

# Agenda – Legislation, Justice and Constitution Committee

---

|                               |  |
|-------------------------------|--|
| Meeting Venue:                | For further information contact:                                   |
| Video conference via Zoom     | <b>Gareth Williams</b>   |
| Meeting date: 12 October 2020 | Committee Clerk  |
| Meeting time: 09.30           | 0300 200 6565  |
|                               | <a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a> |

---

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](http://www.Senedd.TV)

Informal pre-meeting (09.00–09.30)

## 1 Introduction, apologies, substitutions and declarations of interest

09:30

## 2 Making Justice work in Wales: Evidence session 2

09:30–10:30

(Pages 1 – 32)

Mark Drakeford MS, First Minister of Wales

Jeremy Miles MS, Counsel General

Christopher Warner, Deputy Director, Constitutional Affairs & Inter-Governmental Relations, Welsh Government

James Gerard, Deputy Director, Justice Transformation & Devolution, Welsh Government

**CLA(5)–29–20 – Briefing**

**CLA(5)–29–20 – Paper 1** – Letter from the First Minister, 28 August 2020

**CLA(5)–29–20 – Paper 2** – Letter from the First Minister, 23 July 2020

**CLA(5)–29–20 – Paper 3** – Letter from the Parliamentary Under-Secretary of State for Justice, 7 July 2020



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

10:30–10:40

Negative Resolution Instruments

#### **3.1 SL(5)623 – The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020**

(Pages 33 – 66)

CLA(5)–29–20 – Paper 4 – Report

CLA(5)–29–20 – Paper 5 – Regulations

CLA(5)–29–20 – Paper 6 – Explanatory Memorandum

CLA(5)–29–20 – Paper 7 – Letter from the Minister for Finance and Trefnydd, 28 September 2020

CLA(5)–29–20 – Paper 8 – Written statement, 28 September 2020

#### **3.2 SL(5)628 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020**

(Pages 67 – 79)

CLA(5)–29–20 – Paper 9 – Report

CLA(5)–29–20 – Paper 10 – Regulations

CLA(5)–29–20 – Paper 11 – Explanatory Memorandum

CLA(5)–29–20 – Paper 12 – Letter from the Minister for Finance and Trefnydd, 2 October 2020

CLA(5)–29–20 – Paper 13 – Written statement, 1 October 2020

Affirmative Resolution Instruments

#### **3.3 SL(5)625 – The Smoke-free Premises and Vehicles (Wales) Regulations 2020**

(Pages 80 – 148)

CLA(5)–29–20 – Paper 14 – Report

CLA(5)–29–20 – Paper 15 – Regulations

CLA(5)–29–20 – Paper 16 – Explanatory Memorandum

CLA(5)–29–20 – Paper 17 – Written statement, 29 September 2020

#### **3.4 SL(5)626 – The Senedd Cymru (Disqualification) Order 2020**

(Pages 149 – 166)

CLA(5)–29–20 – Paper 18 – Report

CLA(5)–29–20 – Paper 19 – Regulations

CLA(5)–29–20 – Paper 20 – Explanatory Memorandum

Made Affirmative Resolution Instruments

**3.5 SL(5)627 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020**

(Pages 167 – 182)

CLA(5)–29–20 – Paper 21 – Report

CLA(5)–29–20 – Paper 22 – Regulations

CLA(5)–29–20 – Paper 23 – Explanatory Memorandum

CLA(5)–29–20 – Paper 24 – Letter from the First Minister, 30 September 2020

CLA(5)–29–20 – Paper 25 – Statement, 29 September 2020

**3.6 SL(5)629 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020**

(Pages 183 – 196)

CLA(5)–29–20 – Paper 26 – Report

CLA(5)–29–20 – Paper 27 – Regulations

CLA(5)–29–20 – Paper 28 – Explanatory Memorandum

CLA(5)–29–20 – Paper 29 – Letter from the First Minister, 2 October 2020

CLA(5)–29–20 – Paper 30 – Written statement, 2 October 2020

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

10:40–10:45

**4.1 SL(5)619 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020**

(Pages 197 – 201)

CLA(5)–29–20 – Paper 31 – Report

CLA(5)–29–20 – Paper 32 – Welsh Government response

**4.2 SL(5)621 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020**

(Pages 202 – 204)

CLA(5)–29–20 – Paper 33 – Report

CLA(5)–29–20 – Paper 34 – Welsh Government response

## **5 Subordinate legislation that raises issues to be reported to the Senedd under Standing Order 21.7**

10:45–10:50

### **5.1 C(5)042 – The Senedd and Elections (Wales) Act 2020 (Commencement) Order 2020**

(Pages 205 – 208)

CLA(5)–29–20 – Paper 35 – Report

CLA(5)–29–20 – Paper 36 – Order

CLA(5)–29–20 – Paper 37 – Letter from the First Minister, 28 September 2020

## **6 Written statements under Standing Order 30C**

10:50–10:55

### **6.1 WS–30C(5)167 – The Environment (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020**

(Pages 209 – 212)

CLA(5)–29–20 – Paper 38 – Written statement

CLA(5)–29–20 – Paper 39 – Commentary

### **6.2 WS–30C(5)168 – The Nutrition (Amendment etc) (EU Exit) Regulations 2020**

(Pages 213 – 216)

CLA(5)–29–20 – Paper 40 – Written statement

CLA(5)–29–20 – Paper 41 – Commentary

## **7 Papers to note**

10:55–11:00

### **7.1 Letter from the Counsel General: Follow up to Committee scrutiny session on 21 September 2020**

(Pages 217 – 218)

CLA(5)–29–20 – Paper 42 – Letter from the Counsel General, 5 October 2020

### **7.2 Letter from the Secretary of State for Wales: UK Internal Market Bill**

(Page 219)



CLA(5)–29–20 – Paper 43 – Letter from the Secretary of State for Wales, 3 October 2020

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

11:00

**9 Making Justice work in Wales: Consideration of evidence**

11:00–11:10

(Pages 220 – 229)

CLA(5)–29–20 – Paper 44 – Summary note of engagement exercise

**10 The Greenhouse Gas Emissions Trading Scheme Order 2020: Consideration of draft report**

11:10–11:20

(Pages 230 – 241)

CLA(5)–29–20 – Paper 45 – Draft report

**11 Legislative Consent Memorandum on the Domestic Abuse Bill: Consideration of correspondence**

11:20–11:30

(Pages 242 – 247)

CLA(5)–29–20 – Paper 46 – Letter from the Deputy Minister and Chief Whip, 6 October 2020

CLA(5)–29–20 – Paper 47 – Legal advice note

**12 Legislative Consent Memorandum on the Non–Domestic Rating (Lists) (No. 2) Bill: Consideration of key issues**

11:30–11:40

(Pages 248 – 254)

CLA(5)–29–20 – Paper 48 – Legislative Consent Memorandum

CLA(5)–29–20 – Paper 49 – Legal advice note

**13 Covid–19 regulations: Consideration of correspondence**

11:40–11:50

(Page 255)

CLA(5)–29–20 – Paper 50 – Letter from the Llywydd, 8 October 2020

**Date of the next meeting – 19 October 2020**

Document is Restricted



Mick Antoniw MS  
Chair of the Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

28 August 2020

Dear Mick

I am writing in response to your letter of 23 July and your invitation to attend the Legislation, Justice and Constitution Committee meeting on 12 October as part of the Committee's ongoing inquiry, "Making Justice work in Wales". Both I and the Counsel General look forward to attending.

You also referred to the second annual report of the President of Welsh Tribunals. I can confirm that we will schedule a debate on the report, a date for which is being explored by officials.

Best wishes

**MARK DRAKEFORD**



Mick Antoniw MS  
Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN

[seneddLJC@senedd.wales](mailto: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.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[YP.PrifWeinidog@llyw.cymru](mailto:YP.PrifWeinidog@llyw.cymru) • [ps.firstminister@gov.wales](mailto:ps.firstminister@gov.wales)

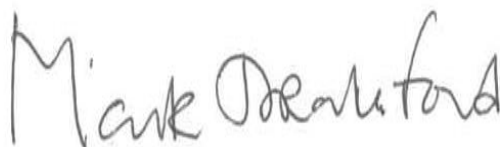
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

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 style with a large initial 'M'.

**MARK DRAKEFORD**



Mick Antoniw MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardif Bay  
Cardiff  
CF99 1SN

**MoJ ref:** ADR79396

7 July 2020

Dear Mick,

### **INQUIRY INTO MAKING JUSTICE WORK IN WALES – DATA ON ACCESS TO JUSTICE**

Thank you for your letter of 19 June to the Lord Chancellor, regarding the inquiry into Making Justice work in Wales and in particular, user needs for Welsh justice data.

As you have noted, the Justice in Wales Working Group recommended that we should undertake a review of how data collection and publishing practices reflect the distinctiveness of Wales, where possible disaggregating data to give a clear picture of how justice in Wales functions. Disaggregation of Welsh data is a matter that we have been seeking to resolve for some time, particularly the challenges involved in categorising Welsh individuals in the justice system, but I am pleased to say that we have made considerable progress.

HMCTS in Wales currently collects data on existing legacy Case Management Systems at Court and Tribunal venue level for all jurisdictions. This data can be aggregated at a local reporting level e.g. Local Justice Area or Local Family Justice Board areas, and then summarised in a top level HMCTS Wales data set, which can be used in Wales for performance monitoring against workloads and all Key Performance measures. The Ministry of Justice aggregate the data for the Office for National Statistics, which are released Quarterly.

When considering changes to the court and tribunal estate, HMCTS will always assess local data for a particular court and the surrounding area. They will consider the workload and operating costs of the court but also, through an equalities assessment, local populations and their characteristics. They will assess local journeys to court by public transport to make sure that any likely future journeys meet HMCTS' access to justice principles.

Legal Aid Provider Statistics provide legal aid data at national/regional level, so data for Wales can be isolated from the overall data for England and Wales. This is based on the provider location, not the client location. The published statistics give the type of work undertaken, covering both civil and crime billing data for completed claims. This dataset includes data from 2011/12 onwards.

With respect to family justice, we publish data at a regional level, which can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/895002/Family\\_Data\\_2020\\_Q1.zip](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895002/Family_Data_2020_Q1.zip). This data set includes:

- The number of cases started/finishing by region and by case type (with 'count' referring the number of applications/orders etc depending on the start/end selection)
- The timeliness by region and case type and legal representation status (note that those without representation are where representation isn't recorded, rather than specifically being litigants in person)

Whilst your request does not cover prisons and probation, I thought you would find it helpful to know that HMPPS currently provides published statistics on how offender management services in the community and in custody are delivered. These statistics include key statistics relating to offenders, staff and performance against agreed service levels and measures. Where possible, for prisons, the statistics are disaggregated to the establishment level, including prisons in Wales. Similarly, statistical publications relating to community supervision are disaggregated to a regional level, including Wales. A narrative account of HMPPS in Wales, reflecting the devolved structure of the organisation and activities is provided in HMPPS Annual Report and Accounts.

One important development this year, however, has been the funding announced by Administrative Data Research to the Ministry of Justice for the Data First project. This work will provide a platform to link together 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.

I hope this information is helpful and I would be happy to answer any follow up questions you may have in relation to the inquiry.

Thank you again for getting in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Chalk', is centered on a light gray background.

**ALEX CHALK MP**

## **SL(5)623 – The Coronavirus Act 2020 (Residential Tenancies Protection from Eviction) (Wales) Regulations 2020**

### **Background and Purpose**

The Coronavirus Act 2020 (the "2020 Act") section 81 and Schedule 29 provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession.

These Regulations extend until 31 March 2021 the period during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Previously, the end date was 30 September 2020.

Additionally, these Regulations increase from 3 months to 6 months the period of notice required for most notices served in respect of protected and statutory tenancies, secure tenancies, introductory and demoted tenancies. This brings those tenancies into line with the period of six months notice already required for assured and assured shorthold tenancies.

However, in respect of all tenancies, where the ground or reason for giving notice relates to antisocial behaviour, or domestic violence, the Regulations suspend the longer notice periods required under Schedule 29 of the 2020 Act.

Section 88(1) of the 2020 Act provides a power for a relevant national authority (in this case the Welsh Ministers) to suspend the operation of any provision of that Act by regulations. Regulations may also be made to revive a suspended provision (section 88(3)), and the provisions in 88(1) and (3) may be used more than once (see section 88(4)).

### **Procedure**

Negative.

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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





We note the breach of the 21-day rule in respect of these Regulations (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). This Minister for Finance and Trefnydd, Rebecca Evans provides an explanation for the breach in a letter to the Llywydd dated 28 September 2020:

*There remains 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. In order to ensure that the provisions of Schedule 29 continue to apply after 30 September, the Regulations come into force on 29 September 2020.*

Likewise, paragraph 2.1 of the Welsh Government’s Explanatory Memorandum (“EM”) states as follows:

*There is an urgent need to ensure that the relevant period is extended beyond the 30 September. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the virus. Consequently, the Regulations come into force on 29 September 2020 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.*

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 it was necessary for these Regulations to come into force so urgently as to breach the 21-day rule. Since earlier, similar, provision was made, in July by the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (the “previous Regulations”), there has been a period of two months for the Welsh Ministers to consider and put into place provision beyond 30 September. Despite this, these Regulations were made on 25 September, laid on 28 September and came into force on 29 September. We noted in our report on the previous Regulations, that the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the 2020 Act 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 extend, in certain cases, the notice period that a landlord must give a tenant from three months to six months, after 29 September 2020. The Regulations have the effect of restricting a landlord's use and enjoyment of their property for this additional period of time. 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.

In our report on the previous Regulations, we noted that there was no analysis in the Welsh Government's EM of landlords' A1P1 rights and how interference with these rights is justified. The Government response to the Committee's report on those previous Regulations did not provide any detail about the rationale for the Government's decision.

The EM accompanying these Regulations also does not contain an analysis of the impact on human rights. As such, it is not possible for a reader of the Regulations to understand how the Government has weighed up the competing rights of landlords, tenants and the wider public.

The Welsh Government is asked to set out how it considers that these regulations are compliant with A1P1 of the ECHR.

### **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**

Paragraph 2.3 of the Welsh Government's Explanatory Memorandum discusses the issue of retrospectivity:

*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 tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date the Regulations come into force.*

Whilst we appreciate that the Regulations will apply prospectively, in that only notices given after the date the Regulations come into force will be affected by the provisions, the Regulations will apply to existing tenancies, made between landlords and tenants.



#### **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**

Paragraph 6.1 of the EM explains that the Welsh Government has not been able to carry out a quantified regulatory impact assessment, but that the EM provides a qualitative assessment of the likely impacts of the Regulations. However, these Regulations were laid on 28 September 2020 and came into force on 29 September 2020 giving landlords and other stakeholders only a matter of hours notice of this (extension to a) substantive change to the law and their rights.

In regard to the potential economic effects of the Regulations on landlords, paragraph 6.11 of the EM states as follows:

*...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 increased notice periods. 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...*

The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment makes it harder to ascertain if the Regulations represent a proportionate response by the Welsh Government. There has also been a period of two months since the previous Regulations were made, which could have provided an opportunity for further assessment to be made by the Welsh Government into the impacts of the provisions.

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

None.

### **Welsh Government response**

A Welsh Government response is required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 October 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. 1044 (W. 233)**

**HOUSING, WALES**

**The Coronavirus Act 2020  
(Residential Tenancies: Protection  
from Eviction) (Wales) Regulations  
2020**

**EXPLANATORY NOTE**

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

These Regulations amend Schedule 29 to the Coronavirus Act 2020, and suspend the operation of certain provisions in that Schedule. The Regulations also amend the Notices to Quit etc. (Prescribed Information) Regulations 1988.

Schedule 29 to the Coronavirus Act 2020 (“Schedule 29”) modifies various statutory provisions relating to notices that need to be given in order to seek possession of dwellings.

Prior to these Regulations coming into force, the effect of the modifications made by Schedule 29 was that, in Wales, landlords were required to provide at least three months’ notice before seeking a possession order where dwellings were let under Rent Act 1977 protected or statutory tenancies, secure tenancies, introductory tenancies or demoted tenancies. For assured shorthold tenancies, at least six months’ notice was required where notice was given under section 21 of the Housing Act 1988, and for assured tenancies, at least six months’ notice was required unless the notice specified Ground 7A or 14 (in which case, at least three months’ notice was required).

The Regulations amend the modifications made by Schedule 29 in relation to notices that are given after these Regulations come into force.

In most cases, the notice period that must be given in order to obtain possession of a dwelling let on Rent Act protected tenancies or statutory tenancies, secure tenancies, assured tenancies, introductory tenancies or demoted tenancies is increased to six months. Exceptions are made for notices that specify grounds relating to anti-social behaviour or domestic violence

(and, in those cases, the notice period reverts to the position that applied before Schedule 29 came into force).

Regulation 4 amends Schedule 29 in so far as it modifies the notice period relating to Rent Act 1977 protected tenancies. It extends the notice required under a notice to quit given under section 5(1) of the Protection from Eviction Act 1977 to six months, unless the notice to quit specifies that the landlord believes that Case 2 in Schedule 15 to the Rent Act 1977 applies (conduct which is a nuisance or annoyance, or dwelling used for immoral or illegal purposes). In those circumstances, at least four weeks' notice must be given.

Regulation 16 amends the Notice to Quit etc. (Prescribed Information) Regulations 1988. Where a notice to quit is given less than 6 months before the date on which it is to take effect, the notice to quit will have to specify that the landlord believes that the circumstance in Case 2 applies. This requirement will apply from the date these Regulations come into force until 31 March 2021.

Regulation 5 amends Schedule 29 in so far as it modifies the notice period relating to Rent Act 1977 statutory tenancies. It extends the notice required under section 3 of the Rent Act 1977 to six months, unless a notice of intention to commence possession proceedings specifies Case 2 in Schedule 15 to the Rent Act 1977. In those circumstances, at least four weeks' notice must be given.

The requirement to give a notice of intention to commence proceedings in relation to statutory tenancies is set out in the modification to the Rent Act 1977 made by paragraph 2(3) of Schedule 29.

Regulation 6 amends Schedule 29 in so far as it modifies the notice periods relating to secure tenancies. It extends the notice period required under section 83 of the Housing Act 1985 to six months, except where Ground 2A (domestic violence) is specified, without other grounds. If Ground 2A is specified, the notice requirement reverts to the position that applied before Schedule 29 came into force.

Regulation 7 suspends the operation of paragraph 3 of Schedule 29 where a notice under section 83 of the Housing Act 1985 specifies Ground 2 in Schedule 2 to that Act (conduct which is a nuisance or annoyance, or dwelling used for immoral or illegal purposes). The effect of the regulation is that, where Ground 2 is specified (whether with or without other grounds), the notice requirement reverts to the position that applied before Schedule 29 was brought into force.

Regulation 8 suspends the operation of paragraph 4 of Schedule 29. The effect of the regulation is that,

where a notice under section 83ZA of the Housing Act 1985 specifies that the Court will be asked to make an order for possession under section 84A of the Housing Act 1985 (absolute grounds for anti-social behaviour), the notice requirement reverts to the position that applied in those circumstances before Schedule 29 came into force.

Regulation 9 amends Schedule 29 in so far as it modifies the notice periods relating to assured tenancies. Where a notice under section 8 of the Housing Act 1988 specifies Ground 14A in Schedule 2 to that Act (domestic violence), without other grounds, the notice period is reduced from 3 months to 2 weeks, which is the notice requirement that applied in those circumstances before Schedule 29 came into force.

Regulation 10 suspends the operation of paragraph 6(a) and (b) of Schedule 29. The effect of the Regulation is that, where a notice under section 8 of the Housing Act 1988 specifies Ground 7A or 14 in Schedule 2 to that Act (anti-social behaviour, offences etc.), the notice requirements revert to the position that applied before Schedule 29 came into force.

Regulation 11 amends Schedule 29 in so far as it modifies the notice period relating to introductory tenancies. It extends the notice period required under section 128 of the Housing Act 1996 to six months, except where the landlord has specified an anti-social behaviour reason in the notice of proceedings. In those circumstances, the notice requirement reverts to the position that applied before Schedule 29 came into force.

Regulation 12 amends Schedule 29 in so far as it modifies the notice periods relating to demoted tenancies. It extends the notice period required under section 143E of the Housing Act 1996 to six months, except where the landlord has specified an anti-social behaviour reason in the notice of proceedings. In those circumstances, the notice requirement reverts to the position that applied before Schedule 29 came into force.

Regulations 13 and 15 amend the modifications made by paragraphs 10 and 11 of Schedule 29, and regulation 14 suspends the operation of paragraph 10(1)(a)(i) and (b) of that Schedule. The effect of these regulations is that the prescribed forms relating to secure tenancies and assured tenancies and assured agricultural occupancies are modified to reflect the changes to notice requirements made by these Regulations.

The provision made by Schedule 29 was to end on 30th September 2020, but regulation 3 amends paragraph 3 of Schedule 29 so that it has effect, in relation to Wales, until 31st March 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.

---

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. 1044 (W. 233)**

**HOUSING, WALES**

**The Coronavirus Act 2020  
(Residential Tenancies: Protection  
from Eviction) (Wales) Regulations  
2020**

*Made* 25 September 2020

*Laid before Senedd Cymru* 28 September 2020

*Coming into force* 29 September 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 5(1)(a) of the Protection from Eviction Act 1977<sup>(1)</sup> and section 88(1) of, and paragraphs 1(2) and 13(1) of Schedule 29 to, the Coronavirus Act 2020<sup>(2)</sup>.

