	<i>24 July 2020</i>
<i>Coming into force</i>	<i>27 July 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 24(1) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017(1).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020.

(2) These Regulations come into force on 27 July 2020.

(1) 2017 anaw 1. See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

(3) In these Regulations, “the LTT Act” means the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

(4) Words and expressions used in these Regulations have the same meaning as they have in the LTT Act.

Application

2.—(1) These Regulations have effect in relation to any chargeable transaction that—

- (a) is a residential property transaction, and
- (b) has an effective date on or after 27 July 2020, but before 1 April 2021⁽¹⁾.

(2) Paragraph (3) applies where—

- (a) as a result of section 10(4) of the LTT Act, the effective date of the transaction falls on or after 27 July 2020 but before 1 April 2021, and
- (b) the contract concerned is completed by a transfer on or after 1 April 2021.

(3) Where this paragraph applies, section 10(5)(b) of the LTT Act does not apply in relation to that transfer if the sole reason that (but for this regulation) it would have applied is that the modifications made by these Regulations have no effect in relation to that transfer.

Tax bands and percentage tax rates

3. The Schedule to these Regulations specifies the tax bands and percentage tax rates for residential property transactions to which these Regulations apply for the purposes of section 24(1) of the LTT Act.

Amendment of the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

4.—(1) The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018⁽²⁾ are amended as follows.

(2) In regulation 2—

- (a) the existing text becomes paragraph (1);
- (b) at the beginning of paragraph (1), insert “Subject to paragraph (2),”;
- (c) after paragraph (1) insert—

“(2) These Regulations do not have effect in relation to any chargeable transaction that is subject to the Land Transaction Tax (Temporary

(1) See the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) as to the application of rates and bands to residential property transactions with an effective date before 27 July 2020 or on or after 1 April 2021.

(2) S.I. 2018/128 (W. 32).

Variation of Rates and Bands for Residential
Property Transactions) (Wales) Regulations
2020.”

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh
Ministers

22 July 2020

SCHEDULE Regulation 3

Table: Residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £250,000	0%
First tax band	More than £250,000 but not more than £400,000	5%
Second tax band	More than £400,000 but not more than £750,000	7.5%
Third tax band	More than £750,000 but not more than £1,500,000	10%
Fourth tax band	More than £1,500,000	12%

Explanatory Memorandum to The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group of the Welsh Government and is laid before the Welsh Parliament 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 Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs. This is a temporary change to commence 27 July 2020 and end on 31 March 2021, with the rates and bands reverting back to those currently in force after that date.

Rebecca Evans MS
Minister for Finance and Trefnydd

24 July 2020

1. Description

- 1.1 The purpose of this instrument is to specify a temporary variation to the land transaction tax (“LTT”) rates and bands that will apply to purchases of certain residential property transactions.

2. Matters of special interest to the Legislative, Justice and Constitution Committee

- 2.1 This instrument contains regulations made under the provisional affirmative procedure set out in section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the 2017 Act”). These Regulations are therefore made without a draft having been laid before, and approved by, the Senedd. Further details about this procedure can be found in paragraph 3.2, below.
- 2.2 This instrument also contains regulations made under section 78(1) of the 2017 Act to make transitional provision in connection with certain transactions where substantial performance takes place before 1 April 2021, but completion takes place on or after that date. Section 79(3) of the 2017 Act provides that regulations made under section 78(1) are subject to the negative procedure, unless the Welsh Ministers consider the regulations have the effect of imposing or increasing liability to tax. The transitional rule made under section 78(1) does not have the effect described in section 79(3) on the basis that it reduces the amount of tax that will otherwise be chargeable on those specified transactions. However, as a result of section 40 of the Legislation (Wales) Act 2019, this instrument is subject to the provisional affirmative procedure.

3. Legislative background

- 3.1 Section 24 of 2017 Act provides the Welsh Ministers with powers to vary the tax rates and tax bands for LTT through regulations.
- 3.2 Regulations made under this section are subject to a provisional affirmative procedure, which means the regulations are made (signed) by the Ministers and can come into force immediately. Once the Regulations have been made, they must be laid before the Senedd and will have temporary effect until they are voted on by the Senedd. That vote must happen within 28 calendar days of the regulations being made, not counting days when the Senedd is in recess. If the vote does not occur, or is lost, the former tax rates and tax bands apply and any taxpayer who has underpaid, because they paid based on the now failed regulations, will not be pursued to make good that underpayment. This means that the risk of the regulations failing to achieve Senedd approval will rest with the Welsh Government and not Welsh taxpayers.
- 3.3 As the Regulations have been made when the Senedd is in recess, the 28 day period commences on Monday 14 September and the vote to approve the Regulations must occur by 11 October.
- 3.4 The regulations have temporary effect until 31 March 2021.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of these regulations is to make a temporary variation to the tax bands and percentage tax rates of LTT applicable to certain residential property transactions with an effective date¹ on or after 27 July 2020 and before 1 April 2021, as announced by the Minister for Finance and Trefnydd on 14 July 2020. This will be used to calculate the amount of LTT chargeable in respect of a residential land transaction and is restricted to those paying the main rates only. The tax bands and percentage tax rates applicable to residential property transactions will revert back to those in force before 27 July 2020 on 1 April 2021. The date these changes are to come into force, 27 July 2020, was chosen to coincide with the anticipated full re-opening of the housing market, announced by the First Minister on 10 July².
- 4.2 The effect of these Regulations is to increase the threshold between the zero rate band and first tax band applicable to residential property transactions. Currently, this is set at £180,000, but, as a result of these Regulations, will increase to £250,000 from 27 July. This new threshold is £70,000 higher than the current starting threshold for residential property transactions subject to the main rates and it will effectively remove the former first band, charging 3.5% on consideration of more than £180,000 but not more than £250,000. It will also mean that in terms of price, only around the top 20% of those liable to the main LTT rates will pay any tax at all. Those buying properties costing more than £250,000 will make a saving of £2,450 over that which would previously have been payable.
- 4.3 These Regulations do not make any changes to the tax bands and percentage tax rates applicable to higher rates residential property transactions, non-residential property transactions, or transactions where the chargeable consideration consists of rent³. The higher rates and thresholds for buyers of properties such as buy to let or as a second home therefore remain unchanged. This targeted tax reduction will support taxpayers who are paying the main rates of land transaction tax (broadly, those buying their homes) and who may need additional support in deciding to buy their homes as a result of the uncertainty as we move from the peak of the pandemic and towards our economic recovery.

¹ The 'effective date' is, broadly, the date of completion of the contract to purchase the property.

² <https://gov.wales/written-statement-review-health-protection-coronavirus-restrictions-wales-regulations-2020>

³ The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) makes provision as to the rates and bands of LTT applicable to higher rates residential property transactions, non-residential property transactions, and transactions where chargeable consideration consists of rent.

4.4 The LTT residential property main rates will, for transactions completed on or after 27 July 2020 until 31 March 2021, temporarily be:

Table 1: Residential Property Transactions - Rates and Bands from 27 July 2020 until 31 March 2021

Main rates Residential property transactions		
<i><u>Tax band</u></i>	<i><u>Relevant consideration</u></i>	<i><u>Percentage tax rate</u></i>
Zero rate band	Not more than £250,000	0%
First tax band	More than £250,000 but not more than £400,000	5%
Second tax band	More than £400,000 but not more than £750,000	7.5%
Third tax band	More than £750,000 but not more than £1,500,000	10%
Fourth tax band	More than £1,500,000	12%

5. Consultation

5.1 There is no statutory requirement to consult on this instrument. The increase to the nil rate band was announced by the Minister for Finance and Trefnydd on 14 July 2020. The timing takes account of calls from certain stakeholders and taxpayers for amended rates and bands to be introduced. However, the setting of rates and thresholds for taxes is not an area of policy where consultation is undertaken, as any such consultation with a 'live' tax is highly likely to have a distortive effect on behaviours and, in relation to transaction taxes, the timing of those transactions. The intention is to provide a temporary economic stimulus to support the housing market and broader economy in Wales. The temporary rates will come into force on 27 July 2020, in line with the anticipated removal of the restrictions on viewing occupied residential property for sale imposed due to the coronavirus pandemic.

6. Regulatory Impact Assessment

6.1 The revenue impact of these changes will be provided alongside the next Welsh Government draft Budget. The costing of the policy will be agreed with the Office for

Budget Responsibility and included as part of its forecast of land transaction tax (LTT) revenues for the Welsh Government.

- 6.2 The Welsh Government considered a number of options for changes to land transaction tax rates and thresholds. This assessment covers a no change option and the policy within these regulations.

No change

- 6.3 The no change option would have left all rates and thresholds for the taxes as they have been since 1 April 2018 when land transaction tax first applied in Wales. These rates and thresholds mean that, in relation to the main residential rates, 60% of homebuyers do not pay any tax when buying their home, including the vast majority of first time buyers.
- 6.4 Following the temporary increase to £500,000 for the threshold for stamp duty land tax introduced from 8 July 2020, not changing LTT would result in some relatively large differences in tax between England and Wales. This is particularly so for very high priced property in Wales. This may affect some local property markets which straddle the England and Wales border, creating some market distortion in those areas. Around 20% of properties in Wales sell for £250,000 or more, at that price the difference in tax between SDLT and LTT would be £2,450. Around 10% sell for £300,000 or more, at that price the difference in tax would be around £5,000. Around 5% sell for £380,000 or more, at that price the difference in tax would be around £9,000. Around 1% sell for £600,000 or more, at that price the difference in tax would be around £20,000.

Temporary £250,000 threshold applied only to the main rates

- 6.5 This option is a time limited increase to the residential main rate threshold from £180,000 to £250,000. This change will, broadly, not apply to transactions where the purchaser already owns a residential property.
- 6.6 As a result of this change around 80% of Welsh homebuyers will pay no tax, up from 60% previously. For properties costing £250,000 or more, representing the top 20% of homebuyers, there will be a tax reduction of £2,450. This tax reduction is proportionately smaller for the highest price properties and largest for those priced at £250,000. The purchase of a home costing £200,000 will see a tax saving of £700, whereas one costing £240,000 will see a tax saving of £2,100.
- 6.7 This option does not provide a temporary tax reduction for those properties that are subject to the higher residential rates of land transaction tax. The higher residential rates apply to companies buying any dwellings and to individuals, broadly, who are buying residential properties when they, or an individual they are buying with, already own an interest in another dwelling. This is most likely to apply to the purchases of second homes and buy-to-let properties.
- 6.8 This option ensures the benefits of the tax savings are restricted to those with only an interest in the property they are acquiring (or who meet the replacement of a main residence rules) and not those purchasing buy to let properties, second or holiday homes. Purchasers who pay the higher residential rates account for around 25% of all residential purchases each year, although some of these may subsequently be refunded the higher residential rates and then be subject to the main residential rates.
- 6.9 Based on 2019-20 data, around 14,000 residential property transactions initially subject to the higher residential rates will not see any change to their tax as a result of restricting the threshold increase to the main rates.
- 6.10 Also, again based on 2019-20 data, this option will benefit around 16,000 transactions in Wales subject to the main rates of LTT. The number of transactions this year that will benefit from the tax reduction is difficult to estimate as the effect of the pandemic on the property market and the wider economy is highly uncertain. However, the tax reduction is expected to increase transactions overall, from that which would otherwise have occurred, and also prices. In addition, it is likely that some transactions will be brought forward from

2021-22 to take advantage of the temporary tax reduction. This forestalling effect should also increase the number of transactions in 2020-21⁴.