**PART 1**

**INTRODUCTION**

**Title and coming into force**

**1.**—(1) The title of these Regulations is the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020.

(2) These Regulations come into force on 29 September 2020.

---

(1) 1977 c. 43. The functions of the Secretary of State under section 5, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) 2020 c. 7. The powers conferred by section 88(1) of, and paragraphs 1(2) and 13(1) of Schedule 29 to, the Coronavirus Act 2020 are exercisable by the “relevant national authority”. The Welsh Ministers are the relevant national authority in relation to Wales.



### **Meaning of references to “Schedule 29”**

2. In these Regulations, a reference to “Schedule 29” is a reference to Schedule 29 to the Coronavirus Act 2020 (Residential Tenancies in England and Wales: Protection from Eviction).

## **PART 2**

### **EXTENSION OF RELEVANT PERIOD**

#### **Extension of the relevant period in Schedule 29**

3. In paragraph 1(1)(b)(ii) of Schedule 29 (meaning of “relevant period” in relation to Wales), for “30 September 2020” substitute “31 March 2021”.

## **PART 3**

### **NOTICE PERIODS: AMENDMENTS TO MODIFICATIONS MADE BY SCHEDULE 29**

#### **RENT ACT 1977 PROTECTED TENANCIES AND STATUTORY TENANCIES**

#### **Amendment of modifications made to section 5(1) of the Protection from Eviction Act 1977**

4.—(1) Paragraph 2 of Schedule 29 is amended as follows.

(2) In sub-paragraph (1) (notice period for Rent Act notices to quit)—

- (a) omit “the reference to 4 weeks were a reference to”;
- (b) in paragraph (a), after “in relation to premises in England,” insert “the reference to 4 weeks were a reference to”;
- (c) in paragraph (b), for “3 months”, substitute “for paragraph (b) there were substituted—  
“**(b)** it is given—
  - (i) not less than four weeks before the date on which it is to take effect where the notice to quit specifies that the landlord is of the opinion that the circumstance specified in Case 2 in Schedule 15 to the Rent Act 1977 applies (whether or not any other circumstance specified in that Schedule applies), and”

- (ii) where sub-paragraph (i) does not apply, not less than six months before the date on which it is to take effect.”;

**Amendment of modifications made to section 3 of the Rent Act 1977**

5.—(1) Paragraph 2 of Schedule 29 is amended as follows.

(2) In sub-paragraph (3) (notice period for possession proceedings in relation to Rent Act 1977 statutory tenancies)—

- (i) in inserted subsection (4A)(b)(ii) of the modification, for “, at least three months” substitute “—

- (aa) at least four weeks where the notice of intention to commence possession proceedings specifies a ground that corresponds to Case 2 in Schedule 15 to this Act (whether or not the notice specifies any other ground), and

- (ab) where sub-paragraph (aa) does not apply, at least six months”;

- (ii) in inserted subsection (4C)(g)(i) of the modification, for “, at least three months after the date on which the notice is given,” substitute “—

- (aa) at least four weeks after the date on which the notice is given where the notice of intention to commence possession proceedings specifies a ground that corresponds to Case 2 in Schedule 15 to this Act (whether or not the notice specifies any other ground), and

- (ab) where sub-paragraph (aa) does not apply, at least six months after the date on which the notice is given,”.

SECURE TENANCIES

**Amendment of modifications made to section 83 of the Housing Act 1985**

6.—(1) Paragraph 3 of Schedule 29 (notice of possession proceedings in relation to secure tenancies) is amended as follows.

(2) In paragraph (b), omit “, in relation to a dwelling-house in England.”.

(3) in paragraph (c)—

(a) in inserted subsection (4B)(a)(ii) of the modification, for “, three months after the date of service of the notice,” substitute “—

(aa) four weeks after the date of service of the notice where Ground 2A in Schedule 2 is specified without any other ground, and

(ab) where sub-paragraph (aa) does not apply, six months after the date of service of the notice.”.

#### **Suspension of provision relating to section 83 of the Housing Act 1985 where notice is given on anti-social behaviour grounds**

7. Paragraph 3 of Schedule 29 (extension of notices in relation to secure tenancies) is suspended in relation to Wales for the purposes of a notice under section 83 of the Housing Act 1985(1) specifying Ground 2 in Schedule 2 to that Act (discretionary ground for anti-social behaviour), whether with or without other grounds.

#### **Suspension of provisions relating to section 83ZA of the Housing Act 1985 where notice is given on anti-social behaviour grounds**

8. Paragraph 4 of Schedule 29 (notice of possession proceedings on absolute ground for anti-social behaviour in relation to secure tenancies) is suspended in relation to Wales.

#### **ASSURED TENANCIES**

#### **Amendment of modifications made to section 8 of the Housing Act 1988**

9.—(1) Paragraph 6 of Schedule 29 (notice of possession proceedings in relation to assured tenancies) is amended as follows.

(2) In paragraph (d)—

(a) the words “for “two weeks” there were substituted “the relevant notice period” in relation to a dwelling-house in England” become sub-paragraph (i);

(b) for “and “six months” in relation to a dwelling-house in Wales” substitute “, and

---

(1) 1985 c. 68.

- (ii) for “two weeks from the date of the service of the notice” there were substituted, in relation to a dwelling-house in Wales “—
- (a) two weeks from the date of the service of the notice where Ground 14A in Schedule 2 is specified without any other ground, and
- (b) where paragraph (b) does not apply, six months from the date of the service of the notice.””

**Suspension of provisions relating to section 8(3A) and (4) of the Housing Act 1988 (Grounds 7A or 14: anti-social behaviour, offences etc.)**

10. In paragraph 6 of Schedule 29 (notice of possession proceedings on Grounds 7A and 14 in relation to assured tenancies) paragraphs (a) and (b) are suspended in relation to Wales.

INTRODUCTORY TENANCIES

**Amendment of modifications made to section 128 of the Housing Act 1996**

11.—(1) Paragraph 8 of Schedule 29 (notice of possession proceedings in relation to introductory tenancies) is amended as follows.

(2) In paragraph (b), in inserted subsection (4A)(a)(ii) of the modification, for “, three months beginning with the date on which the notice of proceedings is served” substitute “—

- (aa) four weeks beginning with the date on which the notice of proceedings is served where the landlord has specified in the notice of proceedings an ASB reason for applying for a possession order (whether or not the landlord has any other reason), and
- (ab) in any other case, six months from the date on which the notice of proceedings is served”.

(3) In paragraph (c), in inserted subsection (8) of the modification, in the definition of “ASB reason”—

- (a) after ““ASB reason” means” insert “, in relation to a dwelling-house in England,”, and
- (b) at the end, insert “and, in relation to a dwelling-house in Wales, a reason which corresponds to any of those set out in section 84A(3) to (7) of the Housing Act 1985 or Grounds 2 and 2A of Schedule 2 to that Act”.

## DEMOTED TENANCIES

### **Amendment of modifications made to section 143E of the Housing Act 1996**

**12.**—(1) Paragraph 9 of Schedule 29 (notice of possession proceedings in relation to introductory tenancies) is amended as follows.

(2) In paragraph (a), in inserted subsection (3)(a)(ii) of the modification, for “, three months beginning with the date on which the notice of proceedings is served” substitute “—

- (aa) four weeks beginning with the date on which the notice of proceedings is served where the landlord has specified in the notice of proceedings an ASB reason for applying for a possession order (whether or not the landlord has any other reason), and
- (ab) in any other case, six months from the date on which the notice of proceedings is served”.

(3) In paragraph (c), in inserted subsection (6) of the modification, in the definition of “ASB reason”—

- (a) after ““ASB reason” means” insert “, in relation to a dwelling-house in England,”, and
- (b) at the end, insert “and, in relation to a dwelling-house in Wales, a reason which corresponds to any of those set out in section 84A(3) to (7) of the Housing Act 1985 or Grounds 2 and 2A of Schedule 2 to that Act”.

## PART 4

### CHANGES TO PRESCRIBED FORMS

#### **Consequential modifications to prescribed forms relating to secure tenancies**

**13.**—(1) Paragraph 10 of Schedule 29 (modifications of the Schedule to the Secure Tenancies (Notices) Regulations 1987<sup>(1)</sup>: prescribed forms in relation to secure tenancies) is amended as follows.

(2) In sub-paragraph (1) (modification of Part 1 of the Schedule), in paragraph (a)(ii) for ““three months from the date this Notice is served and also cannot be earlier than” substitute “—

- (a) four weeks from the date this Notice is served where Ground 2A in Schedule 2 to the Housing Act 1985 is specified in

---

<sup>(1)</sup> S.I. 1987/755.

the Notice and no other ground is specified, and

- (b) where paragraph (a) does not apply, six months from the date this Notice is served.

Court proceedings also cannot be begun earlier than”.

(3) In sub-paragraph (2) (modification of Part 2 of the Schedule), in the first bullet point of the modification, in paragraph (b), for “, three months from the date this Notice is served” substitute “—

- (i) four weeks from the date this Notice is served where Ground 2A in Schedule 2 to the Housing Act 1985 is specified in the notice and no other ground is specified, and
- (ii) where sub-paragraph (i) does not apply, six months from the date this Notice is served (unless proceedings are brought on Ground 2 in Schedule 2 to the Housing Act 1985, in which case they may be begun immediately).”.

#### **Suspension of modifications to the Secure Tenancies (Notices) Regulations 1987 relating to Ground 2**

**14.** In paragraph 10(1) of Schedule 29, paragraphs (a)(i) and (b) are suspended in relation to Wales.

#### **Consequential modifications to prescribed forms relating to assured tenancies and agricultural occupancies**

**15.—**(1) Paragraph 11 of Schedule 29 (modifications of the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997<sup>(1)</sup>: prescribed forms in relation to assured tenancies and agricultural occupancies) is amended as follows.

(2) For paragraphs (a), (b) and (c) substitute “for the first, second and third bullet points there were substituted—

“—Where the landlord is seeking possession on any of grounds 1 to 7, 8 to 13, 15, 16 or 17 (without ground 7A or 14) court proceedings cannot begin earlier than six months from the date on which this notice is served on you, and in the case of grounds 1, 2 5 to 7, 9 and 16 court proceedings cannot, in

---

(1) S.I. 1997/194.

any event, begin before the date on which the tenancy (had it not been assured) could have been brought to an end by a notice to quit served at the same time as the notice.

—Where the landlord is seeking possession on ground 7A (with or without other grounds), court proceedings cannot begin earlier than 1 month from the date this notice is served on you in the case of a fixed term tenancy and, in the case of a periodic tenancy, court proceedings cannot begin before the date on which the tenancy (had it not been assured) could have been brought to an end by a notice to quit served at the same time as this notice.

—Where the landlord is seeking possession on ground 14 (with or without other grounds other than ground 7A), court proceedings cannot begin before the date this notice is served on you.

—Where the landlord is seeking possession on ground 14A (without other grounds), court proceedings cannot begin earlier than two weeks from the date this notice is served on you.”

## PART 5

### PRESCRIBED INFORMATION IN NOTICES TO QUIT

#### **Amendment to the Notices to Quit etc. (Prescribed Information) Regulations 1988**

**16.**—(1) The Schedule to the Notice to Quit etc. (Prescribed Information) Regulations 1988(1) is to be read, in relation to a Rent Act notice to quit given in relation to premises in Wales during the relevant period, as if after paragraph 2 there were inserted—

#### **“Prescribed information where less than 6 months’ notice has been given**

**3.** Where a notice to quit has been given less than 6 months before the date on which it is to take effect, the following information must be given—

---

(1) S.I. 1988/2201.

“The notice to quit has been given less than 6 months before the date on which it is to take effect on the basis that the landlord believes that the circumstance specified in Case 2 in Schedule 15 to the Rent Act 1977 applies (conduct which is a nuisance or annoyance to adjoining occupiers, or dwelling-houses used for immoral or illegal purposes).”

(2) In sub-paragraph (1)—

- (a) “Rent Act notice to quit” means a notice to quit relating to a tenancy that is a protected tenancy for the purposes of the Rent Act 1977<sup>(1)</sup> (see section 1 of that Act), and
- (b) “relevant period” means the period beginning with the day on which these Regulations come into force and ending with the date specified in paragraph 1(b)(ii) of Schedule 29.

## PART 6

### TRANSITIONAL PROVISION

#### **Transitional provision**

**17.** The amendments to Schedule 29 and the suspension of provisions in Schedule 29 made by these Regulations do not apply in relation to notices given or served before the day on which these Regulations come into force.

*Julie James*

Minister for Housing and Local Government, one of  
the Welsh Ministers  
25 September 2020

---

(1) 1977 c. 42.



## **Explanatory Memorandum to the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (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 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020.

Julie James  
Minister for Housing and Local Government  
28 September 2020

## **1. Description**

- 1.1 Section 81 and Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession. These Regulations extend until 31 March 2021 (from the previous end date of 30 September 2020) the period during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. In addition, these Regulations increase from three months to six months the period of notice required for most notices served in respect of protected and statutory tenancies, secure tenancies, introductory and demoted tenancies, thus bringing those tenancies into line with the period of six months’ notice already required in relation to assured tenancies and assured shorthold tenancies. However, in the case of all tenancies, the Regulations suspend the longer notice periods required under Schedule 29 to the 2020 Act in relation to cases where the ground or reason for giving notice relates to antisocial behaviour (ASB) or domestic violence (DV)

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

- 2.1 There is an urgent need to ensure that the relevant period is extended beyond the 30 September. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the virus. Consequently, the Regulations come into force on 29 September 2020 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.
- 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 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 Section 88, and paragraphs 1(2) and 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 or, in some cases, creating a 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, which is set to end on 30 September 2020, may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales) under a power set out in paragraph 1(2) of Schedule 29.

- 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, introductory tenancies and demoted tenancies. Following amendments made to Schedule 29 of the 2020 Act by the Coronavirus (Assured Tenancies and Assured Shorthold Tenancies; Extended Notice Periods) (Amendment) (Wales) Regulations 2020, six months’ notice must be served in respect of assured tenancies and assured shorthold tenancies, except where the notice is issued under Grounds 7A and 14 of Schedule 2 to the Housing Act 1988 (respectively, the mandatory ground for serious offences/ASB and the nuisance and annoyance discretionary ground) where the notice period remains at three months.
- 3.5 Paragraph 13(1)(a) 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. Paragraph 13(1)(b) provides the power to alter a reference which has been altered by virtue of either paragraph (a) or (b) but not so as to result in the reference being to a specified period of more than six months.
- 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 Senedd (i.e. the negative resolution procedure).
- 3.7 Section 88 of the 2020 Act provides a power to ‘national authorities’ to suspend and revive provisions within the Coronavirus Act. This power may be exercised more than once in relation to a given provision and may be exercised so as to make different provision for different purposes or areas.
- 3.8 Section 88(9) provides that the Welsh Ministers are a relevant national authority in relation to a provision if it extends to England and Wales and applies in relation to Wales and the provision would otherwise fall within the legislative competence of the Senedd.

#### 4. Purpose & intended effect of the legislation

- 4.1 The Regulations amend Schedule 29 of the 2020 Act so as to ensure that after 29 September 2020 until 31 March 2021 tenancies are subject to a six-month notice period for termination of the tenancy, except where the reason for seeking to end the tenancy relates to ASB or domestic violence.
- 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 more months with continuing restrictions required on various aspects of normal life, including local lockdowns. Although there is currently little independent evidence available to confirm the scale of the problem of rent arrears at the present time, or projections as to how the problem may increase in future as the full economic effects of the coronavirus become clear, financial hardship resulting from the effects of the pandemic are likely to have had a damaging impact on the ability of some tenants to pay rent. This may give rise to a substantial increase in evictions if action is not taken.
- 4.3 With this in mind, the Regulations have been drafted in order 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.
- 4.4 Extending the relevant period to 31 March 2021 and increasing notice periods for those tenancies not already increased by the 2020 Regulations – but at the same time reducing the notice period for grounds relating to ASB and DV - will support these three aims through:

**Reduced homelessness-** continued longer notice periods, and increased notice periods for those tenancies not already increased by the 2020 Regulations, should mean fewer people evicted into homelessness, or be at risk of being evicted into homelessness. If a person becomes homeless, their potential vulnerability to the virus and the likelihood of them spreading it is increased further (“*containing and slowing the virus*”). This may become particularly significant in the event of a potential second wave or local spikes occurring during the autumn and winter months. 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.

Reducing the notice period for ASB and DV grounds would result potentially in the individuals subject to such notices being evicted more quickly – but the negative effect of this would be mitigated, for example, by the reduced need to rehouse neighbouring tenants who are affected by the ASB, and fewer homes left vacant due to the ASB which might otherwise be used to house those at risk of homelessness. In those cases subject to notices issued under the discretionary ASB ground (Ground

14), the court would be able to take into account any particular consideration arising as a result of Covid-19, and whether the severity of the case warranted an eviction in the circumstances of the pandemic, before deciding whether to issue a possession order.

**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. These pressures include 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 emergency posed by Covid-19, will potentially weaken the effectiveness of that response ("*easing the burden on frontline staff*"), particularly as health and other services will already likely face additional pressures (for example, caused by increased influenza cases) during the winter months.

Although reducing notice periods relating to ASB and DV could lead to increased pressure on homelessness services specifically, overall it is likely to reduce pressure on public services. This is because an earlier eviction on ASB grounds will reduce the need for ongoing intervention to address the impact that ASB and DV has on others, for example (in the case of ASB) neighbours (including having to rehouse those worst affected, but also the intensive support and security measures, including police intervention, more generally required in these cases). In the case of both ASB and DV, a quicker process of eviction also helps to deter such behaviours from occurring in the first place, thus eliminating the need for services to intervene.

**Increased security and reduced anxiety** - Those renting their homes will continue to benefit from the knowledge that they will not face the threat of eviction at short notice and in some instances will receive even longer notice on a statutory basis. 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*").

At the same time, reducing the notice periods for ASB will also contribute to a greater feeling of security and reduced anxiety amongst those who would otherwise be negatively affected by the on-going ASB of a neighbour.

**Increased scope to support individuals at risk of eviction** - An extension to the relevant period and increased notice periods for those tenancies not already increased by the 2020 Regulations, would also

continue to 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”). In the case of ASB, especially in social housing, there are likely to have been significant interventions by support agencies prior to a possession notice being issued, so the additional time extended notice periods provide would have little value in this respect.

- 4.5 With the stay on possession proceedings in the courts ending on 20 September, the extended notice periods have become more important. Extending the relevant period for which the longer notices apply will reduce the number of possession proceedings in the weeks and months following the stay being lifted and help to flatten any wave of evictions that may arise.
- 4.6 The Welsh Government also thinks that notice periods for protected and statutory tenancies, secure tenancies, and introductory tenancies and demoted tenancies should be increased from three months to six months except those that relate to ASB or DV. This will mean that they better align with those relating to assured tenancies and assured shorthold tenancies and provide tenants with a similar level of security irrespective of the type of tenancy they have.
- 4.7 Taking all the above into account, the Regulations make the following specific changes:

Relevant period

The relevant period to which Schedule 29 of the Coronavirus Act 2020 applies is extended to 31 March 2021

Rent Act 1977

- (i) Subject to (ii) below, notice periods in relation to protected tenancies and statutory tenancies are extended from three months to six months;
- (ii) In relation to notices that relate to Case 2 of Schedule 15 (conduct which is a nuisance or annoyance to adjoining occupiers, or dwelling-house used for immoral or illegal purposes), the existing three month notice period is suspended so that for the time being, the arrangements for giving notice return to those which applied in the pre-Coronavirus period.
- (iii) The Notice to Quit etc. (Prescribed Information) Regulations 1988 are amended so the notice to quit will have to specify that the landlord believes that the circumstance in Case 2 applies.

## Housing Act 1985 (“the 1985 Act”)

### *Secure tenancies*

- (i) Subject to (ii) and (iii) below, notice periods in relation to secure tenancies are extended from three months to six months;
- (ii) The existing three month notice periods for notices issued in relation to grounds 2 (discretionary ground for nuisance and annoyance) and 2A (domestic violence) under Schedule 2 to the 1985 Act, are suspended so that for the time being the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 83 of that 1985 Act ;
- (iii) The existing three month notice period for notices issued under the absolute ground for ASB (section 84A) are suspended so that for the time being, the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 83ZA of the 1985 Act.
- (iv) The Secure Tenancies (Notices) Regulations 1987 are amended so the form used to provide notice reflects the detail above.

## Housing Act 1988 (“the 1988 Act”)

### *Assured tenancies*

- (i) the existing three month notice period in relation to grounds 7A (mandatory ground for serious offences/ASB) and 14 (discretionary ground for nuisance and annoyance), and the existing six month notice period for ground 14A (domestic violence), is suspended so that the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 8 of the 1988 Act;
- (ii) All other grounds set out in Schedule 2 to the 1988 remain subject to the existing six month notice period.
- (iii) Paragraph 5 of Form 3 of the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 is amended to reflect the above.

### *Assured shorthold tenancies*

- (iv) Notices issued under section 21 of the 1988 act remain subject to the existing six month notice period.

## Housing Act 1996

- (i) Subject to (ii), notice periods in relation to introductory and demoted tenancies are extended from three months to six months;
- (ii) Where the landlord has specified in the notice of proceedings an ASB or domestic violence reason for applying for a possession order - that is a reason which corresponds to any of those set out in section 84A(3) to (7) of the Housing Act 1985 or Grounds 2 and 2A of Schedule 2 to that Act – the existing three month notice period is reduced to four weeks beginning with the date on which the notice of proceedings is served.

### **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**

- 6.2 Three options have been considered:

*Option A – Do nothing*

*Option B – Extend the relevant period until 31 March, keeping all notice periods at their existing lengths*

*Option C – Extend the relevant period until 31 March and maintain/increase notice periods for all tenancies to six months except those relating to ASB or DV which would be reduced back to those periods applying pre-Covid*

#### **Costs and Benefits**

*Option A – Do nothing*

- 6.3 If no action is taken, from 1 October, the arrangements for notice periods will revert to those which was required before the temporary amendments introduced by Schedule 29 of the 2020 Act. This will mean different things in relation to different tenancies, but in all instances will mean that the period given to a tenant will either be less than it currently is.



Although there are no immediate additional costs associated with this option, nor any costs at all to landlords, it will not achieve any of the benefits set out in 4.4 above. As a result of the latter, there will be a potentially significant cost medium to longer term cost, both in terms of potential harm to public health and the financial impact on services of having to deal with those facing eviction and homelessness.

*Option B – Extend the relevant period until 31 March, keeping all notice periods at their existing lengths*

- 6.4 Under this option, regulations would be made that extend the relevant period until 31 March 2021. Consequently, the benefits of extending the period over which additional protections are applied, as outlined under 4.4, would be realised for an additional six months (and across the winter months when pressures on the health service in particular are at their worst). There would also be a saving 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.

That said, the benefits outlined in 4.3 would not be as fully realised as would be the case if notice periods in respect of protected and statutory tenancies, secure tenancies, and introductory and demoted tenancies were also increased to six months for that period.

More significantly, under this option, the benefits to public health and public services set out in relation to a reduction in the notice periods for ASB and DV would not be realised. Instead, there would be continuing costs associated with public health and financial impact on services associated with ASB and DV.

The administrative and transitional costs to landlords of extending the relevant period 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 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, the Welsh Government's recently announced Tenancy Saver Loan scheme is designed to support both landlords and tenants. The funds from these loans will be paid directly to landlords, and should help considerably with easing any financial burden on them resulting from rent arrears.

*Option C – Extend the relevant period until 31 March and maintain/increase notice periods for all tenancies to six months except those relating to ASB or DV which are reduced back to those periods applying pre-Covid.*

- 6.5 As with option B, under this option, regulations would be made that extend the relevant period until 31 March 2021. This would realise fully the all the benefits outlined in 4.4.

Also as with option B, the administrative and transitional costs to landlords of this option 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 by the recently introduced Tenancy Saver Loan. There should also be savings to those who provide support to individuals faced with eviction.

The main difference compared with option B, is that under option C, the negative impact on community well-being and the financial costs associated with continued anti-social behaviour do not arise. Reducing all notice periods for all tenancies where ASB or DV is involved, will help landlords resolve issues which can frequently be the cause of significant stress and anxiety for those living in the vicinity of a tenant engaging in ASB. As a consequence, it is considered that the benefits of pursuing this option do, clearly, outweigh the costs.

It is the view of the Welsh Government that this option will continue to reduce as far as is reasonable, evictions and movement in the light of the ongoing pandemic. However, the option also recognises that the increased three-month notice periods have had a negative impact on those neighbourhoods affected by ASB, and potentially those affected by DV, and that these impacts should not have to continue for a further extended period due to an inability to evict for reasons of ASB or DV in a more timely manner.

## **Competition Assessment**

- 6.6 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**

- 6.7 *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 extending the relevant period 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 rented sector and therefore vulnerable to eviction, e.g. some Black, Asian and Minority Ethnic groups.

#### 6.8 *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, extending the relevant 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.

#### 6.9 *Welsh language*

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

#### 6.10 *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 allow those faced with a possession notice more time to find alternative accommodation themselves without recourse to homelessness services.

#### 6.11 *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 increased notice periods. 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 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.

6.12 *Impact on Privacy*

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

6.13 *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 between rural and urban areas.

6.14 *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.

6.15 *Impact on the Justice System*

The net effect of changes resulting from this legislation 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.



Ein cyf/Our ref: MA/JJ/3013/20

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

28 September 2020

Dear Llywydd,

**The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (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 1(1), 2, 3, 6, 8, 9, 10 and 11 of Schedule 29 to the Coronavirus Act 2020 ("the 2020 Act") in relation to the notice period that landlords are required to serve on a tenant where the landlord has granted a tenancy governed by the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Amendments being made include extending until 31 March 2021 the relevant period during which Schedule 29 applies.

The effect of these changes will be to:

- extend, for a further six months, the period during which landlords, in most circumstances, will need to provide tenants with increased notice before starting possession proceedings in the courts;
- ensure that six months' notice is required in relation to all protected and statutory tenancies, secure tenancies, introductory and demoted tenancies, and assured tenancies and assured shorthold tenancies, except where the reason for notice relates to antisocial behaviour or domestic violence

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@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.

- revert to the pre-Covid 19 notice period requirements for serving notices where the reason for giving notice relates to antisocial behaviour or domestic violence.

There remains 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. In order to ensure that the provisions of Schedule 29 continue to apply after 30 September, the Regulations come into force on 29 September 2020.

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 style with a large initial 'R' and a long, sweeping underline.

Rebecca Evans MS  
Minister for Finance and Trefnydd



Llywodraeth Cymru  
Welsh Government

---

## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

---

|              |   |
|--------------|---|
| <b>TITLE</b> | <b>Use of powers under the Coronavirus Act 2020: Residential tenancies – protecting tenants from eviction</b> |
| <b>DATE</b>  | <b>28 September 2020</b>  |
| <b>BY</b>    | <b>Julie James, Minister for Housing and Local Government</b>   |

The Coronavirus Act 2020 ('the 2020 Act') includes 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 by temporarily increasing the period of notice that must be given before a possession claim is made to the court.

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, introductory tenancies and demoted tenancies. The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies) (Amendment) (Wales) Regulations 2020, which came into force on 24 July 2020, amended Schedule 29 so that six months' notice is required in relation to assured and assured shorthold tenancies (except for notices specifying Grounds 7A and 14 relating to antisocial behaviour, which remained at three months).

Schedule 29 applies to notices served during the relevant period, which was due to end on 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.

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.

Section 88 of the 2020 Act provides a power to 'national authorities' to suspend and revive provisions within the Coronavirus Act. Section 88(9) provides that the Welsh Ministers are a relevant national authority in relation to a provision if it extends to England and Wales and applies in relation to Wales and the provision would otherwise fall within the legislative competence of the Senedd.

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 section 88(1) and paragraphs 1(2) and 13(1) of Schedule 29 to the 2020 Act. The Regulations extend until 31 March 2021 the relevant period to which the provisions of Schedule 29 will apply. Furthermore, the Regulations increase from three months to six months, the period of notice that must be served in respect of protected and statutory tenancies, secure tenancies, and introductory tenancies and demoted tenancies, thus bringing them into line with the period required in relation to assured and assured shorthold tenancies. In respect of all tenancies however, for notices given in relation to antisocial behaviour and domestic violence, the requirements will revert to those that applied prior to the Coronavirus Act 2020.

The purpose of these alterations is to ensure that during the on-going public emergency, landlords continue to give increased notice to tenants facing eviction from rented properties before landlords can issue proceedings for possession. The effect will be to delay evictions meaning that: 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.

The alteration to notice periods contained in the Regulations will apply to notices served on or after the date the Regulations come into force – namely 29 September 2020. 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.

I will review again in December 2020 the provisions of Schedule 29 to the 2020 Act. The purpose of that review will be to consider whether those provisions remain necessary and appropriately drafted in the light of the pandemic and its effects as they appear at that time

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



## **SL(5)628 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) 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 a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. 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 (“exempt countries and territories”) are not required to isolate. These Regulations amend the list of exempt countries and territories to remove Bonaire, Sint Eustatius and Saba, Poland and Turkey.

In addition, these Regulations correct a technical error in the Welsh language text of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020, which was identified by this Committee during scrutiny of those Regulations.

### **Procedure**

Negative.

### **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 of public policy likely to be of interest to the Senedd**

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution 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 2 October 2020.

In particular, we note that the letter confirms as follows:

*“Not adhering to the 21 day convention 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.”*

## Implications arising from exiting the European Union

None.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**7 October 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. 1080 (W. 243)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel)  
(Wales) (Amendment) (No. 13)  
Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

- (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
  - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. 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”.

Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 of these Regulations amends the International Travel Regulations to remove Bonaire, Sint Eustatius and Saba, Poland and Turkey from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision relating to these countries’ and territories’ change of status. The transitional provision addresses a

potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations.

In Part 3 of these Regulations, regulation 4 corrects a technical error identified in the Welsh language text at regulation 3 of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020.

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

---

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. 1080 (W. 243)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel)  
(Wales) (Amendment) (No. 13)  
Regulations 2020**

*Made at 2.09 p.m. on 2 October 2020*

*Laid before Senedd  
Cymru at 3.50 p.m. on 2 October 2020*

*Coming into force at 4.00 a.m. on 3 October  
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<sup>(1)</sup>, make the following Regulations.

**PART 1**

**General**

**Title, coming into force and interpretation**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 3 October 2020.

---

<sup>(1)</sup> 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.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020<sup>(1)</sup>.

## PART 2

### Amendments to the list of exempt countries in Schedule 3 to the International Travel Regulations

#### **Removal of countries and territories from the list of exempt countries and territories**

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

“Bonaire, Sint Eustatius and Saba”

“Poland”

“Turkey”.

#### **Transitional provision in connection with regulation 2**

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

- (a) arrives in Wales at or after 4.00 a.m. on 3 October 2020, and
- (b) was last in a country or territory listed in regulation 2—
  - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
  - (ii) before 4.00 a.m. on 3 October 2020.

(2) P is, by virtue of having been in a country or territory listed in regulation 2, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

---

<sup>(1)</sup> S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226) and S.I. 2020/1042 (W. 231).

## PART 3

### Amendment to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020

#### **Amendment to the heading of regulation 3**

4. In Part 2 of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020<sup>(1)</sup>, in the Welsh language text, in the heading of regulation 3, for “rheoliad 24” substitute “rheoliad 2”.

*Vaughan Gething*

Minister for Health and Social Services, one of the  
Welsh Ministers

At 2.09 p.m. on 2 October 2020

---

<sup>(1)</sup> S.I. 2020/1042 (W. 231).



## **Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) 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. 13) Regulations 2020

**Vaughan Gething**  
**Minister for Health and Social Services**

2 October 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 isolate 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 to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

## **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, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

### *European Convention on Human Rights*

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 Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

## **3. Legislative background**

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations provides further information on these powers.

## **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).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on 26 September 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in the Caribbean Netherlands territories of Bonaire, St Eustatius and Saba as well as Poland and Turkey has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from the Caribbean Netherlands territories of Bonaire, St Eustatius and Saba as well as Poland and Turkey.

These revised requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 3 October 2020. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments 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.

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/VG/3268/20

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

2 October 2020

Dear Llywydd,

**The Health Protection (Coronavirus, International Travel) (Wales) (Amendment)  
(No. 13) Regulations 2020**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the Caribbean Netherlands territories of Bonaire, St Eustatius and Saba, Poland and Turkey from the list of exempt countries and territories. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and territories.

Not adhering to the 21 day convention 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 MS, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@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.



Llywodraeth Cymru  
Welsh Government

---

**WRITTEN STATEMENT**  
**BY**  
**THE WELSH GOVERNMENT**

---

**TITLE**            **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

**DATE**            **1 October 2020**

**BY**                **Vaughan Gething MS, Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended the Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Today I reviewed the latest JBC assessments and I have decided that Bonaire, Saba and St Eustatius, Poland and Turkey will be removed from the list of exempt countries and territories.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 3 October.

# Agenda Item 3.3

## SL(5)625 – The Smoke-free Premises and Vehicles (Wales) Regulations 2020

### Background and Purpose

These Regulations are made under sections 6(5), 10(6), 11(5), 15(1), 16(1), 17(1), 17(3), 18(2), 28(7) and 123(1) of, and paragraphs 5, 6 and 9 of Schedule 1 to the Public Health (Wales) Act 2017 (“the 2017 Act”). Each of these provisions, save for section 123(1)<sup>1</sup>, were brought into force on 29 September 2020<sup>2</sup>.

The Regulations are due to come into force on 1 March 2021.

The Regulations exempt certain premises from the requirement to be smoke-free under the 2017 Act and set out the circumstances in which vehicles are to be treated as being smoke-free. The Regulations also make provision about displaying signs and provision relating to enforcement. In particular, the Regulations:

- define “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” – under the 2017 Act, the requirement to be smoke-free is imposed in relation to workplaces and premises open to the public that are enclosed or substantially enclosed;
- state that any premises which are used to any extent as dwellings are not to be treated as smoke-free, unless they are also used as places of work;
- state that holiday or temporary accommodation are not required to be smoke-free, though this provision ceases to have effect on 1 March 2022;
- provide that, subject to certain conditions, rooms in adult care homes, adult hospices and research and testing facilities may be designated as rooms in which smoking is permitted;
- provide that, subject to certain conditions, rooms in mental health units may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 September 2022;
- provide that bedrooms in hotels, guesthouses, inns, hostels and members’ clubs which meet certain conditions may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 March 2022;
- provide for hospital grounds, school grounds and public playgrounds to be smoke-free and for conditions which must be met before an area in the grounds of a school

---

<sup>1</sup> Section 123 came into force on 3 July 2017, when the 2017 Act received Royal Assent.

<sup>2</sup> See the Public Health (Wales) Act 2017 (Commencement No. 5) Order 2020.



that provides residential accommodation and in hospital grounds may be designated as an area in which smoking is permitted;

- require a person who controls or is concerned in the management of smoke-free premises to take reasonable steps to cause a person smoking there to stop smoking;
- require signs to be displayed in premises which are workplaces or open to the public, school grounds, hospital grounds and public playgrounds, and specify their content;
- provide that certain vehicles are treated as being smoke-free. Vehicles used wholly or mainly in the course of work by more than one person or to transport members of the public are smoke-free all the time. Other vehicles which are not smoke-free all the time are smoke-free only when a person in the vehicle is receiving goods or services from another person also in the vehicle and when a child is in the vehicle (subject to an exemption for caravans);
- provide that a driver, an operator or a person who is concerned in the management of a smoke-free vehicle has a duty to prevent smoking in that vehicle;
- require signs be displayed in certain smoke-free vehicles and specify their content.
- designate the chief officer of police for a police area as an enforcement authority in relation to vehicles which are smoke-free by virtue of being used for social, domestic or other private purposes where a child is present. Local authorities are already enforcement authorities under section 18 of the 2017 Act in relation to premises, places and vehicles in their areas; and
- provide for fixed and discounted penalty amounts in respect of certain offences.

## Procedure

Draft Affirmative.

## 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**

The Committee is concerned that the Welsh Government has not provided any assessment, justification or made any reference to human rights in the Explanatory Memorandum for these Regulations. The Committee believes that the Regulations engage Article 8 of the



European Convention on Human Rights ("ECHR"), which is the right to private life. Although this is a qualified right, in that it is a right which may be interfered with in order to protect the rights of another or the wider public interest, e.g. on public health grounds, the Welsh Government must provide details of its assessment or otherwise risk breaching this human right.

Although the law does allow an interference the rights under Article 8, the Welsh Government must set out that the change in the law:

- is justified on the grounds of public interest;
- is proportionate to the public interest aim pursued; and
- is done in accordance with domestic and international law, and with legal certainty.

Section 7 of the 2017 Act provides that premises in Wales are smoke-free if they are workplaces, which includes certain dwellings. The Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purposes of section 7. The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more of these dwellings will be required to be smoke free.

Similarly, the Regulations also provide that privately owned vehicles are to be smoke-free when a child is in the vehicle.

In both of these situations, the Regulations affect how people conduct themselves in their privately owned property, whether this be their own home or their vehicle.

The Welsh Government is asked to set out how it considers that these regulations are compliant with Article 8 of the ECHR.

## **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**

There are cross-references in the Regulations to provisions of the 2017 Act which are not yet in force.

- The Regulations refer to sections 5, 7, 8 and 12 of the 2017 Act. Section 5 makes it an offence to smoke in smoke free premises or vehicles. Section 7 makes workplaces in Wales smoke-free. Section 8 makes premises that are open to the public smoke-free. Section 12 makes playgrounds in Wales smoke-free. None of sections 5, 7, 8 or 12 are as yet in force.
- The Regulations also refer to sections 6, 10, 11 and 17 of the 2017 Act, and certain paragraphs of Schedule 1 to that Act. Sections 6, 10, 11 and 17 and the relevant paragraphs of Schedule 1 were partially brought into force on 29 September 2020, but only to the extent necessary for the Regulations to be made. Substantively, section 6 makes it an offence for those in charge of the relevant premises to fail to





prevent smoking in a smoke free area. Section 10 makes school grounds in Wales smoke free and section 11 makes hospital grounds in Wales smoke free. Section 17 requires the display of signs in smoke free premises. The relevant paragraphs of Schedule 1 deal with fixed penalties. These elements of sections 6, 10, 11 and 17 and Schedule 1 are not yet in force.

- The Explanatory Note confirms that the term “smoking” in the Regulations is to be read in accordance with section 4 (Smoking) of the 2017 Act. Section 4 is not yet in force.

The Committee would be grateful if the Welsh Government would confirm that it intends to bring the provisions referred to above into force on or before 1 March 2021.

### **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**

The Regulations required notification to the EU in line with the requirements of the Technical Standards and Regulations Directive 2015/1535/EC. This is as a result of the technical requirements in the Regulations as to the lay-out and form of no-smoking signs (Regulations 13, 14 and 18). This process required a three-month standstill period during which the Regulations remained in draft form and were not laid before the Senedd. The standstill period commenced on 23 June 2020 and ended on 24 September 2020. No objections were made by Member States to the draft 2020 Regulations.

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

None.

### **Welsh Government response**

A Welsh Government response is required in relation to the first and second merit reporting points.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**6 October 2020**



*Draft Regulations laid before Senedd Cymru under section 123(2) of the Public Health (Wales) Act 2017, for approval by resolution of Senedd Cymru.*

---

DRAFT WELSH STATUTORY  
INSTRUMENTS

---

**2020 No. (W.)**

**PUBLIC HEALTH, WALES**

**The Smoke-free Premises and  
Vehicles (Wales) Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations revoke and replace the Smoke-free Premises etc. (Wales) Regulations 2007<sup>(1)</sup>.

Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 (“the Act”)<sup>(2)</sup> makes provision restricting smoking in workplaces and public places (among other places). “Smoking” is to be read in accordance with section 4 of the Act.

These Regulations exempt certain premises from the requirement to be smoke-free under the Act and set out the circumstances in which vehicles are to be treated as being smoke-free. “Premises” has the meaning given by section 28 of the Act. The Regulations also make provision about displaying signs and provision relating to enforcement.

Regulation 3 defines “enclosed” and “substantially enclosed”. Under the Act, the requirement to be smoke-free is imposed in relation to workplaces and premises open to the public that are enclosed or substantially enclosed.

Regulation 4(1) provides that premises used to any extent as dwellings are not to be treated as being smoke-free unless regulation 4(2) or 4(5) applies (certain dwellings which are used as places of work).

Regulation 5 provides that holiday and temporary accommodation are to be treated as not being smoke-free. This regulation applies to premises that are not

---

(1) S.I. 2007/787 (W. 68) amended by S.I. 2015/1363 (W. 133), S.I. 2016/118 (W. 55) and S.I. 2018/48 (W. 15).  
(2) 2017 anaw 2.

dwellings (because any such premises fall within regulation 4). This regulation ceases to have effect 12 months after these Regulations come into force.

Regulations 6 to 9 provide that rooms in adult care homes, adult hospices (regulation 6), research and testing facilities (regulation 7) and mental health units (regulation 8) and bedrooms in hotels, guesthouses, inns, hostels and members' clubs (regulation 9) which meet certain conditions may be designated as rooms in which smoking is permitted. But a designation of a room in a mental health unit ceases to have effect 18 months after these Regulations come into force and a designation of a bedroom in a hotel, guesthouse, inn, hostel and a members' club ceases to have effect 12 months after these Regulations come into force. Sections 10 to 12 of the Act provide for hospital grounds, school grounds and public playgrounds to be smoke-free. Regulations 10 and 11 provide the conditions which must be met before an area in the grounds of a school that provides residential accommodation and in hospital grounds may be designated as an area in which smoking is permitted.

Regulation 12 provides that a person who controls or is concerned in the management of smoke-free premises has to take reasonable steps to cause a person smoking there to stop smoking.

Regulation 13 requires signs to be displayed in premises which are workplaces or open to the public and specifies their content.

Regulation 14 requires signs to be displayed in school grounds, hospital grounds and public playgrounds and specifies their content.

Regulation 15 provides that certain vehicles are treated as being smoke-free. Vehicles used wholly or mainly in the course of work by more than one person or to transport members of the public are smoke-free all the time. Other vehicles which are not smoke-free all the time are smoke-free only when a person in the vehicle is receiving goods or services from another person also in the vehicle and when a child is in the vehicle. Regulation 16 provides an exemption from this. In these Regulations, a "child" is a person aged under 18 (see section 28 of the Act).

Regulation 17 provides that a driver, an operator or a person who is concerned in the management of a smoke-free vehicle has a duty to prevent smoking in that vehicle.

Regulation 18 requires signs be displayed in certain smoke-free vehicles and specifies their content.