- 6.11 Following the temporary changes introduced to SDLT from 8 July 2020, the option to increase the LTT threshold on main rates to £250,000 will result in some relatively large tax differences in tax between England and Wales for some very high priced property in Wales. This may affect some local property markets which straddle the England-Wales border, creating some property market distortion in those areas.
- 6.12 With this option, around 80% of properties in Wales which are subject to the main rates will pay no tax. Only from £250,000 upwards will there be differences in tax between SDLT and LTT. Around 10% of properties sell for £300,000 or more, at that price the difference in tax between SDLT and LTT will be £2,500. Around 5% sell for £380,000 or more, at that price the difference in tax will be £6,500. Around 1% sell for £600,000 or more, at that price the difference in tax will be £17,500. This option reduces the difference in tax between SDLT and LTT compared to the no change option. It should therefore result in less local market distortion between England and Wales than the no change option.
- 6.13 This option, by not applying the temporary tax reduction to higher rate property transactions, increases the tax difference between different types of residential purchases in Wales. The relative reduction in tax for home buyers compared to second home and buy-to-let purchases may also change the composition of residential transactions. This may slightly increase the share of homebuyer transactions in Wales.
- 6.14 Increasing residential property transactions in 2020-21, from that which would otherwise have occurred, is expected to have a positive effect on the housing market and the economy more generally this year. UK evidence during the economic downturn of 2008 to 2009 suggests reducing residential property transaction taxes boosted the property market and stimulated the economy⁵. Subsequent research for Wales suggests, whilst there may be positive benefits due to transactions being brought forward from future years, the overall benefit may be smaller than implied by the UK evidence⁶. However, the current economic downturn is very different to the one which occurred in 2008 and the tax system in Wales is also different (for example the shift from a slab to a slice system for residential property transactions occurred in 2014). It is therefore difficult to directly apply these studies to the current situation. Overall this option represents a more measured tax reduction in Wales compared to England, consistent with the differential economic effect suggested by the evidence.
- 6.15 The wellbeing of individuals and families who need to move may also be improved by this measure. This could be for a wide range of reasons, such as to be closer to family members who need care, for a new school, or a new job. This option is expected to generate additional transactions in 2020-21, from that which would otherwise have occurred, some of which will have been brought forward from 2021-22.
- 6.16 There will be little additional administrative cost to the Welsh Revenue Authority ('WRA') as a result of updating its online tax calculators and responding to taxpayer queries about the change. These costs will be met within its current budget. Businesses involved in the various stages of house purchases, especially estate agents and conveyancers and solicitors have dealt with many rate (and method of calculation) changes before through SDLT and the introduction of LTT in Wales. This option will be limited to a single table of tax rates. There has been clear communication of the changes and the WRA has provided

⁴ For more details on forestalling see *Forestalling ahead of property tax changes* OBR (2016), available at https://obr.uk/docs/dlm_uploads/Working-paper-No.10-1.pdf

⁵ See Best, M. and Kleven, H. (2018) *Housing Market Responses to Transaction Taxes: Evidence from Notches and Stimulus in the UK*, The Review of Economic Studies, 85, pp. 157-193

⁶ See TARC (2019) *An Evaluation of the 2008-2009 Stamp Duty Holiday in Wales* available at https://tarc.exeter.ac.uk/media/universityofexeter/businessschool/documents/centres/tarc/publications/reports/An_Evaluation_of_the_2008-2009_Stamp_Duty_Holiday_in_Wales.pdf

a revised LTT calculator to establish liability. The additional costs to these businesses should therefore be minimal.

7. Post Implementation review

- 7.1 Section 77 of the 2017 Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within six years of the day after the day of the 2017 Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the 2017 Act.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-RE- 2337-20

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

22 July 2020

Dear Llywydd,

Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020

I have today made the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 under sections 25(2) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ('the 2017 Act') which comes into force on Monday 27 July. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in sections 25(2) and 78(1) of the 2017 Act, this instrument must be approved by the Senedd by 11 October 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. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 29 September.

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

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.

SL(5)565 – The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) (Coronavirus) Regulation 2020 (“the Regulations”) are made under sections 17 and 47(1) of the Education (Wales) Act 2014. The Regulations amend the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015 (“the 2015 Regulations”).

The 2015 Regulations provide that newly qualified teachers (“NQTs”) must undertake a statutory induction period comprising of three school terms, or 380 sessions, in a school or, in certain circumstances, another institution. NQTs can count periods of employment undertaken on a full-time or part-time basis towards this requirement. Due to the re-purposing of schools in response to the Covid-19 pandemic, some NQTs who are undertaking their induction on a part-time basis are not able to meet the 380 session requirement during the current academic year. This is likely to also affect the 2020-2021 academic year.

The Regulations therefore amend the 2015 Regulations to:-

- (i) allow the “appropriate body”, namely the local authority, to reduce the required induction period for a person to a minimum of 110 school sessions, provided that the person consents (the standards required of the person undertaking the induction will remain unchanged); and
- (ii) allow sessions of professional learning to count towards a person’s induction period, subject to certain conditions. These sessions must not exceed 16% of the total length of the induction period.

Procedure

Negative.

Technical Scrutiny

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

1. That for any particular reason its form or meaning needs further explanation.

Regulation 7 of the Regulations inserts a new Regulation 7A into the 2015 Regulations. This states that a session of professional learning undertaken by a person may count towards that person’s induction period, subject to three conditions. One of the conditions is that the learning takes place between 26 March 2020 and 31 August 2021 and another condition is that such learning is approved by the appropriate body, which would be the relevant local authority.

It is not clear from the drafting of Regulation 7A:

- (i) What standards a local authority is required to apply in order to approve professional learning sessions. The Regulations do not define what is meant by “professional learning sessions”. They



are silent as to what form or content a learning session should have in order for it to be approved and they do not provide for any guidance to be issued on this point. Alternatively, the Regulations are silent as to whether it is entirely at the discretion of the local authority as to what form or content the sessions must have in order to gain the approval of the authority.

- (ii) Whether the local authority is required to have approved any professional learning sessions prior to the sessions taking place or whether they may approve them after the event. If it is the case that the sessions must be approved before taking place then this means that any sessions which took place after 26 March 2020 but before the Regulations come into force on 15 July 2020 will not be able to achieve the status of professional learning sessions for the purpose of the Regulations. Alternatively, if the local authority is permitted to retrospectively approve sessions which took place after 26 March 2020 but before the Regulations come into force on 15 July 2020, the power to do so should be included on the face of the Regulations for the purpose of clarity.

It is noted that paragraph 5.2 of the Explanatory Memorandum states that "Revised guidance will be published and shared with stakeholders prior to the 2020 Regulations coming into force to ensure that those involved in induction will be able to clearly understand the changes made." There is no indication as to whether this guidance will address the issues raised in this technical scrutiny point.

Merits Scrutiny

Three 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.

Regulation 7 inserts a new Regulation 7A into the 2015 Regulations. This permits a session of professional learning undertaken by a person to count towards that person's induction period, subject to three conditions. One of the conditions is that the sessions must have taken place during the period commencing on 26 March 2020 and ending on 31 August 2021. The start date for this period pre-dates the date upon which the Regulations will come into force on 15 July 2020. Consideration has been given as to whether this gives the Regulations retrospective effect, in that they change the law of the past. It is considered that these Regulations do not have retrospective effect as they do not change the law of the past, but state that any sessions of professional learning which were undertaken since 26 March 2020 will, from the date upon which these Regulations come into force, be treated as professional learning sessions for the purpose of the induction arrangements, as amended by these Regulations.

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.