Regulation 19 designates the chief officer of police for a police area as an enforcement authority in relation to vehicles which are smoke-free by virtue of

being used for social, domestic or other private purposes where a child is present. Local authorities are already enforcement authorities under section 18 of the Act in relation to premises, places and vehicles in their areas.

Regulation 20 provides the fixed penalty amounts in respect of certain offences, and regulation 21 provides the discounted penalty amounts in respect of certain offences. Regulation 22 introduces the form of fixed penalty notices the enforcement authorities must use.

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 [Public Health Division], Welsh Government, Cathays Park, Cardiff CF10 3NQ.

*Draft Regulations laid before Senedd Cymru under section 123(2) of the Public Health (Wales) Act 2017, for approval by resolution of Senedd Cymru.*

---

DRAFT WELSH STATUTORY  
INSTRUMENTS

---

**2020 No. (W.)**

**PUBLIC HEALTH, WALES**

**The Smoke-free Premises and  
Vehicles (Wales) Regulations 2020**

*Made*

\*\*\*

*Coming into force*

*1 March 2021*

The Welsh Ministers, in exercise of the powers conferred by sections 6(5), 10(6), 11(5), 15(1), 16(1), 17(1), 17(3), 18(2), 28(7) and 123(1) of, and paragraphs 5, 6 and 9 of Schedule 1 to the Public Health (Wales) Act 2017(1), make the following Regulations.

In accordance with section 123(2) of the Public Health (Wales) Act 2017, a draft of these Regulations was laid before, and approved by, resolution of Senedd Cymru (2).

**PART 1**

**GENERAL**

**Title, commencement and interpretation**

**1.—**(1) The title of these Regulations is the Smoke-free Premises and Vehicles (Wales) Regulations 2020.

(2) These Regulations come into force on 1 March 2021.

**2.—**(1) In these Regulations—

---

(1) 2017 anaw 2.

(2) The reference in section 123 of the Public Health (Wales) Act 2017 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

“the Act” (“*y Ddeddf*”) means the Public Health (Wales) Act 2017;

“vehicle” (“*cerbyd*”) does not include—

- (a) aircraft, nor
- (b) a ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995(1) including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968(2).

(2) Expressions used in these Regulations have the same meaning as in the Act.

**Meaning of “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed”**

3.—(1) For the purposes of Chapter 1 of Part 3 of the Act—

- (a) premises, or parts of premises, are enclosed if—
  - (i) they have a ceiling or a roof, and
  - (ii) except for doors, windows and passageways, they are wholly enclosed either permanently or temporarily;
- (b) a vehicle, or part of a vehicle, is enclosed if—
  - (i) it has a roof, and
  - (ii) except for doors and windows, it is wholly enclosed either permanently or temporarily.

(2) For the purposes of Chapter 1 of Part 3 of the Act, premises, or parts of premises, are substantially enclosed if—

- (a) they have a ceiling or a roof, and
- (b) any openings in the walls have a total area which is less than half the area of the walls, including other structures which serve the purpose of walls and constitute the perimeter of the premises.

(3) In calculating the total area of any openings for the purposes of paragraph (2)(b), no account is to be taken of openings in which there are doors, windows or other fittings which can be opened and shut.

(4) In this regulation, “roof” includes any fixed or moveable structure or device capable of covering all or part of the premises or vehicle as a roof.

---

(1) 1995 c. 21. Section 85 was amended by the British Overseas Territories Act 2002 (c. 8), section 2 and by the Merchant Shipping and Maritime Security Act 1997 (s. 28), section 8.

(2) 1968 c. 59. Section 1(1)(h) was amended by the Constitutional Reform Act 2005, Schedule 11 paragraph 1(2) and by the Supreme Court Act 1981 (c. 54), section 152.

(5) For the purposes of Chapter 1 of Part 3 of the Act, premises or parts of premises are “not enclosed or substantially enclosed” if they are not enclosed or not substantially enclosed within the meaning of paragraphs (1) and (2).

## PART 2

### SMOKE-FREE PREMISES: EXEMPTIONS AND SIGNS

#### CHAPTER 1

##### Exemptions

#### **Dwellings: exemptions**

4.—(1) Premises used to any extent as a dwelling, or part of such premises, which would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act are to be treated as not being smoke-free unless the premises come within paragraph (2) or (5).

(2) Premises come within this paragraph if they are smoke-free because they are workplaces within section 7(2)(a) of the Act and either condition 1 or 2 is met.

(3) Condition 1 is met if one or more of the persons who work at the premises do not live in the dwelling.

(4) Condition 2 is met if the persons who work at the premises all live in the dwelling and members of the public might attend the dwelling for the purposes of seeking or receiving goods or services from a person working from the dwelling.

(5) Premises come within this paragraph if they are smoke-free because they are workplaces within section 7(2)(b) of the Act.

#### **Holiday or temporary accommodation: exemptions**

5.—(1) Premises that—

- (a) are not used to any extent as a dwelling, and
- (b) consist of self-contained residential accommodation that would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act,

are to be treated as not being smoke-free at any time during which they are being used as accommodation for holiday or temporary purposes.

(2) Paragraph (1) ceases to have effect at the end of the period of 12 months beginning with the day on which these Regulations come into force.

**Adult care homes and adult hospices: designated rooms**

6.—(1) A room in premises consisting of an adult care home or an adult hospice that would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act is to be treated as not being smoke-free if conditions 1 and 2 are met.

(2) Condition 1 is that the person in charge of the premises—

- (a) designates the room as one in which residents of the adult care home or adult hospice who are aged 18 or over (and no other persons) are permitted to smoke, and
- (b) keeps a record of all rooms that have been so designated.

(3) Condition 2 is that the room—

- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor to ceiling walls,
- (b) does not have a ventilation system that ventilates into a smoke-free part of the premises,
- (c) does not have doors which do not mechanically close immediately after use if they open into smoke-free areas, and
- (d) is clearly marked as a room in which smoking is permitted.

(4) The person in charge of the premises may withdraw a designation at any time.

**Research and testing facilities: designated rooms**

7.—(1) A room in premises consisting of research and testing facilities that would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act is to be treated as not being smoke-free if conditions 1, 2 and 3 are met.

(2) Condition 1 is that the person in charge of the premises—

- (a) designates the room as one in which smoking is permitted, and
- (b) keeps a record of all rooms that have been so designated.

(3) Condition 2 is that the room is used for tests and research which relate to—

- (a) emissions from smoking,
- (b) developing products for smoking with lower fire hazard,
- (c) fire safety testing of materials involving products for smoking,



- (d) development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking, or
  - (e) smoking cessation programmes.
- (4) Condition 3 is that the room—
- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor to ceiling walls,
  - (b) does not have a ventilation system that ventilates into a smoke-free part of the premises,
  - (c) does not have doors which do not mechanically close immediately after use if they open into smoke-free areas, and
  - (d) is clearly marked as a room in which smoking is permitted.
- (5) The room is to be treated as not being smoke-free only when used for the purposes of the tests and research referred to in paragraph (3).
- (6) The person in charge of the premises may withdraw a designation at any time.

**Mental health units: temporary exemption**

8.—(1) A room in premises consisting of a mental health unit that would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act is to be treated as not being smoke-free if conditions 1 and 2 are met.

- (2) Condition 1 is that the person in charge of the premises—
- (a) designates the room as one in which patients of the mental health unit who are aged 18 or over (and no other person) are permitted to smoke, and
  - (b) keeps a record of all rooms that have been so designated.
- (3) Condition 2 is that the room—
- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor to ceiling walls,
  - (b) does not have a ventilation system that ventilates into a smoke-free part of the premises,
  - (c) does not have doors which do not mechanically close immediately after use if they open into smoke-free areas, and
  - (d) is clearly marked as a room in which smoking is permitted.
- (4) The person in charge of the premises may withdraw a designation at any time.

(5) In this regulation, “mental health unit” means premises, or part of premises, maintained wholly or mainly for the reception and treatment of persons suffering from a mental disorder as defined in section 1(2) of the Mental Health Act 1983<sup>(1)</sup> but does not include an adult care home.

(6) Paragraphs (1) to (5) cease to have effect at the end of the period of 18 months beginning with the day on which these Regulations come into force.

#### **Hotels, guesthouses, inns, hostels and members’ clubs: temporary exemption**

9.—(1) A bedroom in premises consisting of a hotel, guesthouse, inn, hostel or members’ club that would (but for this regulation) be smoke-free by virtue of section 7 or 8 of the Act is to be treated as not being smoke-free if conditions 1 and 2 are met.

(2) Condition 1 is that the person in charge of the premises—

- (a) designates the bedroom as one in which smoking is permitted, and
- (b) keeps a record of all rooms that have been so designated.

(3) Condition 2 is that the bedroom—

- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor to ceiling walls,
- (b) does not have a ventilation system that ventilates into a smoke-free part of the premises,
- (c) does not have doors which do not mechanically close immediately after use if they open into smoke-free areas, and
- (d) is clearly marked as a room in which smoking is permitted.

(4) The person in charge of the premises may withdraw a designation at any time.

(5) Paragraphs (1) to (4) cease to have effect at the end of the period of 12 months beginning with the day on which these Regulations come into force.

#### **Grounds of schools that provide residential accommodation to pupils: designated areas**

10.—(1) Before an area within paragraph (2) may be designated under section 10(5) of the Act as an area in which smoking is permitted and so treated as not being smoke-free, conditions 1 and 2 must be met.

---

(1) 1983 c. 20. Section 1(2) was amended by the Mental Health Act 2007 (c. 12), Schedule 10, paragraph 2.

(2) An area is within this paragraph if it is an area in premises consisting of grounds that adjoin a school that provides residential accommodation to pupils that would (but for this regulation) be smoke-free by virtue of section 10 of the Act.

(3) Condition 1 is that the person in charge of the premises specifies persons or descriptions of persons (“permitted persons”) who may use the area but a child may not be specified.

(4) Condition 2 is that the area—

- (a) is no more than 8.25 square metres,
- (b) is at least 10 metres away from any other premises that are smoke-free by virtue of the Act (other than the premises within paragraph (2)), and
- (c) is clearly marked as an area in which a permitted person may smoke.

(5) The person in charge of the premises must keep a record of all of the areas which have been designated under section 10(5) of the Act and of permitted persons.

(6) The person in charge of the premises may vary or withdraw a designation at any time.

### **Hospital grounds: designated areas**

**11.**—(1) Before an area within paragraph (2) may be designated under section 11(4) of the Act as an area in which smoking is permitted and so treated as not being smoke-free, conditions 1 and 2 must be met.

(2) An area is within this paragraph if it is an area in premises consisting of the grounds of a hospital<sup>(1)</sup> that would (but for this regulation) be smoke-free by virtue of section 11 of the Act.

(3) Condition 1 is that the person in charge of the premises specifies persons or descriptions of persons (“permitted persons”) who may use the area but a child may not be specified.

(4) Condition 2 is that the area—

- (a) is not more than 8.25 square metres,
- (b) is at least 10 metres away from any other premises that are smoke-free by virtue of the Act (other than the premises within paragraph (2)), and
- (c) is clearly marked as an area in which a permitted person may smoke.

---

(1) “Hospital” is defined by section 28 of the Act as having the meaning given by section 206 of the National Health Service (Wales) Act 2006 (c. 42), and a mental health unit (within the meaning given by regulation 8(5)) falls within that definition.

(5) The person in charge of the premises must keep a record of all of the areas which have been designated under section 11(4) of the Act and of permitted persons.

(6) The person in charge of the premises may vary or withdraw a designation at any time.

### **Duty to prevent smoking in school grounds, hospital grounds and public playgrounds**

12. A person who controls or is concerned in the management of premises which are smoke-free by virtue of section 10 (school grounds), 11 (hospital grounds) or 12 (public playgrounds) of the Act must take reasonable steps to cause a person smoking there to stop smoking.

## CHAPTER 2

### Signs

#### **Smoke-free premises which are workplaces or open to the public: signs**

13.—(1) This regulation applies to premises that are smoke-free by virtue of section 7 or 8 of the Act.

(2) At least one sign must be displayed for the purposes of section 17(1) of the Act and it must contain a legible graphic representation of a burning cigarette enclosed in a circle with a bar across the circle which crosses the cigarette symbol.

(3) This regulation does not apply to premises used to any extent as a dwelling.

#### **School grounds, hospital grounds, and public playgrounds: signs**

14.—(1) This regulation applies to—

- (a) premises that are smoke-free by virtue of section 10 of the Act and that adjoin the school concerned (“school grounds”),
- (b) premises that are smoke-free by virtue of section 11 of the Act (“hospital grounds”), and
- (c) premises that are smoke-free by virtue of section 12 of the Act (“public playgrounds”).

(2) At least one sign must be displayed at the premises for the purposes of section 17(1) of the Act and it must—

- (a) contain a legible graphic representation of a burning cigarette enclosed in a circle with a bar across the circle which crosses the cigarette symbol,
- (b) be displayed—

- (i) in the case of school grounds, hospital grounds and public playgrounds within clearly marked boundaries, in a prominent position at or near the main entrance, or if there is more than one main entrance, each of them, and
  - (ii) in the case of public playgrounds not within clearly marked boundaries in a prominent position near the playground, and
  - (c) include the appropriate warning text.
- (3) The “appropriate warning text” is—
- (a) for school grounds, “It is against the law to smoke in these school grounds/Mae ysmegu yn nhir yr ysgol hon yn erbyn y gyfraith”;
  - (b) for hospital grounds, “It is against the law to smoke in these hospital grounds/Mae ysmegu yn nhir yr ysbyty hwn yn erbyn y gyfraith”;
  - (c) for public playgrounds within clearly marked boundaries, “It is against the law to smoke in this playground/Mae ysmegu yn y maes chwarae hwn yn erbyn y gyfraith”;
  - (d) for public playgrounds not within clearly marked boundaries, “It is against the law to smoke within 5 metres of this play equipment/Mae ysmegu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfraith”.

## PART 3

### SMOKE-FREE VEHICLES

#### **Smoke-free vehicles**

**15.**—(1) A vehicle which is enclosed, and any part of a vehicle which is enclosed, is to be treated as being smoke-free if paragraph (2) or (3) applies.

(2) This paragraph applies if the vehicle is one that is used wholly or mainly in the course of paid or voluntary work and it is used—

- (a) by more than one person (even if the persons who use it do so at different times or intermittently), or
- (b) to transport members of the public or a section of the public.

(3) This paragraph applies if the vehicle is not within paragraph (2) and it is used—

- (a) in the course of paid or voluntary work and more than one person is present in the vehicle and one of those is present for the purpose of receiving goods or services from the person using the vehicle, or

- (b) for social, domestic or other private purposes and more than one person is present in the vehicle and one of those persons is a child.

(4) A vehicle which is smoke-free by virtue of paragraph (2) is smoke-free all the time.

(5) A vehicle which is smoke-free by virtue of paragraph (3) is smoke-free only when the vehicle is being used as described in that paragraph.

#### **Smoke-free vehicles: exemptions**

**16.—**(1) A vehicle is not to be treated as being smoke-free by virtue of regulation 15(3)(b) if it is a caravan or motor caravan that is—

- (a) stationary and not on a road, or
- (b) stationary, is on a road and is being used as living accommodation.

(2) In this regulation—

“caravan” (“*carafán*”) means a trailer which is designed for road use and provides mobile living accommodation;

“motor caravan” (“*carafán fodur*”) means a motor vehicle which is constructed or adapted for the carriage of passengers and their effects and which contains, as permanently installed equipment, the facilities which are reasonably necessary for enabling the vehicle to provide mobile living accommodation for its users;

“road” (“*ffordd*”) has the meaning given by section 192(1) of the Road Traffic Act 1988(1).

#### **Duty to prevent smoking in a smoke-free vehicle**

**17.** The following persons must take reasonable steps to cause a person smoking in a vehicle which is treated as being smoke-free by virtue of regulation 15 to stop smoking—

- (a) a driver or operator of a vehicle which is treated as being smoke-free by virtue of regulation 15, and
- (b) a person who is concerned in the management of such a vehicle.

#### **Smoke-free vehicles: signs**

**18.—**(1) The driver, operator and person who is concerned in the management of a vehicle which is treated as a smoke-free vehicle by virtue of regulation 15(2) must make sure that a sign is displayed in the vehicle in accordance with paragraph (2).

---

(1) 1988 c. 52. The definition of “road” was amended by the Road Traffic Act 1991 (c. 40), paragraph 78 of Schedule 4.

(2) The sign must contain a legible graphic representation of a burning cigarette enclosed in a circle with a bar across the circle which crosses the cigarette symbol.

## PART 4 ENFORCEMENT

### **Enforcement authority: police**

**19.** The chief officer of police for a police area is authorised to act as an enforcement authority in relation to vehicles in its area that are smoke-free by virtue of regulation 15(3)(b) (vehicles being used for social, domestic or other private purposes where a child is present).

### **Fixed penalty amounts**

**20.** The fixed penalty amounts specified for the purposes of paragraph 6 of Schedule 1 to the Act are—

- (a) in respect of an offence under section 17(5) of the Act (offence of failing to display a sign), £200,
- (b) in respect of an offence under section 5(1) of the Act (offence of smoking in smoke-free premises or in a smoke-free vehicle), £100, and
- (c) in respect of an offence under section 6(6) of the Act in relation to a vehicle being used for the purposes mentioned in section 27(4) of the Act (offence of failing to prevent smoking in vehicle being used for social, domestic or other private purposes where a child is present), £100.

### **Fixed penalty amounts: discounted amounts**

**21.** The discounted amounts specified for the purposes of paragraph 9 of Schedule 1 to the Act are—

- (a) in respect of an offence under section 17(5) of the Act (offence of failing to display a sign), £150,
- (b) in respect an offence under section 5(1) of the Act (offence of smoking in smoke-free premises or in a smoke-free vehicle), £75, and
- (c) in respect of an offence under section 6(6) of the Act in relation to a vehicle being used for the purposes mentioned in section 27(4) of the Act (offence of failing to prevent smoking in vehicle being used for social, domestic or

other private purposes where a child is present), £75.

### **Form of fixed penalty notices**

**22.**—(1) A fixed penalty notice must be in the form set out in Schedule 1 in respect of an offence under section 17(5) of the Act (offence of failing to display a sign).

(2) A fixed penalty notice must be in the form set out in Schedule 2 in respect of an offence under—

- (a) section 5(1) of the Act (offence of smoking in a smoke-free vehicle or in smoke-free premises), and
- (b) section 6(6) of the Act (offence of failing to prevent smoking in vehicle being used for social, domestic or other private purposes where a child is present).

(3) Paragraphs (1) and (2) do not prevent an enforcement authority from including on a fixed penalty notice form—

- (a) information about the method of payment,
- (b) information to facilitate financial and administrative processing of the forms, and
- (c) coats of arms, logos or other devices to represent the authority.

## **PART 5**

### **CONSEQUENTIAL AMENDMENTS AND REVOCATIONS**

#### **Amendment of the Smoke-free (Penalties and Discounted Amounts) Regulations 2007**

**23.**—(1) The Smoke-free (Penalties and Discounted Amounts) Regulations 2007<sup>(1)</sup> are amended as follows.

(2) In regulation 1—

- (a) for paragraph (2), substitute—  
“(2) These regulations only apply to premises, places and vehicles in England.”;
- (b) in paragraph (3), omit “and in Wales on 2nd April 2007”.

---

(1) S.I. 2007/764.



**Amendment of the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018**

24. Omit paragraph 16 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018(1).

**Revocations**

25. The following regulations are revoked—

- (a) the Smoke-free Premises etc. (Wales) Regulations 2007(2);
- (b) the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015(3);
- (c) the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2016(4).

*Name*

Minister for Health and Social Services, one of the Welsh Ministers

*Date*

---

(1) S.I. 2018/48 (W. 15).  
(2) S.I. 2007/787 (W. 68).  
(3) S.I. 2015/1363 (W. 133).  
(4) S.I. 2016/118 (W. 55).

**YR ATODLENNI  
SCHEDULES**

**ATODLEN 1 Rheoliad 22(1)**

Ffurflen Hysbysiad Cosb Benodedig  
Methu ag arddangos arwyddion yn unol â  
rheoliadau a wnaed o dan adran 17.

**[ENW'R AWDURDOD GORFODI]**

**[CYFEIRIAD YR AWDURDOD GORFODI]**

**DEDDF IECHYD Y CYHOEDD (CYMRU)  
2017:**

**ADRAN 17 (METHU AG ARDDANGOS  
ARWYDDION YN UNOL Â RHEOLIADAU  
A WNAED GAN NEU O DAN ADRAN 17)**

**HYSBYSIAD COSB BENODEDIG**

**SWM Y GOSB £200**

**RHAN 1:**

**COPI'R DERBYNNYDD**

**Rhif yr hysbysiad cosb  
benodedig** \_\_\_\_\_

**Enw llawn y troseddwr  
honedig** \_\_\_\_\_

**Cyfeiriad y troseddwr  
honedig** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Cod post** \_\_\_\_\_

**Dyddiad geni (os yw'n hysbys)** \_\_\_\_\_

Mae gennyf i, \_\_\_\_\_

, un o swyddogion  
awdurdodedig [enw'r awdurdod

**SCHEDULE 1 Regulation 22(1)**

Fixed Penalty Notice Form  
Failing to display signs in accordance with  
regulations made under section 17.

**[NAME OF ENFORCEMENT AUTHORITY]**

**[ADDRESS OF ENFORCEMENT  
AUTHORITY]**

**PUBLIC HEALTH (WALES) ACT 2017:**

**SECTION 17 (FAILING TO DISPLAY  
SIGNS IN ACCORDANCE WITH  
REGULATIONS MADE BY OR UNDER  
SECTION 17)**

**FIXED PENALTY NOTICE**

**PENALTY AMOUNT £200**

**PART 1:**

**RECIPIENT COPY**

**Fixed penalty notice number**

**Full name of alleged offender**

**Address of alleged offender**

**Post code**

**Date of birth (if known)**

I,

, an authorised officer of the  
[name of enforcement authority]

gorfodi] yn rhinwedd adran 18 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017, reswm dros gredu ichi gyflawni trosedd o dan adran 17 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017 (methu ag arddangos arwyddion yn unol â rheoliadau a wnaed o dan adran 17) mewn mangre neu gerbyd y mae gan [enw'r awdurdod gorfodi] gyfrifoldebau gorfodi mewn cysylltiad â hi neu ag ef.

by virtue of section 18 of the Public Health (Wales) Act 2017, have reason to believe that you committed an offence under section 17 of the Public Health (Wales) Act 2017 (failing to display signs in accordance with regulations made under section 17) within premises or vehicle in respect of which [name of enforcement authority] has enforcement responsibilities.

Yr amgylchiadau yr honnir eu bod yn drosedd yw eich bod chi, am (*amser*)

The circumstances alleged to constitute the offence are that at (*time*)

o'r gloch, ar (*dyddiad*)

hours, on (*date*)

yn y fangre neu'r cerbyd a ganlyn (*lle y digwyddodd y drosedd honedig, gan gynnwys y cyfeiriad*)

you, at/on the following premises or vehicle (*where alleged offence took place, including address*)

sef mangre neu gerbyd y mae adran 17 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017 yn gymwys iddi neu iddo (*manylion y drosedd*)

being premises or a vehicle to which section 17 of the Public Health (Wales) Act 2017 applies allegedly (*details of offence*)

Mae'r hysbysiad hwn yn rhoi'r cyfle ichi i ryddhau unrhyw atebolrwydd am euogfarn am y drosedd honno drwy dalu cosb benodedig o **£200 (dau gan punt)**. Ni ddygir achos am y drosedd hon cyn diwedd 29 o ddiwrnodau sy'n dechrau â (*y dyddiad y rhoddir yr hysbysiad hwn*).

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£200 (two hundred pounds)**. No proceedings will be taken for this offence before the end of 29 days beginning with (*the date on which this notice is given*).

Ni fyddwch yn agored i euogfarn am y drosedd os byddwch yn talu'r gosb benodedig o fewn y cyfnod hwnnw. Yn y ffurflen hon, cyfeirir at y cyfnod hwn fel y cyfnod 29 o ddiwrnodau.

You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this form, this period is referred to as the 29 day period.

**Gallwch dalu swm gostyngol o £150 (cant a hanner o bunnoedd) os byddwch yn talu o fewn 15 niwrnod sy'n dechrau â (*y dyddiad y rhoddir yr hysbysiad hwn*).**

**You can pay a discounted amount of £150 (one hundred and fifty pounds) if you pay within 15 days beginning with (*date on which this notice is given*).**

Os nad yw'r 15fed diwrnod yn ddiwrnod gwaith, cewch dalu ar y diwrnod gwaith nesaf. Ystyr "diwrnod gwaith" yw unrhyw ddiwrnod nad yw'n ddydd Sadwrn, dydd Sul, Dydd Nadolig, Dydd Gwener y Groglith nac yn ddiwrnod sy'n wyl banc yng Nghymru a Lloegr o dan Ddeddf Bancio a Thrafodion Ariannol 1971. Yn y ffurflen hon, cyfeirir at y cyfnod hwn fel y cyfnod 15 niwrnod.

If the 15th day is not a working day, you may pay on the next working day. "Working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this form, this period is referred to as the 15 day period.

Ceir gwybodaeth at sylw di-oed y person y dyroddwyd yr hysbysiad cosb benodedig hwn iddo yn Rhan 2 o'r hysbysiad hwn. Ceir manylion ynghylch sut i dalu'r gosb benodedig hon yn Rhan 3 o'r hysbysiad hwn. Ceir manylion ynghylch sut i ofyn am wrandawriad llys mewn perthynas â'r drosedd honedig hon yn Rhan 4 o'r hysbysiad hwn.

Information for the immediate attention of the person who has been issued this fixed penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice.

**Os oes gennych unrhyw gwestiynau, neu os ydych yn dymuno trafod yr hysbysiad hwn, cysylltwch â: [enw a chyfeiriad yr awdurdod gorfodi a manylion cyswllt].**

**If you have any questions, or if you wish to discuss this notice, please contact [name and address of enforcement authority and contact details].**

*Llofnod y swyddog  
awdurdodedig*

\_\_\_\_\_

*Signature of authorised officer*

*Dyddiad dyroddi (dd/mm/yyyy)*

\_\_\_\_\_

*Date of issue (dd/mm/yyyy)*

## Rhan 2

### **GWYBODAETH AT SYLW DI-OED Y PERSON Y DYRODDWYD YR HYSBYSIAD HWN IDDO:**

Rydych wedi cael yr hysbysiad hwn oherwydd bod gan swyddog awdurdodedig [enw'r awdurdod gorfodi] a enwir yn Rhan 1 o'r hysbysiad hwn reswm dros gredu eich bod wedi cyflawni'r drosedd o fethu ag arddangos arwyddion yn unol â rheoliadau a wnaed o dan adran 17 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017 fel y'i disgrifir yn Rhan 1. O fewn y **cyfnod 29 o ddiwrnodau a bennir yn Rhan 1, rhaid ichi naill ai** talu'r gosb **neu** ofyn bod llys yn gwrandao ar y mater. Ni chewch wneud y ddau beth.

Os byddwch yn methu â gwneud y naill neu'r llall, caiff [enw'r awdurdod gorfodi], ac yntau'n awdurdod gorfodi yn rhinwedd adran 18 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017, ddwyn y mater hwn gerbron llys. Mae person a ddyfernir yn euog o'r drosedd o fethu ag arddangos arwyddion yn unol â rheoliadau a wnaed o dan adran 17 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017 yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 3 ar y raddfa safonol.

## Part 2

### **INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS NOTICE:**

You have received this notice because the authorised officer of [name of enforcement authority] named in Part 1 of this notice has reason to believe that you have committed the offence of failing to display signs in accordance with regulations made under section 17 of the Public Health (Wales) Act 2017 as described in Part 1. Within the **29 day period specified in Part 1, you must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

If you fail to do either, [name of enforcement authority] as an enforcement authority by virtue of section 18 of the Public Health (Wales) Act 2017, may pursue this matter in court. A person found guilty of the offence of failing to display signs in accordance with regulations made under section 17 of the Public Health (Wales) Act 2017 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Rhan 3**

**Part 3**

**TALU'R GOSB**

**PAYING THE PENALTY**

Swm y gosb benodedig yw **£200 (dau gan punt)**. Rhaid ei dalu o fewn y cyfnod 29 o ddiwrnodau a bennir yn Rhan 1.

The amount of the fixed penalty is **£200 (two hundred pounds)**. It must be paid within the 29 day period which is specified in Part 1.

Gallwch dalu swm gostyngol o **£150 (cant a hanner o bunnoedd)** os byddwch yn talu o fewn y cyfnod 15 niwrnod a bennir yn Rhan 1.

You can pay a discounted amount of **£150 (one hundred and fifty pounds)** if you pay within the 15 day period which is specified in Part 1.

Os byddwch yn dewis talu'r gosb benodedig hon, ni chymerir unrhyw gamau pellach mewn cysylltiad â'r drosedd honedig a ddisgrifir yn Rhan 1 o'r hysbysiad hwn. Nid yw talu'r gosb yn golygu eich bod yn cyfaddef eich bod yn euog ac ni fydd yn arwain at gofnod o euogfarn droseddol yn eich erbyn. Caniateir talu drwy gwblhau Rhan 3A isod a'i hanfon ynghyd â thaliad i'r cyfeiriad a nodir yn y Rhan honno, neu drwy gwblhau Rhan 3A isod a thalu'n bersonol yn [enw a chyfeiriad yr awdurdod gorfodi].

If you choose to pay this fixed penalty, no further action will be taken in respect of the alleged offence described at Part 1 of this notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you. Payment may be made by completing Part 3A below and sending it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at [name and address of enforcement authority].

Mae'r dulliau talu derbynol yn cynnwys arian parod, siec, archeb bost neu archeb arian, neu daliad ar-lein yn y cyfeiriad gwe a ganlyn [cyfeiriad ar gyfer gwneud taliadau ar-lein]. Dylid gwneud sieciau, archebion post neu archebion arian yn daladwy i [enw'r awdurdod gorfodi]. Os byddwch yn dewis talu'r gosb benodedig hon mewn arian parod drwy'r post, rhaid ei anfon drwy'r post cofrestredig, a rhaid cadw prawf o bostio. Os bydd arnoch angen derbynneb am dalu'r gosb, rhaid ichi ofyn amdani pan fyddwch yn talu, ac os byddwch yn talu drwy'r post, rhaid ichi ddarparu amlen ac arni stamp a'ch cyfeiriad eich hun.

Acceptable methods of payment include cash, cheque, postal order or money order or online at the following web address [address for making online payments]. Cheques, postal orders or money orders should be made payable to [name of enforcement authority]. If you choose to pay this fixed penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

**RHYBUDD: NI DDERBYNNIR TALIAD HWYR. NID ANFONIR NODYN I'CH ATGOFFA.**

**WARNING: LATE PAYMENT WILL NOT BE ACCEPTED. YOU WILL NOT BE SENT A REMINDER.**

**Rhan 3A**

**Part 3A**

**TALU COSB BENODEDIG A DDYRODDWYD O DAN ADRAN 27 O DDEDDF IECHYD Y CYHOEDD (CYMRU) 2017 MEWN CYSYLLTIAD Â THROSEDD O DAN ADRAN 17(5) O'R DDEDDF HONNO (METHU AG ARDDANGOS ARWYDDION YN UNOL Â RHEOLIADAU A WNAED O DAN ADRAN 17)**

**PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 27 OF THE PUBLIC HEALTH (WALES) ACT 2017 IN RESPECT OF AN OFFENCE UNDER SECTION 17(5) OF THAT ACT (FAILING TO DISPLAY SIGNS IN ACCORDANCE WITH REGULATIONS MADE UNDER SECTION 17)**

*Rhaid amgáu'r slip hwn gyda phob taliad*  
[Enw'r awdurdod gorfodi a'r \_\_\_\_\_]

*This slip must accompany all payments*

[Name and address at \_\_\_\_\_]

cyfeiriad lle y dylid anfon y taliad]

enforcement authority where payment should be sent]

**Rhif yr hysbysiad cosb benodedig**

\_\_\_\_\_

**Fixed penalty notice number**

Rwyf yn amgáu'r swm o:  
(*ticiwch un blwch*)

I enclose the amount of:  
(*tick one box*)

(os gwneir y taliad o fewn y cyfnod 15 niwrnod a bennir yn Rhan 1)

**£150**

(if the payment is made within the 15 day period specified in Part 1)

(os gwneir y taliad o fewn y cyfnod 29 o ddiwrnodau a bennir yn Rhan 1)

**£200**

(if the payment is made within the 29 day period specified in Part 1)

Enw llawn y troseddwr honedig

\_\_\_\_\_

Full name of the alleged offender

Cyfeiriad y troseddwr honedig

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of the alleged offender

Cod post

\_\_\_\_\_

Post code

Llofnod

\_\_\_\_\_

Signature

Dyddiad (*dd/mm/bbbb*)

\_\_\_\_\_

Date (*dd/mm/yyyy*)

**RHAN 4****PART 4****GOFYN AM WRANDAWIAD LLYS****REQUESTING A COURT HEARING**

Os byddwch yn dewis gofyn am wrandawriad llys, **rhaidd** ichi wneud hynny o fewn y cyfnod 29 o ddiwrnodau drwy gwblhau Rhan 4A a'i hanfon at [enw'r awdurdod gorfodi], neu drwy ysgrifennu at [enw'r awdurdod gorfodi] yn y cyfeiriad a nodir yn Rhan 4A, gan roi eich manylion, rhif yr hysbysiad cosb benodedig (a geir yn Rhan 1 o'r hysbysiad hwn) a chyfeiriad lle y gellir cyflwyno gwys ichi. Bydd yr wys yn rhoi gwybod ichi pryd i fynd i'r llys ac ym mhle y mae'r llys. Dim ond derbynnydd yr hysbysiad hwn (y person a enwir yn Rhan 1) a gaiff ofyn am wrandawriad llys.

If you choose to request a court hearing, you **must** do so within the 29 day period by completing Part 4A and sending it to [name of enforcement authority], or by writing to [name of enforcement authority] at the address stated in Part 4A, giving your details, the fixed penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this notice (the person named at Part 1) may request a court hearing.

**Rhan 4A****Part 4A**

**DEDDF IECHYD Y CYHOEDD (CYMRU) 2017:  
METHU AG ARDDANGOS ARWYDDION  
YN UNOL Â RHEOLIADAU A WNAED O  
DAN ADRAN 17**

**PUBLIC HEALTH (WALES) ACT 2017:  
FAILING TO DISPLAY SIGNS IN  
ACCORDANCE WITH REGULATIONS  
MADE UNDER SECTION 17**

**CAIS I LYS BARN YMDRIN Â THROSEDD  
HONEDIG**

**REQUEST FOR ALLEGED OFFENCE TO  
BE DEALT WITH BY A COURT OF LAW**

At  
[Enw'r awdurdod gorfodi a'r  
cyfeiriad y dylid anfon Rhan 4  
iddo].

To  
[Name and address at  
enforcement authority to which  
Part 4 should be sent]

**Rhif yr hysbysiad cosb  
benodedig**

**Fixed penalty notice number**

Rwyf yn dymuno i lys barn ymdrin â mi mewn  
cysylltiad â'r drosedd honedig.

I wish to be dealt with by a court of law for the  
alleged offence.

**Enw llawn y troseddwr  
honedig**

**Full name of alleged offender**

**Cyfeiriad y troseddwr  
honedig**

**Address of alleged offender**

**Cod post**

**Post code**

**Llofnod**

**Signature**

**Dyddiad**

**Date**



**ATODLEN 2** Rheoliad 22(2)

Ffurflen Hysbysiad Cosb Benodedig  
Ysmygu mewn mangre ddi-fwg neu mewn cerbyd di-fwg.  
Methu ag atal ysmygu mewn cerbyd sy'n cael ei ddefnyddio at ddibenion cymdeithasol, domestig neu ddibenion preifat eraill pan fo plentyn yn bresennol.

**SCHEDULE 2** Regulation 22(2)

Fixed Penalty Notice Form  
Smoking in smoke-free premises or in a smoke-free vehicle.  
Failing to prevent smoking in a vehicle being used for social, domestic or other private purposes where a child is present.

**[ENW'R AWDURDOD GORFODI]**

**[NAME OF ENFORCEMENT AUTHORITY]**

**[CYFEIRIAD YR AWDURDOD GORFODI]**

**[ADDRESS OF ENFORCEMENT AUTHORITY]**

**DEDDF IECHYD Y CYHOEDD (CYMRU) 2017:**

**PUBLIC HEALTH (WALES) ACT 2017:**

**ADRAN 5(1) (YSMYGU MEWN MANGRE DDI-FWG NEU MEWN CERBYD DI-FWG)**

**SECTION 5(1) (SMOKING IN SMOKE-FREE PREMISES OR IN A SMOKE-FREE VEHICLE)**

**ADRAN 6(6) (METHU AG ATAL YSMYGU MEWN CERBYD SY'N CAEL EI DDEFNYDDIO AT DDIBENION CYMDEITHASOL, DOMESTIG NEU DDIBENION PREIFAT ERAILL PAN FO PLENTYN YN BRESENNOL)**

**SECTION 6(6) (FAILING TO PREVENT SMOKING IN A VEHICLE BEING USED FOR SOCIAL, DOMESTIC OR OTHER PRIVATE PURPOSES WHERE A CHILD IS PRESENT)**

**HYSBYSIAD COSB BENODEDIG**

**FIXED PENALTY NOTICE**

**SWM Y GOSB £100**

**PENALTY AMOUNT £100**

**RHAN 1:**

**PART 1:**

**COPI'R DERBYNNYDD**

**RECIPIENT COPY**

**Rhif yr hysbysiad cosb benodedig** \_\_\_\_\_

**Fixed penalty notice number**

**Enw llawn y troseddwr honedig** \_\_\_\_\_

**Full name of alleged offender**

**Cyfeiriad y troseddwr honedig** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Address of alleged offender**

**Cod post** \_\_\_\_\_

**Post code**



---

Mae'r hysbysiad hwn yn rhoi'r cyfle ichi i ryddhau unrhyw atebolrwydd am euogfarn am y drosedd honno drwy dalu cosb benodedig o **£100 (canpunt)**. Ni ddygir achos am y drosedd hon cyn diwedd 29 o ddiwrnodau sy'n dechrau â (y dyddiad y rhoddir yr hysbysiad hwn).

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£100 (one hundred pounds)**. No proceedings will be taken for this offence before the end of 29 days beginning with (*date on which this notice is given*).

Ni fyddwch yn agored i euogfarn am y drosedd os byddwch yn talu'r gosb benodedig o fewn y cyfnod hwnnw. Yn y ffurflen hon, cyfeirir at y cyfnod hwn fel y cyfnod 29 o ddiwrnodau.

You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this form, this period is referred to as the 29 day period.

**Gallwch dalu swm gostyngol o £75 (pymtheg a thrigain o bunnoedd) os byddwch yn talu o fewn y cyfnod o 15 niwrnod sy'n dechrau â (y dyddiad y rhoddir yr hysbysiad hwn).**

**You can pay a discounted amount of £75 (seventy five pounds) if you pay within the period of 15 days beginning with (*date on which this notice is given*).**

Os nad yw'r 15fed diwrnod yn ddiwrnod gwaith, cewch dalu ar y diwrnod gwaith nesaf. Ystyr "diwrnod gwaith" yw unrhyw ddiwrnod nad yw'n ddydd Sadwrn, dydd Sul, Dydd Nadolig, Dydd Gwener y Grogolith nac yn ddiwrnod sy'n wyl banc yng Nghymru a Lloegr o dan Ddeddf Bancio a Thrafodion Ariannol 1971. Yn y ffurflen hon, cyfeirir at y cyfnod hwn fel y cyfnod 15 niwrnod.

If the 15th day is not a working day, you may pay on the next working day. "Working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this form, this period is referred to as the 15 day period.

Ceir gwybodaeth at sylw di-oed y person y dyroddwyd yr hysbysiad cosb benodedig hwn iddo yn Rhan 2 o'r hysbysiad hwn. Ceir manylion ynghylch sut i dalu'r gosb benodedig hon yn Rhan 3 o'r hysbysiad hwn. Ceir manylion ynghylch sut i ofyn am wrandawriad llys mewn perthynas â'r drosedd honedig hon yn Rhan 4 o'r hysbysiad hwn. **Os oes gennych unrhyw gwestiynau, neu os ydych yn dymuno trafod yr hysbysiad hwn, cysylltwch â: [enw a chyfeiriad yr awdurdod gorfodi a manylion cyswllt].**

Information for the immediate attention of the person who has been issued this fixed penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice. **If you have any questions, or if you wish to discuss this notice, please contact [name and address of enforcement authority and contact details].**

*Llofnod y swyddog  
awdurdodedig*

*Signature of authorised officer*

*Dyddiad dyroddi (dd/mm/yyyy)*

*Date of issue (dd/mm/yyyy)*

## Rhan 2

## Part 2

### **GWYBODAETH AT SYLW DI-OED Y PERSON Y DYRODDWYD YR HYSBYSIAD HWN IDDO:**

### **INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS NOTICE:**

Rydych wedi cael yr hysbysiad hwn oherwydd bod gan swyddog awdurdodedig [enw'r awdurdod gorfodi] a enwir yn Rhan 1 o'r hysbysiad hwn reswm dros gredu eich bod wedi cyflawni'r drosedd o:

You have received this notice because the authorised officer of [name of enforcement authority] named in Part 1 of this notice has reason to believe that you have committed the offence of:

- i. ysmegu mewn mangre ddi-fwg neu mewn cerbyd di-fwg; neu
  - ii. methu ag atal ysmegu mewn cerbyd sy'n cael ei ddefnyddio at ddibenion cymdeithasol, domestig neu ddibenion preifat eraill pan fo plentyn yn bresennol,
- i. smoking in smoke-free premises or in a smoke-free vehicle; or
  - ii. failing to prevent smoking in a vehicle being used for social, domestic or other private purposes where a child is present,

fel y'i disgrifir yn Rhan 1. O fewn y **cyfnod 29 o ddiwrnodau a bennir yn Rhan 1, rhaid ichi naill ai** talu'r gosb **neu** ofyn bod llys yn gwrandao ar y mater. Ni chewch wneud y ddau beth.

as described in Part 1. Within the **29 day period specified in Part 1, you must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

Os byddwch yn methu â gwneud y naill neu'r llall, caiff [enw'r awdurdod gorfodi], ac yntau'n awdurdod gorfodi yn rhinwedd adran 18 o Ddeddf Iechyd y Cyhoedd (Cymru) 2017, ddwyn y mater hwn gerbron llys. Mae person a ddyfernir yn euog o'r drosedd o ysmegu mewn man di-fwg yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 1 ar y raddfa safonol. Mae person a ddyfernir yn euog o'r drosedd o fethu ag atal ysmegu mewn cerbyd sy'n cael ei ddefnyddio at ddibenion cymdeithasol, domestig neu ddibenion preifat eraill pan fo plentyn yn bresennol yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 4 ar y raddfa safonol.