Regulation 2 of the Regulations states that the Regulations expire on 31 August 2021. The Explanatory Memorandum to the Regulations sets out that:

"This is considered a suitable expiry date because it should allow sufficient time for the current cohort of NQTs and those starting in September 2020 to complete their induction period. Welsh Government will review the 2020 Regulations following the conclusion of one school term of the 2020/21 academic year to consider whether they are still appropriate and will continue to review them termly thereafter."



The Regulations will continue to have limited effect after 31 August 2021 in that where a person undertakes a session of professional learning which satisfies the conditions of the new Regulation 7A of the 2015 Regulations (as inserted by these Regulations), then such sessions may count towards that person's induction period as if they were school sessions after the expiry of these Regulations (provided that the maximum number of such sessions is 18). The expiry of the Regulations on 31 August 2021 will not affect the validity of anything done under the Regulations before that date.

3. 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.

It is noted that no formal consultation has taken place in relation to the Regulations. The Explanatory Memorandum notes that this is due to the urgency required to introduce this change of policy in response to the COVID-19 situation. The Explanatory Memorandum further notes that officials have engaged with key stakeholders and workforce unions in the development of the Regulations.

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 in relation to both parts of the technical scrutiny point.

Committee Consideration

The Committee considered the instrument at its meeting on 6 July 2020 and reports to the Senedd in line with the reporting points above.



WELSH GOVERNMENT RESPONSE: The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/623 (W.143))

Technical scrutiny point 1:

The Committee has raised two points in relation to the drafting of regulation 7A.

(i) The Welsh Government agrees that ‘professional learning sessions’ has not been defined. The Welsh Government is of the view that it does not need to be defined. It should be interpreted in accordance with its ordinary meaning.

The term has been used in a number of items of Welsh legislation without definition. For example, the Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018 (SI 2018/766) which amended the Education (School Development Plans) (Wales) Regulations 2014 so as to remove references to “professional development” and insert references instead to “professional learning”. That change was made so that the wording would be consistent with the wording used in non legislative documents and is more familiar to the teaching profession. This continues to be a term that is well understood by the teaching profession and features in the Professional Standards for Teaching and Leadership (“the Standards”) that all NQTs commencing induction from September 2017 are required to work towards. In that context, it was not considered necessary to define the meaning of professional learning.

The Welsh Government is content that it is for the appropriate body, namely the local authority, to have a discretion as to whether a session would constitute a session of professional learning as it already has to do this when assessing the inductee against the Standards. In making that determination the appropriate body will have to comply with usual public law principles and will, of course, refer to the Standards in so doing.

(ii) The Welsh Government agrees with the committee (see Merit point 1) that the Regulations have no retrospective effect. The approval by the appropriate body can only take place once the regulations come into force, albeit in relation to sessions which happened before the regulations came into force. The Welsh Government considers that it is clear that sessions which took place between 26 March 2020 and the coming into force of the Regulations are therefore approved after the event. The approval is required before those sessions can be counted towards an induction period.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020.
DATE	16 July 2020
BY	Rebecca Evans MS, Minister for Finance and Trefnydd

The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020.

Policy Overview of the SI

This SI intends to revoke the SI repealing the European Regional Development Fund (ERDF), the European Social Fund (ESF) and European Territorial Cooperation (ETC) and the Cohesion Fund regulations that was laid in 2019.

The Law which is being amended

The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Regulations) 2019

The purpose of the amendments

The purpose of the amendment is to revoke the Statutory Instrument, The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019, which was laid in January 2019. This SI is required to be revoked because it was planned for a No Deal EU Exit, and therefore would repeal the EU regulations at the end of the Transition Period for ERDF, ESF and ETC (collectively known as Structural Funds). This would contradict the intent and purpose of the Withdrawal Agreement as implemented in UK law which maintains the EU regulations for Structural Funds until their closure and beyond.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/dNVhag1a/SI-2020/>

Any impact the SI may have on the Welsh Ministers' executive competence

The SI has no impact on the Welsh Ministers' executive competence.

Any impact the SI may have on the legislative competence of the Senedd

The SI has no impact on the legislative competence of the Senedd.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility. The Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

164 - The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020

Laid in the UK Parliament: 13 July 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 55
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(a)(ii) and (b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations revoke Statutory Instrument 2019/625 made on 18 March 2019. Statutory Instrument 2019/625 (SI 625) disapplied the common provision regulations on European Structural and Investment Funds insofar as they applied to the European Regional Development Fund, European Social Fund, Cohesion Fund, and European Territorial Cooperation Fund (together the Funds). SI 625 was passed so that, in the event of there being no Withdrawal Agreement, projects supported by the Funds could continue to operate domestically by including transitional provisions for projects agreed before exit and by creating a power to pay out to relevant recipients for the continued delivery of projects. Article 138

of the Withdrawal Agreement as embodied in The European Union (Withdrawal Agreement) Act 2020 states that all applicable European Union law will continue to apply to the UK for all programmes and activities committed under the Multi-annual Financial Framework 2014-2020. Such 'programmes and activities' include the Funds. The effect is, therefore, that the common provision regulations will continue to apply to the Funds. SI 625 is therefore being revoked in order to avoid confusion.

Legal Advisers agree with the statement laid by the Welsh Government dated 16 July 2020 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020**

DATE **16 July 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020

The Law which is being amended:

The Cleaner Road Transport Vehicles Regulations 2011/1631.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The Cleaner Road Transport Vehicles Regulations 2011 set out the requirement for public bodies and utilities to take into account the lifetime energy and environmental impacts of any road transport vehicles they are purchasing or leasing, where the procurement is above certain value thresholds.

The purpose of the amendments

The Cleaner Road Transport Regulations 2011/1631 contain a number of provisions, which would be deficient when the Regulation becomes retained EU law.

The purpose of these amendments is to correct these deficiencies i.e. modification of references to Member States.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI, are available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-cleaner-road-transport-vehicles-amendment-eu-exit-regulations-2020>

Matters of special interest to the Legislation, Justice and Constitution Committee

None identified.

Why consent was given

As the corrections proposed are technical in nature there is no divergence between the Welsh Government and the UK Government on the policy for the amendments and the substance of the amendments are not considered politically sensitive. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition.

UK MINISTERS ACTING IN DEVOLVED AREAS

165 - The Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 15 July 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Proposed Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	21 July 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	9 September 2020
Written statement under SO 30C:	Paper 57
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“Withdrawal Act”).