If you fail to do either, [name of enforcement authority] as an enforcement authority by virtue of section 18 of the Public Health (Wales) Act 2017, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 1 on the standard scale. A person found guilty of the offence of failing to prevent smoking in a vehicle being used for social, domestic or other private purposes where a child is present is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## Rhan 3

## Part 3

### **TALU'R GOSB**

### **PAYING THE PENALTY**

Swm y gosb benodedig yw **£100 (canpunt)**. Rhaid ei dalu o fewn y cyfnod 29 o ddiwrnodau a bennir yn Rhan 1.

The amount of the fixed penalty is **£100 (one hundred pounds)**. It must be paid within the 29 day period which is specified in Part 1.

Gallwch dalu swm gostyngol o **£75 (pymtheg a thrigain o bunnoedd)** os byddwch yn talu o fewn y cyfnod 15 niwrnod a bennir yn Rhan 1.

You can pay a discounted amount of **£75 (seventy five pounds)** if you pay within the 15 day period which is specified in Part 1.

Os byddwch yn dewis talu'r gosb benodedig hon,

If you choose to pay this fixed penalty, no further

ni chymerir unrhyw gamau pellach mewn cysylltiad â'r drosedd honedig a ddisgrifir yn Rhan 1 o'r hysbysiad hwn. Nid yw talu'r gosb yn golygu eich bod yn cyfaddef eich bod yn euog ac ni fydd yn arwain at gofnod o euogfarn droseddol yn eich erbyn. Caniateir talu drwy gwblhau Rhan 3A isod a'i hanfon ynghyd â thaliad i'r cyfeiriad a nodir yn y Rhan honno, neu drwy gwblhau Rhan 3A isod a thalu'n bersonol yn [enw a chyfeiriad yr awdurdod gorfodi].

Mae'r dulliau talu derbynol yn cynnwys arian parod, siec, archeb bost neu archeb arian, neu daliad ar-lein yn y cyfeiriad gwe a ganlyn [cyfeiriad ar gyfer gwneud taliadau ar-lein]. Dylid gwneud sieciau, archebion post neu archebion arian yn daladwy i [enw'r awdurdod gorfodi]. Os byddwch yn dewis talu'r gosb benodedig hon mewn arian parod drwy'r post, rhaid ei anfon drwy'r post cofrestredig, a rhaid cadw prawf o bostio. Os bydd arnoch angen derbynneb am dalu'r gosb, rhaid ichi ofyn amdani pan fyddwch yn talu, ac os byddwch yn talu drwy'r post, rhaid ichi ddarparu amlen ac arni stamp a'ch cyfeiriad eich hun.

**RHYBUDD: NI DDERBYNNIR TALIAD  
HWYR. NID ANFONIR NODYN I'CH  
ATGOFFA.**

**Rhan 3A  
TALU COSB BENODEDIG A  
DDYRODDWYD O DAN ADRAN 27 O  
DDEDDF IECHYD Y CYHOEDD (CYMRU)  
2017 MEWN CYSYLLTIAD Â THROSEDD  
O DAN:**

**ADRAN 5(1) (YSMYGU MEWN MANGRE  
DDI-FWG NEU MEWN CERBYD DI-FWG)  
O'R DDEDDF HONNO**

NEU

**ADRAN 6(6) (METHU AG ATAL YSMYGU  
MEWN CERBYD SY'N CAEL EI  
DDEFNYDDIO AT DDIBENION  
CYMDEITHASOL, DOMESTIG NEU  
DDIBENION PREIFAT ERAILL PAN FO  
PLENTYN YN BRESENNOL) O'R DDEDDF  
HONNO**

*Rhaid amgáu'r slip hwn gyda phob taliad*

At  
[Enw'r awdurdod gorfodi a'r  
cyfeiriad lle y dylid anfon y  
taliad]

action will be taken in respect of the alleged offence described at Part 1 of this notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you. Payment may be made by completing Part 3A below and sending it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at [name and address of enforcement authority].

Acceptable methods of payment include cash, cheque, postal order or money order or online at the following web address [address for making online payments]. Cheques, postal orders or money orders should be made payable to [name of enforcement authority]. If you choose to pay this fixed penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

**WARNING: LATE PAYMENT WILL NOT  
BE ACCEPTED. YOU WILL NOT BE SENT  
A REMINDER.**

**Part 3A  
PAYMENT OF FIXED PENALTY ISSUED  
UNDER SECTION 27 OF THE PUBLIC  
HEALTH (WALES) ACT 2017 IN RESPECT  
OF AN OFFENCE UNDER:**

**SECTION 5(1) (SMOKING IN A SMOKE-  
FREE PREMISES OR IN A SMOKE-FREE  
VEHICLE) OF THAT ACT**

OR

**SECTION 6(6) (FAILING TO PREVENT  
SMOKING IN A VEHICLE BEING USED  
FOR FOR SOCIAL, DOMESTIC OR  
OTHER PRIVATE PURPOSES WHERE A  
CHILD IS PRESENT) OF THAT ACT**

*This slip must accompany all payments*

To  
[Name and address at  
enforcement authority where  
payment should be remitted]

**Rhif yr hysbysiad cosb  
benodedig**

\_\_\_\_\_

**Fixed penalty notice number**

Rwyf yn amgáu'r swm o  
(*ticiwch un blwch*)

I enclose the amount of (*tick  
one box*)

(os gwneir y taliad o fewn y  
cyfnod 15 niwrnod a bennir yn  
Rhan 1)

**£75**

(if the payment is made within  
the 15 day period specified in  
Part 1)

(os gwneir y taliad o fewn y  
cyfnod 29 o ddiwrnodau a  
bennir yn Rhan 1)

**£100**

(if the payment is made within  
the 29 day period specified in  
Part 1)

Enw llawn y troseddwr honedig

\_\_\_\_\_

Full name of alleged offender

Cyfeiriad y troseddwr honedig

\_\_\_\_\_

Address of alleged offender

\_\_\_\_\_

\_\_\_\_\_

Cod post

\_\_\_\_\_

Post code

Llofnod

\_\_\_\_\_

Signature

Dyddiad (*dd/mm/bbbb*)

\_\_\_\_\_

Date (*dd/mm/yyyy*)

**RHAN 4****PART 4****GOFYN AM WRANDAWIAD LLYS****REQUESTING A COURT HEARING**

Os byddwch yn dewis gofyn am wrandawriad llys, **rhaid** ichi wneud hynny o fewn y cyfnod 29 o ddiwrnodau drwy gwblhau Rhan 4A a'i hanfon at [enw'r awdurdod gorfodi], neu drwy ysgrifennu at [enw'r awdurdod gorfodi] yn y cyfeiriad a nodir yn Rhan 4A, gan roi eich manylion, rhif yr hysbysiad cosb (a geir yn Rhan 1 o'r hysbysiad hwn) a chyfeiriad lle y gellir cyflwyno gwys ichi. Bydd yr wys yn rhoi gwybod ichi pryd i fynd i'r llys ac ym mhle y mae'r llys. Dim ond derbynnydd yr hysbysiad hwn (y person a enwir yn Rhan 1) a gaiff ofyn am wrandawriad llys.

If you choose to request a court hearing, you **must** do so within the 29 day period by completing Part 4A and sending it to [name of enforcement authority], or by writing to [name of enforcement authority] at the address stated in Part 4A, giving your details, the penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this notice (the person named at Part 1) may request a court hearing.

**Rhan 4A****Part 4A****DEDDF IECHYD Y CYHOEDD (CYMRU)  
2017****PUBLIC HEALTH (WALES) ACT 2017****CAIS I LYS BARN YMDRIN Â THROSEDD  
HONEDIG****REQUEST FOR ALLEGED OFFENCE TO  
BE DEALT WITH BY A COURT OF LAW**

At  
[Enw'r awdurdod gorfodi a'r  
cyfeiriad lle y dylid anfon Rhan  
4A]

To  
[Name and address of  
enforcement authority where  
Part 4A should be sent]

**Rhif yr hysbysiad cosb  
benodedig**

**Fixed penalty notice number**

Rwyf yn dymuno i lys barn ymdrin â mi mewn  
cysylltiad â'r drosedd honedig.

I wish to be dealt with by a court of law for the  
alleged offence.

Enw llawn y troseddwr honedig

Full name of alleged offender

Cyfeiriad y troseddwr honedig

Address of alleged offender

Cod post

Post code

Llofnod

Signature

Dyddiad

Date





**Explanatory Memorandum to the Smoke-free Premises and Vehicles (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by the Department of Health and Social Services 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 Smoke-free Premises and Vehicles (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Vaughan Gething MS  
Minister for Health and Social Services  
29 September 2020

## PART 1

### Description

1. This Explanatory Memorandum has been developed to consider the implications of introducing the Smoke-free Premises and Vehicles (Wales) Regulations 2020 (“the 2020 Regulations”). The 2020 Regulations will supplement certain provisions in Chapter 1 of Part 3 of the Public Health (Wales) Act 2017<sup>1</sup> (“the 2017 Act”) and support the Welsh Government’s overall vision of a smoke-free society for Wales in which the harm from tobacco is eradicated. The 2017 Act received Royal Assent on 3 July 2017.
2. Chapter 1 of the 2017 Act restates certain provisions relating to smoking in Section 1 of the Health Act 2006<sup>2</sup> (“the 2006 Act”), so far as it relates to Wales. The 2006 Act made enclosed and substantially enclosed workplaces and public places smoke-free and gave powers to national authorities to make limited exemptions to the smoke-free requirements and provide for smoke-free vehicles and additional smoke-free places. These were set out in the Smoke-free Premises etc. (Wales) Regulations 2007 (“the 2007 Regulations”) which came into force on 2 April 2007 and were amended in 2015<sup>3</sup> in relation to smoking in private vehicles carrying persons aged under 18, and in 2016<sup>4</sup> in relation to smoking in prisons.
3. Chapter 1 of the 2017 Act also extends the smoke-free provisions in Wales to include certain non-enclosed or substantially enclosed premises; these are hospital grounds, public playgrounds, school grounds and outdoor care settings for children and authorises each local authority to act as an enforcement authority in relation to the smoke-free premises, places and vehicles in their area.
4. The 2020 Regulations will supplement certain provisions in Chapter 1 of Part 3 of the 2017 Act and will revoke and replace the 2007 Regulations which prohibit smoking in enclosed public places and work places. They will also revoke and replace subsequent amendments to the 2007 Regulations concerning smoking in private vehicles.
5. Alongside powers and provisions in the 2017 Act, the 2020 Regulations will also extend the smoke-free provisions in Wales to include certain non-enclosed or substantially enclosed premises, being hospital grounds, public playgrounds, school grounds, and outdoor care settings for children. Voluntary smoking bans are already in place in many of these settings but despite best efforts enforcement has been difficult.
6. Detailed consideration of the costs and benefits of the provisions on smoking contained in the 2017 Act are provided in the Regulatory Impact

---

<sup>1</sup> Public Health (Wales) Act 2017 <https://www.legislation.gov.uk/anaw/2017/2/contents/enacted>

<sup>2</sup> Health Act 2006 <https://www.legislation.gov.uk/understanding-legislation>

<sup>3</sup> The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2015  
<http://www.legislation.gov.uk/wsi/2015/1363/contents/made>

<sup>4</sup> The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2016  
<http://www.legislation.gov.uk/wsi/2015/1363/contents/made>

Assessment (RIA) to that Act which is available on the Senedd Cymru website<sup>5</sup>. Only those costs and benefits additional to those already considered are therefore discussed in this document.

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

7. The 2020 Regulations required notification to the EU in line with the requirements of the Technical Standards and Regulations Directive 2015/1535/EC<sup>6</sup>. This is as a result of the technical requirements in the Regulations as to the lay-out and form of no-smoking signs (Regulations 13, 14 and 18). This process required a three-month standstill period during which the 2020 Regulations remained in draft form and were not laid before the Senedd. The standstill period commenced on 23/06/20 and ended on 24/09/20. No objections were made by Member States to the draft 2020 Regulations.

## **Legislative background**

8. The 2020 Regulations will be made under powers in Chapter 1 of Part 3 and Schedule 1 of the 2017 Act. Part 3 relates to tobacco and nicotine products. Chapter 1 of Part 3 gives provisions to restrict smoking in workplaces, public places, outdoor care settings for children, school grounds, hospital grounds and public playgrounds, and confers powers on the Welsh Ministers to make Regulations restricting smoking in other premises, and in vehicles.
9. As stated above, the 2006 Act made enclosed and substantially enclosed workplaces and public places smoke-free and gave powers to national authorities to make limited exemptions to the smoke-free requirements and provide for smoke-free vehicles and additional smoke-free places. The 2007 Regulations were made under this Act which first established the smoke-free regime across the United Kingdom. The 2020 Regulations will revoke and replace the 2007 Regulations.
10. The 2007 Regulations will be saved by virtue of section 34 of the Legislation (Wales) Act 2019 ("the 2019 Act"). It is intended to also rely on section 34 of the 2019 Act to save the offences in the 2006 Act (which would be disapplied to Wales by a subsequent Commencement Order but come into force at the same time as the 2007 Regulations are repealed). This means that despite the 2007 Regulations being revoked, and the offences in the 2006 Act no longer applying in Wales, the 2007 Regulations and the 2006 Act would still apply to any things which happened or matters arose prior to the revocation of the 2007 Regulations and the disapplication of the offences in the 2006 Act in Wales.

---

<sup>5</sup> Welsh Government. Public Health (Wales) Bill Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory notes. 2017. <http://www.assembly.wales/laid%20documents/pri-ld10796-em-r/pri-ld10796-em-r-e.pdf>

<sup>6</sup> European Commission - <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=374>

11. Chapter 1 of Part 3 of the 2017 Act restated certain provisions relating to smoking as set out in Section 1 of the 2006 Act, in so far as they relate to Wales. The 2017 Act also extends the smoke-free provisions in Wales to include certain 'non-enclosed' or 'substantially enclosed' premises, namely hospital grounds, public playgrounds, school grounds and outdoor care settings for children.
12. The 2017 Act provides powers to specify in regulations, for the purpose of the smoke-free provisions in Wales:
  - the meaning of 'enclosed', 'substantially enclosed' and 'not enclosed or substantially enclosed';
  - any additional smoke-free premises;
  - any exemptions to smoke-free premises;
  - the provisions on designated areas in hospital and relevant school grounds which are not smoke-free;
  - a duty to prevent smoking in smoke-free hospital grounds, school grounds, public playgrounds, additional smoke-free premises and smoke-free vehicles;
  - the requirements for smoke-free vehicles;
  - the requirements for signs in smoke-free premises and vehicles;
  - the designation of the chief officer of police for a police area as an authorised officer in relation to private vehicles; and,
  - the form and content of the penalty notice form and the amount of the penalty.
13. The 2020 Regulations draw on the above powers to supplement and provide the detail of the smoke-free provisions in Chapter 1 of Part 3 of the 2017 Act. The 2020 Regulations do not however exercise the power to make additional premises smoke-free (section 13 of the 2017 Act). This power provides flexibility for future regulations to be made on additional non-enclosed places, if Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
14. The 2020 Regulations also rely on powers found in Schedule 1 to the 2017 Act. Schedule 1 makes detailed provision about Fixed Penalty Notices (FPNs) as introduced by section 27 of the 2017 Act.

### **Purpose and intended effect of the legislation**

15. The purpose of the 2020 Regulations is to complement and complete the effect of provisions in Chapter 1 of Part 3 of the 2017 Act so as to make changes to the existing smoking ban established in the 2006 Act and 2007 Regulations. The 2020 Regulations introduce new elements needed to implement the provisions on smoke-free hospital grounds, school grounds, and public playgrounds in the 2017 Act. The 2020 Regulations will be supported by guidance to aid implementation by those in charge (or managers) of smoke-free premises and vehicles; and enforcement of the requirements by authorised officers. The 2020 Regulations complement the

measures set out in our Tobacco Control Delivery Plan for Wales 2017-2020<sup>7</sup> to improve health and well-being in Wales, and to provide a greater emphasis on prevention in line with our national strategy *Prosperity for All*.

16. Smoking was once normal across much of society. It is now increasingly uncommon. Reducing the health impacts of smoking is a recognised policy priority for the Welsh Government. Smoking remains one of the main causes of inequalities in health in Wales with smoking rates in the most deprived areas over double those of the least deprived areas<sup>8</sup>.
17. The intended effect of the 2020 Regulations is to reduce exposure to second hand smoke and further denormalise smoking behaviour, particularly amongst children and young people.
18. The 2006 Act and the 2007 Regulations were introduced to protect employees and the public from the harmful effects of second-hand smoke. Restricting smoking in non-enclosed spaces, namely hospital grounds, school grounds and public children's playgrounds (in addition to outdoor care settings for children, as provided by Section 9 of the 2017 Act), will contribute to the policy rationale of continuing the denormalisation of smoking, as there would be less opportunities for the activity of smoking to be seen. The 2007 Regulations have demonstrated the effectiveness of smoke-free policies in denormalising smoking behaviours even though those restrictions were limited to enclosed and substantially enclosed spaces.
19. The smoke emitted by cigarettes and exhaled by smokers contains more than 50 chemicals recognised as carcinogens, as well as many toxic irritant agents<sup>9</sup>. Scientific evidence has linked second hand smoke exposure to adverse health outcomes, including respiratory outcomes in children and adults, acute cardiovascular disease and lung cancer. Whilst most of this evidence is based on long term exposure, there are some studies that have reported effects following short term exposure to tobacco smoke, such as eye and respiratory irritation amongst non-smokers<sup>10</sup>. Such studies show that even brief and short term exposure to second-hand smoke may generate significant adverse effects on the human respiratory system<sup>11</sup>. The consensus, therefore, is that there is no safe level of exposure to second-hand smoke and, while some progress has been made in non-enclosed smoke-free environments through voluntary action, comprehensive legislation is required to make significant progress to protect public health.
20. The 2020 Regulations will also work with other legislation to contribute to the continuing decline in the uptake of smoking by children and young people. The 2020 Regulations will aim to ensure the further denormalisation of smoking by restricting smoking in more public places, particularly where children are likely to be present on a regular basis (such as school grounds

---

7 <https://gov.wales/tobacco-control-plan-wales-2017-2020>

8 National Survey for Wales: <https://gov.wales/national-survey-wales>

9 <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

10 <http://www.ncbi.nlm.nih.gov/pubmed/11675270>

11 <http://www.ncbi.nlm.nih.gov/pubmed/21178628>

and public playgrounds). This will reduce children's exposure to adult smoking behaviours in their everyday lives with the intention of making them less likely to grow up thinking that smoking is a normal or aspirational adult behaviour.

21. Prohibiting smoking in private vehicles carrying children under the age of 18 supports and promotes the following articles of the United Nations Convention on the Rights of the Child (UNCRC);

- Article 3 – the best interests of the child
- Article 24 - a child's right to the best possible health and protection in consideration of the dangers and risks of environmental pollution.

22. The provisions in the 2020 Regulations relating to hospital grounds are intended to promote behaviour change and support smoking cessation among smokers who use hospital services. The 2020 Regulations also remove the current exemption that allows designation of a room in which patients and residents of mental health units may smoke and replacing it with a time limited exemption that will expire 18 months after the 2020 Regulations come into force. Smoking prevalence among people with mental illness is substantially higher than the general population. Removing this exemption will bring the law in line with general hospital service users and will aim to address health inequalities for persons with mental health conditions. The 2020 Regulations also amend the provision of designated smoking rooms in adult care homes and adult hospices. The 2007 Regulations provided an exemption for adult care homes and adult hospices that permitted the manager of the premises to designate a room for smoking for use by those over 18 years of age. This exemption has been retained in the 2020 Regulations but with the additional condition that the designated smoking room is only for use by residents of the adult care home or adult hospice (Regulation 6(2)(a)).

23. The 2020 Regulations will also remove the exemption that permits the designation of bedrooms where smoking is allowed in hotels, guesthouses, hostels, inns and members' clubs and replace it with a time limited exemption that will expire 12 months after the 2020 regulations come into force. A similar provision is provided for self-contained holiday or temporary accommodation (such as static caravans used for holiday rental or temporary purposes and cottages and chalets, and flats and apartments provided via short-term lets for holiday rental accommodation). The smoking ban is embedded in Wales to the extent that the current exemption is not widely used. Removing this designation would extend the workplace protection from the health harms of second hand smoke to all workers in such premises and support the Welsh Government's ultimate aim of a smoke-free society.

## **Consultation**

24. In 2018 the Welsh Government launched a 12 week consultation on the draft Smoke-free Premises and Vehicles Regulations, and a draft

Regulatory Impact Assessment. A full summary of the consultation can be found on the Welsh Government website<sup>12</sup>. A number of amendments to the draft Regulations were made following stakeholder feedback to the consultation. These changes were in relation to the following issues:

#### Dwellings – exclusions to ‘work’

25. Section 7 of the 2017 Act provides that premises in Wales are smoke-free if they are workplaces. It is the intention to protect as many workers as possible from the risks of second hand smoke, including those working in the dwellings of others. The 2020 Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purpose of Section 7. Work activities were specifically defined in the 2007 Regulations and related to providing a service to the persons living there, such as personal/health care, assisting with domestic or maintenance work etc. The effect of removing these exclusions within the 2020 Regulations is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more of those work places will be required to be smoke-free. However, this effect is limited by section 7(5) of the 2017 Act which requires that those classed as workplace-dwellings are only required to be smoke-free in the parts used as a workplace and for the duration so used.

#### Self-contained temporary or holiday accommodation

26. All temporary and holiday accommodations are to be smoke-free as soon as possible. The 2020 Regulations introduce a time-limited exemption to the smoke-free requirements for self-contained accommodation used for temporary or holiday purposes. The exemption for these types of premises will cease to apply 12 months after the 2020 Regulations come into force. This transition period will provide the person in charge of such premises time to make any necessary changes to their accommodation. After this period, self-contained accommodation used for temporary or holiday purposes will have to be smoke-free if they are a workplace or open to the public. This change brings the smoke-free requirements for such accommodation into line with hotels, guest houses, hostels and members' club, which will be required to remove any designated smoking bedrooms (permitted under the 2007 Regulations) by the end of the 12 month transition period. Premises used to any extent as a dwelling are excluded from these provisions.

#### Duty to prevent smoking

27. The 2020 Regulations have introduced a duty on those who control or manage school grounds, hospital grounds and public playgrounds to take reasonable steps to prevent smoking. This is a change to the original policy intent, which considered these types of premises were too dispersed to make this duty viable. However, following further discussions with enforcement teams and Health Boards in the post-consultation period, it has been agreed that a duty is required to establish responsibility.

---

<sup>12</sup> <https://gov.wales/smoke-free-premises-and-vehicles-wales-regulations-2018>

### Fixed penalty notices

28. Provision around fixed penalty notices (FPNs) is found in section 27 of and Schedule 1 to the 2017 Act. The amount of the FPN and discounted penalty amount has been increased to £100 and £75 respectively (proposals prior to consultation were £50 and £30 respectively) in relation to the offences of:
- smoking in smoke-free premises or vehicles; and
  - failing to prevent smoking in a vehicle being used for social, domestic or other private purposes where a person under the age of 18 is present.

This will bring FPNs relating to smoke-free offences more in line with similar offences such as littering and dog fouling.

### Hospital and school grounds: designated areas

29. No changes to the conditions around designated areas for smoking within hospital and the grounds of schools providing residential accommodation were made following the consultation. The possibility of permitting designated smoking areas in hospital and school grounds where the grounds are too small to comply with the usual conditions on distance (i.e. that it is 10 metres away from any other smoke-free premises) was considered but was discounted on the basis that it would be contrary to the underlying policy intention of limiting smoke-drift.



## PART 2 – REGULATORY IMPACT ASSESSMENT

1. This Regulatory Impact Assessment (RIA) has been completed to consider the implications of introducing the Smoke-free Premises and Vehicles (Wales) Regulations 2020 (the “2020 Regulations”). These Regulations will implement certain smoking provisions in Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 (“the 2017 Act”) and support the Welsh Government’s overall vision of a smoke-free society for Wales in which the harm from tobacco is eradicated. This RIA builds upon the RIA for the 2017 Act (a link to the EM/RIA for the 2017 Act is provided at footnote 5 above, the relevant assessment is on pages 109-126).
2. An Integrated Impact Assessment has been completed for the 2020 Regulations. The Integrated Impact Assessment Summary is published on the Welsh Government website: <https://gov.wales/smoking>

### Options

3. This RIA considers three options:
  - **Option One** – Do nothing.
  - **Option Two** – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds which would use the powers in the 2017 Act to:
    - provide a meaning for ‘not enclosed or substantially enclosed’,
    - set out the requirements on no-smoking signs in these premises, and
    - provide the conditions for any designated smoking areas within hospital grounds and grounds of schools with residential accommodation for pupils.

Option two would make no changes to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007 (“the 2007 Regulations”) (i.e. retain the existing provisions on, for example, no-smoking signs for enclosed and substantially enclosed premises, the permitted exemptions to enclosed and substantially enclosed smoke-free premises, and on smoke-free vehicles).

- **Option Three** – Introduce regulations on smoking bans in hospital grounds, school grounds and children’s playgrounds as per option two but also making changes to the existing provisions within the 2007 Regulations being:
  - refine the current meaning of ‘substantially enclosed’;
  - provide exemptions for dwellings that are workplaces where certain conditions exist;
  - introduce a time limited exemption for the designation of rooms for smoking for patients of mental health units that will expire 18 months after coming into force;

- introduce a time limited exemption for the designation of bedrooms for smoking in hotels, guesthouses, inns and members clubs, and also self-contained temporary or holiday accommodation that will expire 12 months after coming into force;
- reduced minimum requirements for the graphic images used on all no-smoking signs;
- introduce specific written warnings for no-smoking signs in hospital grounds, school grounds and public playgrounds;
- introduce a duty to prevent smoking in school grounds, hospital grounds and public playgrounds; and
- provide that enclosed vehicles are smoke-free when being used in the course of paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle.

Option three would retain the provisions within the 2007 Regulations that:

- provide an exemption to the smoke-free requirements for research and test facilities;
- establish the requirements for any rooms designated for smoking;
- require enclosed vehicles used mainly for transporting members of the public or for work purposes by more than one person are smoke-free all of the time;
- require enclosed private vehicles to be smoke-free whilst carrying persons under the age of 18; and,
- establish the fixed penalty amounts.

4. Option three is the preferred option.

5. Additional non-enclosed/substantially non-enclosed grounds could be added in the future under options two and three.

### **Option One – Do nothing**

#### **Description**

6. There would be no change to existing legislation under this option. The provisions in the 2017 Act on smoke-free hospital grounds, school grounds and public playgrounds would not be implemented. There would therefore be no additional costs or benefits associated with this option.

7. The option to do nothing is not considered sufficient.

**Option Two – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds with no change to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007**

## Description

8. This option would introduce the regulations required to complete and make effective the restrictions on smoking in hospital grounds, school grounds and public playgrounds in the 2017 Act. The regulations would provide a meaning for ‘not enclosed or substantially enclosed’ and place a duty on managers of these places to display no-smoking signs that meet the minimum requirements specified in the 2007 Regulations with additional requirements specific to the premises type. It is envisaged that these signs could be displayed alongside existing no-smoking signs linked to voluntary smoking bans in hospital grounds and public playgrounds. Any areas within hospital grounds and the grounds of schools with residential accommodation for pupils that are designated for smoking would have to be within parameters established in regulations. The provisions on smoke-free vehicles, exemptions to the requirements on smoke-free workplaces and public places and smoke-free signs for enclosed and substantially enclosed workplaces and public places would remain as the status quo established by the 2007 Regulations.
9. Table 1 provides a summary of the no-smoking signage requirements for hospital grounds, school grounds and public playgrounds proposed under Option Two.

Table 1.

| Aspect of sign     | Option two proposal  |
|--------------------|--|
| Graphic warning    | <p><u>As per 2007 Regulations:</u></p> <p>A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 85 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p>   |
| Overall size/shape | <p><u>As per 2007 Regulations:</u></p> <p>Must be flat and rectangular and at least 160 millimetres by 230 millimetres.</p>  |
| Written warning    | <p>Must contain a legible warning bilingually in Welsh and in English that smoking is not permitted in the premises covered by the smoke-free requirements with specific warning message per premises type.</p> <p>For example: <i>“It is against the law to smoke in these hospital grounds/Mae ysmygu yn nhir yr ysbyty hwn yn erbyn y gyfriath”</i>; for playgrounds with no clear boundary <i>“It is against the law to smoke within 5 metres of this play equipment/Mae ysmygu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfriath.”</i></p> |

|          |  |
|----------|--|
| Location | Must be displayed in a prominent position at or near the main entrance(s) to smoke-free premises; for playgrounds with no clear boundary, in a prominent position near the playground. |
|----------|--|

## Costs

### Welsh Government

10. The costs to Welsh Government for this option are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices). There are no additional costs to those previously stated in that RIA for Welsh Government under this option.

### Enforcement

11. The costs related to enforcement of the provisions of this option are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices). There are no additional costs to those previously stated in that RIA for enforcement under this option. The number and value of FPNs and fines issued to members of the public are assumed to be the same as in the RIA for the 2017 Act.

### Hospital grounds, school grounds and public playgrounds

12. Under this option, managers of hospital grounds, school grounds and public playgrounds would be required to provide no-smoking signs that comply with the requirements. This would be additional to any current voluntary smoking ban signs that already exist. The RIA to the 2017 Act calculated the cost of a limited number of additional signs in hospital grounds and public playgrounds, and new signs for school grounds; for hospital grounds, the cost of stickers for entrance doors and bus shelters as well as pedestrian exits from car parks were also included. Under this option, there would therefore be no additional costs to those accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices).

13. The designation of areas where smoking is allowed within school grounds with residential accommodation for pupils and hospital grounds would not be a mandatory requirement of the legislation and so the cost of erecting smoking shelters and signage are not accounted for in this appraisal.

14. The costs associated with considering guidance, updating smoke-free policies and payment of any fixed penalty notices for non-compliance with the duty to display appropriate signage are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices).

Table 2. Summary of additional costs associated with option two.

|   | 2020/21 (£)               | 21/22 (£)               | 2022/23 (£) | 2023/24 (£)   | 2024/25 (£) |
|---|---------------------------|-------------------------|-------------|---------------|-------------|
| <b>Welsh Government</b>   |                           |                         |             |               |             |
| Communications Campaign   | £51,400 - £72,500         | £0                      | £0          | £0            | £0          |
| Producing guidance to organisations, businesses and the general public.   | £9,000                    | £0                      | £0          | £1,600        | £0          |
| Design and translation of the new guidance  | £1,200                    | £0                      | £0          | £0            | £0          |
| Updating WLGA guidance relating to enforcement of the provisions in the 2006 Act and the Smoke-Free Regulations 2007. | £1,600                    | £0                      | £0          | £1,600        | £0          |
| Enforcement training sessions   | £2,500                    | £0                      | £0          | £0            | £0          |
| <b>Total costs for Welsh Government</b>   | <b>£65,700 - £86,800</b>  | <b>£0</b>               | <b>£0</b>   | <b>£3,200</b> | <b>£0</b>   |
| <b>Local Authorities</b>  |                           |                         |             |               |             |
| Reviewing existing voluntary practices or policies against legislation  | £40,900                   | £0                      | £0          | £0            | £0          |
| Enforcement training  | £9,900                    | £0                      | £0          | £0            | £0          |
| Signage – Schools   | £17,400 - £68,000         | £0                      | £0          | £0            | £0          |
| Signage – Playgrounds   | £24,000 - £66,700         | £6,100 - £16,700        | £0          | £0            | £0          |
| <b>Total costs for local authorities</b>  | <b>£92,200 - £185,500</b> | <b>£6,100 - £16,700</b> | <b>£0</b>   | <b>£0</b>     | <b>£0</b>   |
| <b>Schools (Voluntary aided, foundation and independent)</b>  |                           |                         |             |               |             |

|  |                            |                          |               |               |               |
|--|----------------------------|--------------------------|---------------|---------------|---------------|
| Reviewing existing voluntary practices or policies against legislation | <b>£6,600</b>              | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| Signage  | <b>£3,400 - £11,200</b>    | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| Total costs for schools  | <b>£10,000 - £17,800</b>   | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| <b>Health Boards</b>   |                            |                          |               |               |               |
| Reviewing existing voluntary practices or policies against legislation | <b>£3,500</b>              | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| Signage  | <b>£17,500 - £22,000</b>   | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| Total costs for Health Boards  | <b>£21,000 - £25,500</b>   | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| <b>Independent Hospitals</b>   |                            |                          |               |               |               |
| Reviewing existing voluntary practices or policies against legislation | <b>£900</b>                |                          |               |               |               |
| Signage  | <b>£3,400 - £4,000</b>     | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| <b>Total costs for independent hospitals</b>                           | <b>£4,300 - £4,900</b>     | <b>£0</b>                | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| <b>Public</b>  |                            |                          |               |               |               |
| Fixed penalty notices  | <b>£3,100</b>              | <b>£4,200</b>            | <b>£4,00</b>  | <b>£2,000</b> | <b>£2,000</b> |
| Fines  | <b>£2,000</b>              | <b>£1,800</b>            | <b>£2,200</b> | <b>£600</b>   | <b>£600</b>   |
| Total costs for the public   | <b>£5,100</b>              | <b>£6,000</b>            | <b>£6,200</b> | <b>£2,600</b> | <b>£2,600</b> |
| Total costs  | <b>£198,300 - £325,600</b> | <b>£12,100 - £22,700</b> | <b>£6,200</b> | <b>£5,800</b> | <b>£2,600</b> |

## **Benefits**

### Welsh Government

15. The benefits to Welsh Government for this option are accounted for in the RIA to the 2017 Act. There are no additional benefits to those previously stated in that RIA for Welsh Government under this option.

### Enforcement

16. Enforcement would benefit from a meaning for 'not enclosed or substantially enclosed' as this would provide clarity when applying the provisions on hospital grounds, school grounds and public playgrounds and any future smoke-free premises that are not enclosed or substantially enclosed.

17. Other benefits for enforcement are accounted for in the RIA to the 2017 Act.

### Hospital grounds, school grounds and public playgrounds

18. The benefits to managers of hospital grounds, school grounds and public playgrounds that currently operate voluntary smoke-free policies and that would be backed by legislation under this option are accounted for in the RIA to the 2017 Act. There are no additional benefits to those previously stated in that RIA for managers of hospital grounds, school grounds and public playgrounds under this option.

### Public

19. Clear signs that inform the public that smoking is not permitted by law in hospital grounds, school grounds and public playgrounds will help with compliance and therefore help the public to avoid incurring a fixed penalty notice fine for smoking in a smoke-free place.

### Health

20. Option Two would work alongside other tobacco control measures to further denormalise smoking and reduce the risks from exposure to second hand smoke. These benefits are explored in the RIA to the 2017 Act. There are no additional health benefits to those previously stated in that RIA.

## **Option Three – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds with changes to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007**

### **Description**

21. This option would be as per Option Two but with some changes to the smoke-free provisions established by the 2007 Regulations.

### Definitions

22. Option Three would update the meaning of 'substantially enclosed' established by the 2007 Regulations. This change would make clear that other structures that form part of the perimeter of the premises should be included when making such a consideration.

### Exemptions

23. The 2007 Regulations provide that dwellings that are workplaces are only smoke-free in those parts that are used solely for work and that those parts should be smoke-free all of the time in accordance with the 2006 Act. Option Three would change this provision to support the policy intention of protecting as many workers as possible from the risks of second hand smoke, including those working in the dwellings of others. Option 3 removes exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purpose of Section 7 of the 2017 Act. Work activities were specifically defined in the 2007 Regulations and related to providing a service to the persons living there, such as personal/health care, assisting with domestic or maintenance work etc. The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more work places will be required to be smoke-free. However, this effect is limited by section 7(5) of the 2017 Act which requires that workplace-dwellings are only required to be smoke-free in the parts used as a workplace and for the duration that they are so used.
24. Option Three would replace three of the current exemptions in the 2007 Regulations with time limited exemptions. For mental health units (MHUs) the permission to designate a room for smoking within the premises would expire 18 months after the regulations come into effect. For hotels, guesthouses, inns, hostels and members' clubs ("hotels, etc.") the permission to designate smoking bedrooms would expire 12 months after the regulations come into effect. Self-contained holiday and temporary accommodation (such as static caravans used for holiday rental or temporary purposes, holiday rental accommodation such as cottages and chalets, and flats and apartments provided via short-term lets) will be required to be smoke-free 12 months after the regulations come into effect. Once these time limited exemptions have expired, MHUs, hotels etc. and holiday and temporary accommodation would have to be smoke-free throughout the entirety of their enclosed and substantially enclosed premises.

### Duty to prevent smoking

25. Option Three would introduce a duty on those who control or manage school grounds, hospital grounds and public playgrounds to take reasonable steps to prevent smoking. This duty is required to establish responsibility for preventing smoking.

### No-smoking signs

26. Option Three would reduce the minimum requirements for all types of smoke-free signs by relaxing the requirements on the graphic warning and removing the specific text warning for enclosed and substantially enclosed smoke-free premises. The intention would be to review the no-smoking signage requirements for hospital grounds, school grounds and public playgrounds three years after the provisions come into force with a view to relaxing them - should compliance with the smoking bans there be at



acceptable levels - to the same more minimal requirements as enclosed and substantially enclosed premises.

27. Table 3 provides a summary of the changes to the no-smoking signage requirements proposed under option Three.

Table 3

| <b>Aspect of sign</b> | <b>2007 Regulations</b>   | <b>Option 3 proposal</b>  |
|-----------------------|---|---|
| Graphic warning       | <p><u>Premises</u><br/>A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 85 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p> <p><u>Vehicles</u><br/>A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 75 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p> | <p><u>All premises and vehicles</u><br/>Require that the no-smoking sign must contain a legible graphic representation of a lit cigarette within a circle with a line through it which crosses the cigarette symbol.</p>  |
| Overall size/shape    | <p><u>Premises</u><br/>Must be flat and rectangular and at least 160 millimetres by 230 millimetres.</p> <p><u>Vehicles</u><br/>Not specified.</p>  | <p><u>All premises and vehicles</u><br/>Not specified.</p>  |
| Written warning       | <p><u>Premises</u><br/>Must contain the following words – “mae ysmygu yn y fangre hon yn erbyn y gyfraith / It is against the law to smoke in these premises”.</p> <p><u>Vehicles</u><br/>Not applicable.</p>   | <p><u>Enclosed and substantially enclosed premises and vehicles</u><br/>Not specified.</p> <p><u>Hospital grounds, school grounds and public playgrounds</u><br/><b>[As per option two]</b><br/>Must contain a legible warning bilingually in Welsh and in English that smoking</p> |

|          |   |  |
|----------|---|--|
|          |   | <p>is not permitted in the premises or area covered by the smoke-free requirements with specific warning message per premises type.</p> <p>For example: <i>“It is against the law to smoke in these hospital grounds/Mae ysmegu yn nhir yr ysbyty hwn yn erbyn y gyfriath”</i>; for playgrounds with no clear boundary <i>“It is against the law to smoke within 5 metres of this play equipment/Mae ysmegu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfriath”</i>.</p> |
| Location | <p><u>Premises</u><br/>Must be displayed in a prominent position at or near each entrance to smoke-free premises.</p> <p><u>Vehicles</u><br/>Must be displayed in a prominent position in each compartment of the vehicle, which is wholly or partly covered by a roof, including the driver’s compartment.</p> | <p><u>Enclosed and substantially enclosed premises and vehicles</u><br/>Not specified.</p> <p><u>Hospital grounds, school grounds and public playgrounds</u><br/><b>[As per Option Two]</b><br/>Must be displayed in a prominent position at or near the main entrance(s) to smoke-free premises; for playgrounds with no clear boundary, in a prominent position near the playground.</p>   |

Smoke-free vehicles

28. Option Three would add to the types of enclosed vehicles that are required to be smoke-free by requiring that enclosed vehicles are smoke-free when being used in the course of paid or voluntary work purposes whilst carrying a person who is receiving goods or services from the person using the vehicle. Such vehicles are not covered by the existing provisions on smoke-free vehicles because they are not wholly or mainly used for work or public transport purposes and they are not being used in a private capacity at the time of use. For example, a car that is used in the course of child-minding to take children to/from school but is otherwise used for private, social or

domestic purposes; a car that is used only part-time to provide private hire services. These vehicles would not be required to be smoke-free all of the time but only when a person in the vehicle is receiving goods or services from the person using the vehicle.

## Costs

### Welsh Government

29. There would be a cost associated with this option in implementing the legislation and producing associated guidance.
30. The new legislation would need to be publicised with schools, hospitals, local authorities, child care providers, hotels, etc., tourism operators and the general public. For managers of premises and enforcement officers, this would be done using the normal routes of communication. There would also be a public information campaign on the new provisions of the smoking ban.
31. In the Explanatory Memorandum supporting the Public Health (Wales) Act 2017, the approach for providing guidance was to update the existing smoke-free guidance. However, since the consultation, it has become clear that the guidance will require a more extensive overhaul therefore the costs have been updated to reflect the additional work. These costs are estimated at approximately £9,000 and cover staffing costs to write the guidance (based on 6,000 words) and engaging with stakeholders to ensure the guidance is fit for purpose.. This is based on approximately five weeks of a full-time equivalent (FTE) higher executive officer (£5,500) to develop the guidance, and five weeks of a FTE team support for administration support (approximately £3,500).
32. It is anticipated that design and typesetting would require one week of a 0.5 FTE executive officer, which would cost approximately £600. It is estimated that translation and proofreading would cost approximately £600. There would be no printing costs for the guidance as it would only be produced electronically. The total cost for the development, design and translation of guidance would therefore be £10,200. The costs associated with producing the guidance would be incurred in 2020/21.
33. The guidance would be updated every three years. It is anticipated that this would require approximately one week of a FTE higher executive officer, which would equate to approximately £1,100. Design and translation costs would amount to half the original costs, a total of £600. There would be no printing costs for the review as it would only be produced electronically. The total cost for each review would therefore be approximately £1,700, incurred every three years. The first review would take place in 2023-24.
34. The Welsh Local Government Association (WLGA) guidance<sup>13</sup> relating to enforcement of the provisions in the 2006 Act and the 2007 Regulations would similarly need to be updated to include a common support and enforcement approach to the new provisions, with best practice advice for

---

<sup>13</sup> [www.wlga.gov.uk/download.php?id=1235&l=1](http://www.wlga.gov.uk/download.php?id=1235&l=1)

those implementing the legislation.