These Regulations use powers in the Withdrawal Act to correct deficiencies in EU-derived legislation that regulates the environmental impact of public sector and utilities’ procurement of vehicles. This will ensure that the legal framework that regulates relevant public procurement of vehicles continues to function correctly at the end of the transition period.

The Cleaner Road Transport Vehicles Regulations 2011 (“CRTVR”) implemented EU Directive 2009/33/EC (“the Directive”) on the procurement of cleaner vehicles by the public sector. The Directive aimed to achieve a number of outcomes, including increasing energy efficiency

in the transport sector, protecting the environment by reducing emissions, stimulate the market for cleaner vehicles and reducing the cost of their production to achieve improved emission performance across the EU fleet. The proposed changes to the CRTVR are designed to ensure that after the transition period ends, the public procurement of vehicles in the UK continues to be regulated in a manner that is at least as ambitious as current arrangements.

The Committee notes a further Directive (Directive (EU) 2019/1161) amending the Directive was agreed by the EU in July 2019 and is due to be adopted by Member States by August 2021, i.e. after the end of transition period. Powers under the (Withdrawal) Act only allow for the correction of deficiencies in existing law that will be transposed into UK law at the end of the transition period, they do not permit policy proposals. As Directive 2019/1161 has not been implemented in the UK this instrument does not propose any potential changes arising from it. The provisions cross refer to related public procurement legislation. These are also the subject of an Exit SI, The Public Procurement (Amendment etc.) Regulations 2020, which will be laid later in the year and be subject to the affirmative procedure.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 16 July 2020 regarding the effect of these Regulations:

- The Welsh Government's statement does not identify which legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by this instrument. Legal advisors recommend that clarification is sought on which devolved powers are affected.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

The regulations were laid before the UK Parliament on 13 July 2020 and subsequently withdrawn on 15 July 2020. New regulations were laid on 15 July 2020.

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Agenda Item 6.1



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

15 July 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 16 July, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually, with UK Government Chairing. The meeting will discuss negotiations with the EU, the Intergovernmental Relations Review, the Northern Ireland Protocol, preparedness for the end of the transition period, the launch of a communications campaign for readiness, legislation, and the UK Internal Market.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).



Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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PSCGBM@gov.wales / YPCCGB@llyw.cymru

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.



Ein cyf/Our ref: MA/KW/2136/20

Mick Antoniow, MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru,
Cardiff Bay
CF99 1SN

15 July 2020

Dear Mick

Thank you for your letter of 8 July regarding the notice I issued to disapply the basic curriculum and associated assessment arrangements.

I am grateful to you for you drawing the discrepancy in dates between the notice and accompanying written statement to my attention. I can confirm that the operative date in respect of which the notices applies is 30 days from 24 June (i.e. ending on 23 July) and that the dates set out in the written statement are incorrect. I apologise for this oversight and any inconvenience it may have caused, this was due to an administrative error.

You have queried whether this discrepancy may cause any confusion for schools and settings and if so whether any clarification needs to be issued. Whilst the error is unfortunate, given that the notice was planned to coincide with the end of the summer term for the majority of schools and settings, I do not believe a clarification is required.

Regarding my intentions to issue any further notices, as you will be aware the Coronavirus Act 2020 requires any notice that is issued to set out why any modification or disapplication is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus. As such over the summer I will consider the public health situation and the likely operating arrangements for schools and settings in the autumn to determine whether any further legislative adaptation is required.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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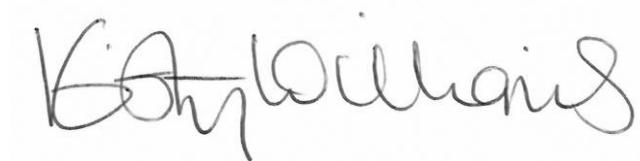
Gohebiaeth.Kirsty.Williams@llyw.cymru
Correspondence.Kirsty.Williams@gov.wales

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.

As the context is likely to be different, both in terms of the public health environment and it being the start of a new academic year, if any further notices are required they may differ in content to those issued this term.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams', written in a cursive style.

Kirsty Williams AS/MS
Y Gweinidog Addysg
Minister for Education



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

15 July 2020

Dear Mick

Thank you for your letter of 11 June 2020, regarding the Agricultural Wages (Wales) Order 2020. You have requested clarification of the Welsh Government's response to technical reporting point 2, on the accommodation offset allowance.

Article 2 of the Order refers to a dwelling house or self-contained accommodation that an agricultural worker is required to live in for the proper or better performance of their duties. It is not a requirement that a house for this purpose is provided on site, however, location of accommodation and proximity to the agricultural worker's place of work will be a significant factor in facilitating the 'proper or better performance of duties'.

Using stockpersons as an example, who may be required to work long or anti-social hours and respond to emergencies, living on or near their place of work would clearly be of considerable benefit. This would have been the case historically, and is still the case today.

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Correspondence.Lesley.Griffiths@gov.wales

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 have noted the Committee's comments and will share the comments with the Agricultural Advisory Panel for Wales. The Panel's functions include reviewing the agricultural minimum wage regime and preparing draft agricultural wages orders for approval by the Welsh Ministers. The Panel has acknowledged the structure and provisions of the agricultural wages orders should be reviewed to ensure they continue to reflect the needs of today's agricultural industry. The Panel Chair has indicated this work, including a review of the accommodation offset allowance, will take place in September.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Agenda Item 6.4

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh
Language



Llywodraeth Cymru
Welsh Government

David Rees MS
Chair of External Affairs and
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Cardiff Bay,
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Mr Mick Antoniw MS
Chair of Legislation, Justice and Constitution
Committee
Welsh Parliament,
Cardiff Bay,
Cardiff,
CF99 1SN
<mailto:SeneddLJC@assembly.wales>
Cc: LJC Committee Members

19 July 2020

Dear Chairs,

I am writing under the inter-institutional relations agreement to inform you that a meeting of the Ministerial Forum for Trade will take place on Tuesday 21 July.

The meeting will discuss the latest from the FTA negotiations and the Continuity Programme as well as an update on the UK Trade Bill.

I will be reiterating the Welsh Government's position that the Devolved Administrations views must be taken into account when developing negotiating positions. I will write you again following the meeting.

Yours sincerely,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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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.

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

seneddLJC@senedd.wales

23 July 2020

Dear Mick

Inquiry into Making Justice work in Wales – data on access to justice

I am writing in response to your letter dated 19 June about the committee's inquiry into making justice work in Wales.

The Welsh Government agrees with the Commission on Justice in Wales that it is important to ensure that disaggregated statistical data on justice in Wales is as accessible as possible. The Welsh Government's Chief Statistician and the Chief Statistician for the Ministry of Justice (MoJ) discussed this on several occasions in 2019 and agreed about the need to identify ways of making the data available wherever it was possible, and for it to be in an accessible form for Welsh users.

The MoJ endeavours to provide us, on request, with data relating to Wales but this is not always available to the MoJ in the form we request it and, that even when it is available, it can take some time for requests to be actioned.

MoJ priorities have been affected by an ongoing significant increase in workload, which commenced last summer and, like the Welsh Government, the MoJ has also been impacted by the global coronavirus pandemic. Analytical resource has been diverted to understanding and responding to coronavirus.

Despite the difficulties which we have acknowledged we continue to believe that more needs to be done to provide data to Wales on the basis set out in the Thomas Commission report. That point has been clearly communicated to the MoJ.

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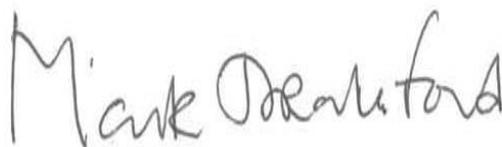
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

We anticipate discussions about statistical data will resume between the Welsh Government and the MoJ over the coming months, subject to the course of the pandemic in the UK.

An important development this year has been the funding announced by Administrative Data Research UK to the MoJ for the [Data First project](#). This work will provide a platform to link data from across the justice system to help our understanding of people's experiences, including people from Wales, and will also provide greater secure access to data for researchers in Wales.

Best wishes

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD



Department for
Business, Energy
& Industrial Strategy

The Rt Hon Alok Sharma MP
Secretary of State
Department for Business,
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Mick Antoniw MS
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay, Cardiff
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16 July 2020

Dear Mick,

Launch of the UK internal market White Paper and consultation

The White Paper on the *UK Internal Market* was published today (<https://www.gov.uk/government/publications/uk-internal-market>).

Today, the UK Internal Market supports jobs and livelihoods across our country. 75% of Welsh exports of final goods and services are consumed in the rest of the UK, three times as much as Wales exports internationally. In some parts of Wales, a quarter of workers commute in from England on a daily basis.

The Internal Market is just as vital for the rest of the UK. Northern Ireland sells more to the rest of the UK than to all EU member states combined. Scotland sells more to the rest of the UK than to the rest of the world put together.

Following the end of the Transition Period, the way we regulate labour, capital, goods and services in the UK will no longer be decided by the EU. Hundreds of powers previously exercised at EU level will flow directly to the devolved administrations in Edinburgh, Cardiff, and Belfast. The UK will be able to regulate our trade in goods and services in a tailored manner, specifically designed to benefit our businesses, workers and consumers while maintaining our high regulatory standards.

At this historic time, it is important that we provide businesses with certainty about how seamless internal trade will be upheld in the future.

Under the plans in this White Paper, the UK will continue to operate as a coherent internal market. A Market Access Commitment will guarantee UK companies can trade unhindered in every part of the United Kingdom, whilst maintaining our commitment to high regulatory standards.

It is the Government's firm belief that without this legislation, trade from one part of the Union to another could be disrupted through regulatory differences. This could put jobs at risk across the country and leave Welsh businesses potentially unable to sell their goods and services in other home nations.

The proposals in the White Paper will protect the UK internal market for the long-term, including:

- The principle of **mutual recognition** – goods and services from one part of the UK will be recognised across the country to ensure the devolved administrations can set their own rules and standards in areas of their competence, but still welcome the trade of businesses based anywhere in the UK.
- The principle of **non-discrimination** – so that there is equal opportunity for companies trading in the UK regardless of where in the UK the business is based.

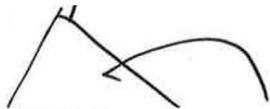
These principles will prevent any part of the UK from blocking products or services from another part while protecting devolved powers, such as introducing plastic bag minimum pricing or introducing smoking bans.

The consultation launched at the same time as the White Paper will enable businesses, academics, consumer groups and trade unions to input their views of the proposals and consultation questions.

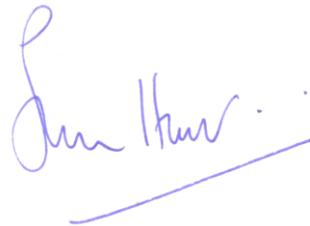
We have welcomed the engagement we have already had with Welsh Government officials and would like to build on this to make sure we fully discuss all the issues raised in the White Paper and consultation. We would value you and your Committee's input in this process.

If you have additional questions or would like further information, our ministerial colleagues and officials would welcome the opportunity to assist you.

Yours sincerely,



THE RT HON ALOK SHARMA MP
Secretary of State for Business, Energy
& Industrial Strategy



THE RT HON SIMON HART MP
Secretary of State for Wales

The Rt Hon Alok Sharma MP,
Secretary of State Department for Business,
Energy & Industrial Strategy,
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The Rt Hon Simon Hart MP
Secretary of State for Wales
Wales Office

27 July 2020

Launch of the UK internal market White Paper and consultation

Dear Alok and Simon

Thank you for your letter dated 16 July 2020 regarding the Launch of the UK internal market White Paper and consultation.

I am aware that both the External Affairs and Additional Legislation Committee and the Legislation, Justice and Constitution Committee have already undertaken work on this area and are planning on responding to your letter separately.

I feel it is sensible for those Committees to continue to lead on this piece of work. However the Economy, Infrastructure and Skills Committee will monitor the progress of the White Paper/developments around the UK Internal Market and may undertake scrutiny at a later date if it becomes appropriate.

I have copied this letter to David Rees MS, Chair of the External Affairs and Additional Legislation Committee, and Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee.



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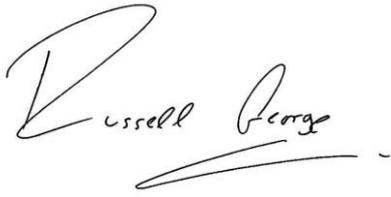
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Yours sincerely,

A handwritten signature in black ink that reads "Russell George". The signature is written in a cursive style with a large, looping initial 'R' and a long horizontal stroke at the end.

Russell George MS
Chair, Economy, Infrastructure and Skills Committee

CC: Mick Antoniw MS, Chair, Legislation, Justice and Constitution Committee
David Rees MS, Chair, External Affairs and Additional Legislation Committee



The Rt Hon Alok Sharma MP
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SW1A 0AA

The Rt Hon Simon Hart MP
Secretary of State for Wales
Gwydyr House
London
SW1A 2NP

30 July 2020

Dear Alok and Simon,

UK Internal Market White Paper

Thank you for your letter dated 16 July 2020, inviting the External Affairs and Additional Legislation Committee to respond to your White Paper proposals for the UK Internal Market.

Ensuring Welsh interests are safeguarded in the development of future intra-UK arrangements, for the management of policy areas that currently sit within EU frameworks or that are otherwise affected by EU exit, is central to our remit. We welcome the opportunity to respond. However, the timing of the consultation on the White Paper, falling as it does in the first four weeks of the Senedd's recess, poses some practical difficulties for us. Additionally, four weeks is arguably a very short consultation period for such a significant and complex proposal.

After considering the White Paper, we have concluded that, to provide a full and meaningful response to the proposals, we will need further information about the proposals. We will also need time at the start of the Senedd's autumn term to consider this information and agree a response.



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We hope that this will be possible prior to the introduction of any legislation. Enclosed with this letter is a set of questions that we would welcome answers to. To help illustrate why we seek answers to these questions, we have also provided some Welsh case studies.

Before turning to these questions and case studies, I would like to share some of the work we have done in this area since 2016.

In our January 2017 report, *Implications for Wales of leaving the European Union*, we identified the possible need for common UK-wide approaches to certain areas of policy.

This issue re-emerged as we considered the EU (Withdrawal) Act 2018. In our December 2017 report on the Bill, we concluded that:

“Decisions about future UK-wide policy frameworks must be agreed between the UK Government and the devolved governments and legislatures. They must not be imposed by the UK Government, even on a time-limited basis.”

Following the passing of the Bill into law, we turned our focus to the programme of work to develop UK-wide common policy frameworks.

In our December 2018 report *Common policy frameworks: Assembly [Senedd] scrutiny*, we stated that:

“[...] having a shared understanding across the nations of the UK of what a UK internal market constitutes, i.e. its foundation principles, objectives, parameters and constraints, is essential if future issues such as the agreement and implementation of future trade agreements are to be navigated successfully.”

In the same report, we concluded that:

“Given the comparatively developed state of the intergovernmental arrangements relating to the frameworks programme, and the fact that JMC EN remains the political locus for both the UK internal market work stream and the frameworks programme, broadening the scope of the frameworks programme might offer a more pragmatic means of reorienting this work in terms of defining the UK internal market.”



You can see from our previous work that we acknowledge the need for intra-UK cooperation in the management of some areas of policy. However, we have also stated that this must be done on the basis of agreement between governments and legislatures and not imposed by the UK Government or Parliament against the will of the other governments and legislatures.

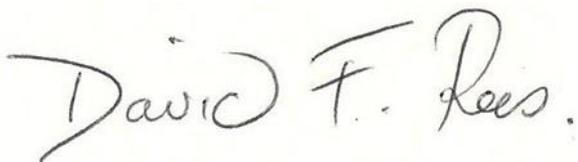
Prior to the UK's exit from the EU, we were the Senedd committee responsible for monitoring draft EU documents from the perspective of subsidiarity. The hard-fought for principles of subsidiarity and proportionality acted as key balancing mechanisms within the EU's internal market, to protect local decision making and ensure common regulation does not extend beyond the issue it seeks to address. There do not appear to be any similar mechanisms proposed in the White Paper.

We look forward to your response to the questions we have enclosed and would welcome a response by 1 September 2020. This will allow us to consider it on 17 September 2020, our first meeting after the recess, and prepare a fuller response to the proposals.

We have decided to publish this letter in the spirit of communicating our approach to our stakeholders, in light of the limited time within which they have to respond to the consultation.

We have also copied this letter to Jeremy Miles MS, Counsel General and Minister for European Transition, and Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,



David Rees MS
Chair of the External Affairs and Additional Legislation Committee

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



Questions on the Internal Market White Paper

Constraints on devolution

1. Can the Secretary of State please confirm that, beyond the reservation of subsidy control, the legislation to enshrine a Market Access Commitment will make no other changes to the devolved settlements?
2. Is the UK Government proposing a legal requirement to carry out an assessment of the effect of any new legislative proposals on the UK internal market?
3. What role will the devolved legislatures have in the architecture of the internal market, as it relates to devolved areas?

Scope of the proposals

Can the Secretary of State please clarify the following:

4. Whether the scope of the Market Access Commitment for the UK Internal Market will be broader than the scope of the rules related to the functioning of the EU's Single Market (that are currently in force in the UK)?
5. What the term "existing differences" means and to confirm that the Market Access Commitment will not apply retrospectively? (see our case studies for further illustration)
6. What the term "certain social policy measures" means (and to illustrate this with examples)?
7. Whether the principles of proportionality and subsidiarity will be reflected in the legislation in anyway? If not, why not?
8. Whether any exclusions on the grounds of public interest, as currently enshrined in the rules related to the EU's Single Market, will be permitted? For example, on public health or environmental protection grounds.
9. If any specific mechanisms will be included to maintain high standards within the UK Internal Market?



Governance

10. When will the review of intergovernmental arrangements be complete?
11. What new mechanisms of intergovernmental dispute resolution will be adopted? Will any element of these new dispute resolution mechanisms be enshrined in legislation?
12. What rights of redress against “harmful” barriers to trade will individual citizens and businesses have?
13. Will the legislature or government of one part of the UK be able to refer legislative proposals of another legislature or government to the independent body for assessment?
14. What processes will be put in place for the notification by one part of the UK to the others of any new measures that could impact the Internal Market?

Trade

15. To confirm what role the devolved governments have, or will have, in trade negotiations?

Spending powers

16. To provide further information on what the “clarification of spending powers” entails and when any review will be completed?
17. To confirm whether it is possible for this process to result in the UK Government seeking changes to the existing spending powers and responsibilities of the devolved governments?

Economic modelling

Paragraph 85 of the White Paper utilises a modelled scenario, where intra-UK trade costs increased to the level seen between German states, to suggest a possible reduction in Welsh GDP of £1.2 billion.

The economic analysis on pages 90 to 91 of the White Paper appears to provide the source for the use of the predictions stated in paragraph 85.

However, the economic analysis on pages 90 to 91 states that “*the usage of intra-German trade costs is purely illustrative and does not indicate a prediction for the UK market.*”



Further, it states that the GDP figures “*should not be taken as any indication of the likely GDP impact of policy divergence by the four parts of the UK after the end of the transition period*”.

18. Can you please clarify the apparent discrepancy in the use of these predicted GDP figures in the main body of the paper, as compared with the analytical annex?

Our case studies

Whilst we have provided our case studies to help illustrate the source of some of our questions, we would also welcome a response to them – either through reference to them when answering the above questions, or in direct reply to the questions posed within the case studies.



Case Studies

Social Care example

Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016 gives Social Care Wales discretion as to which professional qualifications to accept as being sufficient to allow persons to be registered as social workers in Wales, social care managers in Wales and social care workers in Wales.

Are social care services captured by the White Paper? Or is this an example of a pre-existing difference that will be excluded?

If England social care rules allow a person to provide social care services in England with fewer qualification than those allowed by Social Care Wales, would the principle of mutual recognition of professional qualifications apply?

With regard to recognition of professional qualifications, the White Paper is unclear. Paragraph 133(b) on page 46 says (emphasis added):

“Professional qualifications – mutual recognition of professional qualifications means that compliance with regulation required to access a profession in one territory can be used to **demonstrate** compliance towards the access of that profession in another territory. Where access requirements in the other territory differ, a process will be implemented to enable professionals to **demonstrate** compliance. In addition, other profession-specific regulatory requirements needed to practise the profession will be included as part of this process.”

If the White Paper is intended to capture social care services, it is unclear whether “demonstrate” means that:

- a social care worker who can practise social care in England would automatically be allowed to practise social care in Wales, or
- the ability to practise social care in England would provide evidence of suitability to practise in Wales, while leaving the final decision to Social Care Wales.



Registration of Private Landlords example

Part 1 of the Housing (Wales) Act 2014 requires private landlords in Wales to be registered in accordance with the scheme set out in that Act.

Is private landlord registration captured by the White Paper?

If Northern Ireland has a different scheme for authorising private landlords in Northern Ireland, would the principles of mutual recognition and non-discrimination apply? Would a person who carries on business as a private landlord in Northern Ireland be allowed to carry on business as a private landlord in Wales by satisfying the Northern Ireland rules but not the Wales rules?

The scheme set out in the Housing (Wales) Act 2014 already complies with the Provision of Services Regulations 2009. This means that the current Wales scheme must not be discriminatory and must be justifiable in the public interest.

Paragraph 133(c) on page 46 of the White Paper says that the Provision of Services Regulations 2009 rules “will be explicitly brought within the Internal Market system”. However, it is unclear how this will interact with the broader principles of mutual recognition and non-discrimination.

Microbeads example

Each of the four governments in the United Kingdom has made regulations that prohibit the use of microbeads in rinse-off personal care products such as bath products, exfoliators and dental products.

Rinse-off personal care products appear to be goods captured by the White Paper. Therefore, if one of the governments made regulations that lifted the prohibition in respect of such goods, the principles of non-discrimination and mutual recognition would apply.

Would this mean that goods containing microbeads could be placed on the market in Wales, despite the prohibition on the use of microbeads set out in The Environmental Protection (Microbeads) (Wales) Regulations 2018?

While the White Paper repeats many times that the highest standards will be maintained, there is no explanation as to how the internal market will ensure that the highest standards are maintained. For example, will the internal market have minimum standards relating to the use of microbeads plastics in goods? What if one part of the UK completely deregulates this area? Will such matters be dealt



with by common frameworks? And what international obligations might arise so as to override domestic law in this area?

Food Products Containing Meat example

The Products Containing Meat etc. (Wales) Regulations 2014 specify that certain products cannot contain parts of a carcass. They also specify the minimum meat content for various food products such as burgers, pies, pasties and sausage rolls.

Food products appear to be captured by the White Paper. Therefore, if Scotland sets lower standards for food products, the principles of non-discrimination and mutual recognition would apply. This would mean that food of a lower standard could be placed on the market in Wales, despite the restrictions set out in The Products Containing Meat etc. (Wales) Regulations 2014.

While the White Paper repeats many times that the highest standards will be maintained, there is no explanation as to how the internal market will ensure that the highest standards are maintained. For example, will the internal market have minimum standards relating to the use of meat in food products? What if one part of the UK completely deregulates this area? Will such matters be dealt with by common frameworks? And what international obligations might arise so as to override domestic law in this area?

Devolved Taxes example

While the White Paper says that taxation will not be captured by the internal market, it does so in the context of reserved taxes without explicitly excluding devolved taxes.

Land Transaction Tax and Landfill Disposals Tax have the potential to impact on the housing market outside Wales and on waste services outside Wales. It would be helpful to get confirmation that devolved taxes are not intended to be captured by the internal market.

Building Regulations example

Paragraph 17 of the White Paper says that divergent approaches to building regulations would be a barrier to the construction industry in the United Kingdom.

Therefore, while building regulations are clearly intended to be captured by the internal market, it is unclear to what extent any “pre-existing differences” will be excluded.



Will the existing Wales building regulations be excluded? Will the internal market apply only to future changes to building regulations?

This returns to the question at the beginning of this section: how will “pre-existing differences” be excluded from the internal market?

The inclusion of building regulations is also a clear example that the UK internal market is intended to cover goods and services that were not previously regulated under EU law.

Student Finance Support example

Students who ordinarily live in Wales receive financial support from Student Finance Wales, wherever they study in the United Kingdom. Student Finance Wales does not give financial support to students who ordinarily live in England but are studying in Wales.

Would the different student finance schemes across the United Kingdom be subject to principles of non-discrimination and mutual recognition? For example, would Student Finance Wales still be able to reject applications for financial support for students who ordinarily live in England but wish to study in Wales?

Bottled Water Labelling example

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 set out specific requirements for bottled water that is labelled as “spring water”. For example, the water must be bottled at the spring source and specific steps must be taken to avoid contamination of the water.

Bottled water appears to be captured by the White Paper. Therefore, if England rules set different standards for bottled spring water, the principles of non-discrimination and mutual recognition would apply. This would mean that bottled spring water that complies with the Wales rules could be sold in Wales as spring water, and bottled spring water that complies with different England rules could also be sold in Wales as spring water.

Does this cause confusion for consumers who want to buy spring water? Is this an issue that arises in all the above examples?



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