35. The costs for the public information campaign were considered in the RIA for the 2017 Act. Based on that assessment, the cost to Welsh Government in 2020-21 is estimated to be between £51,400 to £72,500 (costs have been updated to 2019-20 prices).

#### Enforcement

36. Under this option, the duty to prevent smoking would be applied to hospital grounds, school grounds and public playgrounds. Guidance will be provided to the managers of these premises to support them in implementing the duty, to demonstrate compliance and to ensure consistency in the application of any enforcement action. Training will also be available to enforcement officers on this element.

37. Funds of £2,000,000 per annum were made available to local authorities when the 2007 Regulations came into force. As the existing smoke-free requirements are virtually self-enforcing, enforcement of the extended smoke-free requirements would be expected to be accommodated within this existing budget.

#### Dwellings that are workplaces

38. There would be no additional costs to dwellings that are workplaces under this option because dwellings are not expected to make any adaptations to the premises in order to be smoke-free during the time they are used as a workplace. There is no legal requirement to display no-smoking signs because dwellings are exempt from the requirements on signage by the 2017 Act; as a result there are no associated costs for signage.

#### Smoke-free vehicles

39. There would be no additional costs for owners of smoke-free vehicles under this option. Vehicles that are not wholly or mainly used for work purposes but are required to be smoke-free when a person in the vehicle is receiving goods or services from another person also in the vehicle are not required to display no smoking signs. There are therefore no associated costs for signage.

#### Hotels, Guesthouses, Inns, Hostels and Members clubs and holiday and temporary accommodation.

40. There may be some costs for managers of hotels, etc. relating to revoking any rooms designated for smoking under the 2007 Regulations, as well as for owners/managers of self-contained accommodation used for temporary or holiday purposes. These would be costs associated with reviewing the new guidance, updating their smoking policy and giving the accommodation and its soft furnishings a deep clean.
41. Robust data on how many hotels, etc. and self-contained accommodation used for temporary or holiday purposes in Wales that enable smoking are not available. An internet search showed very few hotels, etc. in Wales that provide smoking bedrooms or static caravans and holiday rental

accommodation (cottages etc) that permit smoking; whilst it is possible that not all premises that permit smoking advertise this explicitly, it appears that the exemption provided by the 2007 Regulations is not widely used.

42. The most recent Welsh Government bedstock<sup>14</sup> data show there were 96,386 bedspaces available in Wales in the Service sector (hotels, guesthouses and bed and breakfasts) and hostels in 2013. Assuming most bedrooms in hotels, etc. are double occupancy rooms we have based per-bedroom cost estimates in this RIA on there being around 48,193 bedrooms across hotels, etc. in Wales. Given the lack of robust data on bedrooms designated for smoking within hotels, etc. and the small number listed on the internet, we have based cost estimates on a range of 1% to 2% of hotel, etc. bedrooms being designated for smoking, which equates to approximately 482 to 964 bedrooms across Wales in which smoking is permitted. The same dataset shows there were 3,429 Serviced accommodation and hotels in Wales in 2013. We have therefore based per-premises cost estimates on the same range of 1% and 2%, (which equates to approximately 34 to 68 premises) across Wales that have one or more bedrooms designated for smoking.
43. The Welsh Government bedstock data also showed there are 7067 self-catering establishments (cottages, apartments etc), and 1322 establishments in Wales offering Caravan/camping. It is understood that there is great variation between holiday parks/sites, with some accommodating hundreds of caravans and others just a few. The data also does not differentiate between establishments providing camping and those providing caravans, or indeed those offering caravans for holiday rental, rather than for use as a dwelling. It is therefore not possible to accurately estimate the number of these types of premises that currently permit smoking and will be affected by the provisions. Cost estimates are therefore based on a range of 1% to 2% of self-contained establishments and caravan camping establishments which equates to 84 to 168 self-contained temporary or holiday premises across Wales that permit smoking.
44. Managers of hotels, etc. would need to consider the legislation against their existing smoking policy and read any related guidance. However, this would be limited to those premises that currently permit smoking in designated bedrooms as there would be little action required for hotels, etc. that already operate a totally no smoking policy. Hotels, etc. with smoking rooms will vary in the amount of time they allocate to do this work and so it has been assumed that, on average, each premises would spend an hour on it. Assuming it would be the manager or proprietor of a hotel, etc. that would undertake this work, we estimate the total cost would be a range of £548 to £1,096 in the first year. This is based on Office for National Statistics data on mean hourly rates of pay for hotel and accommodation managers<sup>15</sup> and

---

<sup>14</sup> Summary of Wales Bedstock Data: Situation as at March 2013. Welsh Government <https://gov.wales/accommodation-bedstock-march-2013>

<sup>15</sup> Work Region Occupation SOC10 (4) Table 15.6a Hourly Pay (mean £16.12) – Excluding overtime 2019. Office for National Statistics. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15>

between 34 and 68 premises needing to carry out this work. Similar assumptions have been made in relation to self-contained temporary or holiday accommodation in Wales. The total cost would be a range of £1,354 to £2,708 in the first year.

45. Costs to deep clean any smoking bedrooms have been based on those available for studio flats as these would generally include a bathroom and small kitchen area and therefore comparable to an en-suite bedroom. An internet search of the websites of cleaning service providers<sup>16</sup> found the costs to be around £125 to £150 per studio flat; the additional cost of steam or dry cleaning an average sized bedroom carpet, one double mattress, one armchair and one long pair of curtains is around £125 to £175, giving a total cost per bedroom of between £250 to £325. Self-contained accommodation, such as caravans and cottages tend to be larger than an en-suite hotel bedroom but the variety of these types of accommodation make cost estimates difficult. For these purposes the costs estimated are between £400 and £500.
46. Based on a range of 482 to 964 current smoking bedrooms in hotels, etc. requiring a deep clean at a cost per bedroom of between £250 to £325, the cost to hotels, etc. to go entirely smoke-free is estimated to be between £120,500 to £313,300 in the first year of implementation. The costs associated with the upkeep of bedrooms from there onwards are considered to be maintenance in the normal course of business and so are not included in future years. For self-contained accommodation being used for holiday or temporary purposes, the estimate for cleaning costs is between £33,600 and £84,000.
47. Any 'smoking permitted' signage would have to be removed and the costs associated are considered to be minimal. There would be no legal requirement to replace these with no-smoking signs in the previously designated bedrooms for smoking/premises, although managers of premises may choose to display new signage. The other enclosed and substantially enclosed areas of the hotels, etc. are required to be smoke-free and so it is assumed that hotels, etc. would already display no-smoking signs at the main entrance(s) to the premises in line with the requirements of the 2007 Regulations. There are therefore no costs associated with new or additional signage.
48. Hotels, etc. that have a number of designated smoking bedrooms/ establishments that provide self-contained accommodation and permit smoking may lose some trade if their customers choose to stay at their premises solely because they provide smoking accommodation. They may, however, also gain some trade from customers who otherwise would not choose to stay there because smoking is permitted in some of the bedrooms. The overall impact on trade for hotels, etc. and the holiday and

---

<sup>16</sup> A studio flat was considered the most comparable property to a hotel, etc. bedroom which commonly includes an en suite bathroom. Costs taken from <http://www.bdcleaning.co.uk/prices.html>, [http://www.clean-and-dusted.co.uk/cleaning\\_services\\_pricelist.php](http://www.clean-and-dusted.co.uk/cleaning_services_pricelist.php), <http://busyhandscleaners.co.uk/prices/#1494394796419-1ccb5461-ea08>

temporary accommodation tourism sector is therefore considered to be cost neutral.

#### Mental health units

49. There will be costs for Mental Health Units (MHUs) that have designated smoking rooms under the exemption provided by the 2007 Regulations. The costs to remove the smoking rooms include reviewing new guidance and updating smoking policies. Costs associated with cleaning a room designated for smoking within a mental health unit have not been included as we understand such rooms are usually sparsely furnished due to the risk of fire (i.e. no carpet or curtains; only plastic furniture).
50. The Welsh Government issued a questionnaire to mental health units in Wales (NHS mental health hospitals, private adult mental health units and care homes with mental health units). Responses received from private and NHS MHUs, on whether indoor smoking rooms are designated, indicate that numbers are low, that most have indoor smoking policies in place and most have designated outdoor smoking areas. The total number of designated smoking rooms across all responses indicated that eleven smoking rooms have been designated.
51. Managers of MHUs would need to consider the legislation against their existing smoking policy and read any related guidance. This would be limited to MHUs that currently permit smoking in designated rooms as there would be little action required for those that already operate a totally no-smoking indoor policy. It has been assumed that every MHU would spend an hour on it. Assuming it would be the manager that would update the guidance; we estimate that the cost would be around £200 in the first year. This is based Office on National Statistics data on hourly rates of pay for residential, day and domiciliary care managers and proprietors<sup>17</sup>.
52. Existing signage that indicates smoking is permitted in a designated room would have to be removed. There would be no legal requirement to put up no-smoking signs instead. MHUs will already be required to display no-smoking signs that comply with the regulations as there will already be smoke-free parts of the premises.
53. There may be costs for MHUs that choose to designate an area for smoking in their grounds. However, the designation of areas within grounds for smoking would not be a mandatory requirement of the legislation and so the cost of such, including erecting smoking shelters and signage, is not accounted for in this appraisal.
54. Responses to the Welsh Government questionnaire sent to mental health units also indicated that all except one offered nicotine replacement therapy or cessation advice and support. There may be an increase in the uptake of

---

<sup>17</sup>Work Region Occupation SOC10 (4) Table 15.6a Hourly Pay (mean £17.33) – Excluding overtime 2019. Office for National Statistics.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15>

these services but service provision to all patients should already be accounted for within existing budgets and would not therefore represent an actual increase. Staff time to accompanying patients to outdoor areas to smoke could be minimised by ensuring that any designated smoking areas within hospital grounds are located as close as possible to the mental health unit and by limiting escorted smoking breaks to specific times.

#### Hospital grounds, school grounds and public playgrounds

55. There would be no additional costs to managers of hospital grounds, schools grounds or public playgrounds under this option to those already expressed in the RIA to the 2017 Act (table 4 includes these costs uprated to 2019-20 prices). Only limited additional new smoke-free signs would be required to make it clear that smoking in the grounds is against the law, and the costs associated with these are accounted for in the RIA to the Act (table 4 includes these costs uprated to 2019-20 prices). Existing signage relating to voluntary smoking bans in hospital grounds and public playgrounds may be retained and some may even comply with the proposed minimum requirements on the graphic warning depending on the design; although a sign bearing the written warning will be required in all instances. Some schools may already operate voluntary smoking bans in their grounds and these signs could also be retained.
56. The costs associated with considering guidance on the new requirements, updating policies and payment of any fixed penalty notices that may be issued in relation to smoke-free offences are accounted for in the RIA to the 2017 Act (table 4 includes these costs uprated to 2019-20 prices).
57. There may be costs for managers of hospital grounds and schools that provide residential accommodation for pupils, that choose to designate an area for smoking in their grounds. These would be associated with complying with the requirements of such a designation such as clearly marking the area for smoking, recording the designation and communicating it to relevant stakeholders, plus any other costs such as erecting bins for smoking debris. However, as it is not a legal requirement that such a designation is made, these costs have not been accounted for here.

#### Managers of enclosed and substantially enclosed smoke-free premises and vehicles

58. There would be no additional costs to managers of enclosed and substantially enclosed smoke-free premises and vehicles under this option as existing no-smoking signs would comply with the new provisions. There is no requirement for vehicles that are not wholly or mainly used in the course of paid or voluntary work but where members of the public attend to receive goods or services to be smoke-free to display no-smoking signs and so there are no associated costs.
59. Should managers choose to replace their no-smoking signs due to refurbishment or when fitting out new premises, they will have flexibility to choose the size and colour of their no-smoking sign provided the graphic warning complies. There may, therefore, be some cost savings, although



these have not been quantified here.

### The Public

60. Removal of the specific requirements on size and location of smoke-free signs could result in signs going unnoticed by the public in enclosed and substantially enclosed premises which may increase the risk of smoking in a smoke-free place. However, the current smoking ban has high levels of compliance<sup>18</sup> and changes to the signage requirements are unlikely to affect this. In addition, the proposed legibility requirement would, to a certain extent, dictate the overall size of the sign ensuring that it is not so small it cannot be read. It is in the interest of managers of enclosed and substantially enclosed smoke-free premises to display effective smoke-free signs in order to meet their duty to prevent smoking there.
61. Removal of the specific requirements on colour of the graphic warning could result in the sign not being recognised as a smoke-free sign. However, the risk of this is low as the 'no-smoking' symbol is already well established and therefore easily recognised even when not a red/white sign. Where a sign is required for the purpose of conveying a message on health and safety at work<sup>19</sup>, separate legislation requires that these signs are red<sup>20</sup> and this would not change. The number and value of FPNs and fines issued are therefore assumed to be the same as in the RIA for the 2017 Act.

### Health

62. Smoke-drift from any areas designated for smoking would potentially expose people near those areas to second-hand smoke. The conditions of designation should minimise this by requiring that designated areas are located at least 10 metres from any other smoke-free premises other than the smoke-free premises in which the area has been designated. Evidence suggests that in outdoor settings the harm from second hand smoke begins to dissipate from a single cigarette after 2 metres<sup>21</sup>, and continues to fall and approach zero at distances greater than this, particularly beyond 5 metres. A clearly marked designated area will ensure the public is well informed about where smoking is permitted within the grounds, therefore minimising the risk of non-smokers entering the area unawares. The maximum size of the designated area will prevent large areas of the grounds, which would otherwise be smoke-free, from being designated as not smoke-free. The overall impact on the health of non-smokers of designated smoking areas in hospital grounds and relevant school grounds is therefore considered limited and not costed here.
63. Patients of mental health units may consider that their wellbeing is being impacted negatively by being forced to go outside to smoke; however, they have the option of receiving nicotine replacement therapy or cessation advice which may help to mitigate this. Furthermore, this is difficult to

---

18 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216319/dh\\_124959.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216319/dh_124959.pdf)

19 Management of Health and Safety at Work Regulations 1992 requires that a risk assessment is made by the employer; where that assessment finds that a risk cannot be avoided or adequately reduced, the employer should provide appropriate safety signs to warn or instruct, or both, employees of the nature of those risks and the measures to be taken to protect against them.

20 <http://www.legislation.gov.uk/ukxi/1996/341/schedule/1/made>

21 <http://www.ncbi.nlm.nih.gov/pubmed/17518219>

quantify, therefore no estimate has been included.

*Table 4. Summary of additional costs associated with option three and the Public Health (Wales) Act 2017 (costs have been uprated to 2019-20 prices).*

|   | 2020/21 (£)              | 21/22 (£)               | 2022/23 (£) | 2023/24 (£)   | 2024/25 (£) |
|---|--------------------------|-------------------------|-------------|---------------|-------------|
| <b>Welsh Government</b>   |                          |                         |             |               |             |
| Communications Campaign   | £51,400 - £72,500        | £0                      | £0          | £0            | £0          |
| Producing guidance to organisations, businesses and the general public.   | £9,000                   | £0                      | £0          | £1,600        | £0          |
| Design and translation of the new guidance  | £1,200                   | £0                      | £0          | £0            | £0          |
| Updating WLGA guidance relating to enforcement of the provisions in the 2006 Act and the Smoke-Free Regulations 2007. | £1,600                   | £0                      | £0          | £1,600        | £0          |
| Enforcement training sessions   | £2,500                   | £0                      | £0          | £0            | £0          |
| <b>Total costs for Welsh Government</b>   | <b>£65,700 - £86,800</b> | <b>£0</b>               | <b>£0</b>   | <b>£3,200</b> | <b>£0</b>   |
| <b>Local Authorities</b>  |                          |                         |             |               |             |
| Reviewing existing voluntary practices or policies against legislation  | <b>£40,900</b>           | £0                      | £0          | £0            | £0          |
| Enforcement training  | <b>£9,900</b>            | £0                      | £0          | £0            | £0          |
| Signage – Schools   | <b>£17,400 - £68,000</b> | £0                      | £0          | £0            | £0          |
| Signage – Playgrounds   | <b>£24,000 - £66,700</b> | <b>£6,100 - £16,675</b> | £0          | £0            | £0          |

|   |  |                         |           |           |           |
|---|--|-------------------------|-----------|-----------|-----------|
| <b>Total costs for local authorities</b>                                | <b>£92,200 - £185,500</b>                | <b>£6,100 - £16,700</b> | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Schools (Voluntary aided, foundation and independent)</b>            |  |                         |           |           |           |
| Reviewing existing voluntary practices or policies against legislation  | <b>£6,600</b>                            | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| Signage   | <b>£3,400 - £11,200</b>                  | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Total costs for schools</b>  | <b>£10,000 - £17,800</b>                 | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Health Boards</b>  |  |                         |           |           |           |
| Reviewing existing voluntary practices or policies against legislation  | <b>£3,500</b>                            | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| Signage   | <b>£17,500 - £22,000</b>                 | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Total costs for Health Boards</b>                                    | <b>£21,000 - £25,500</b>                 | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Independent Hospitals</b>  |  |                         |           |           |           |
| Reviewing existing voluntary practices or policies against legislation  | <b>£900</b>                              |                         |           |           |           |
| Signage   | <b>£3,400 - £4,000</b>                   | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Total costs for independent hospitals</b>                            | <b>£4,300 - £4,900</b>                   | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Mental Health Units</b>  |  |                         |           |           |           |
| Reviewing guidance and updating smoking policies in mental health units | <b>£200</b>                              | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Total cost to Mental health units</b>                                | <b>£200</b>                              | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |
| <b>Hotels, etc. and Holiday and temporary accommodation</b>             |  |                         |           |           |           |
| Cleaning existing smoking rooms   | <b>£120,500 to £313,000 (Hotels etc)</b> | <b>£0</b>               | <b>£0</b> | <b>£0</b> | <b>£0</b> |

|  |  |                                       |               |               |               |
|--|--|---------------------------------------|---------------|---------------|---------------|
|  | £34,000 to £84,000 (holiday and temporary accommodation)                               |                                       |               |               |               |
| Reviewing guidance and updating smoking policies in hotels | £500 to £1,000 (hotels etc.)<br>£1,300 to £2,700 (holiday and temporary accommodation) | £0                                    | £0            | £0            | £0            |
| <b>Total cost to Hotels, etc.</b>                          | <b>£156,300 to £400,700</b>  | <b>£0</b>                             | <b>£0</b>     | <b>£0</b>     | <b>£0</b>     |
| <b>Public</b>  |  |                                       |               |               |               |
| Fixed penalty notices                                      | <b>£3,100</b>  | <b>£4,200</b>                         | <b>£4,000</b> | <b>£2,000</b> | <b>£2,000</b> |
| Fines  | <b>£2,000</b>  | <b>£1,800</b>                         | <b>£2,200</b> | <b>£600</b>   | <b>£600</b>   |
| Total costs for the public                                 | <b>£5,100</b>  | <b>£6,000</b>                         | <b>£6,200</b> | <b>£2,600</b> | <b>£2,600</b> |
| <b>Total costs</b>   | <b>£354,800 to £726,500</b>  | <b>£12,100</b><br>-<br><b>£22,700</b> | <b>£6,200</b> | <b>£5,800</b> | <b>£2,600</b> |

64. The total costs related to this option are estimated to be £354,800 to £726,500 in the first year before dropping sharply from the second year onwards.

## Benefits

### Enforcement

65. The amendment to the meaning of 'substantially enclosed' will address the current confusion as to whether structures which do not form part of the premises but which serve the purpose of walls, and therefore form part of the perimeter of the premises, should be considered when assessing whether the premises is 'enclosed' or 'substantially enclosed'. This will help enforcement of the provisions by making clear that other structures that form part of the perimeter of the premises should be included when making such a consideration.

66. The relaxed requirements on no-smoking signs would allow the provisions to cover all types of enclosed, substantially enclosed and not enclosed or substantially enclosed smoke-free premises and smoke-free vehicles. Reviewing the specified written warning and requirements on location of sign for hospital and school grounds and public playgrounds after four years of coming into force, with a view to removing this requirement provided compliance with the smoking ban in those places is at acceptable levels, will result in an overall simpler regime for no-smoking signs across all premises

types.

#### Dwellings that are workplaces

67. Members of the public who work from home would have clarity on whether their dwelling should be smoke-free when being used as a workplace. Where the dwelling is required to be smoke-free, there would be a benefit to the household because the premises would not have to be smoke-free all of the time (as is the case in the requirements of the 2007 Regulations) with no associated cost.

#### Workers in hotels, etc., holiday or temporary accommodation and mental health units

68. The smoking ban was introduced to protect employees and the public from the harmful effects of second-hand smoke. Option Three would provide health benefits to workers in hotels, etc., and holiday and temporary accommodation and mental health units who would no longer have to enter a room, premises or bedroom designated for smoking whilst smoking is taking place or shortly afterwards to undertake their work duties. Second-hand smoke is known to emit more than 50 chemicals recognised as carcinogens, as well as many toxic irritant agents<sup>22</sup>. In addition, research conducted since the 2007 Regulations were made shows that tobacco smoke residues lingering in the indoor environment, also termed third-hand smoke (THS), can be a source of long-term exposure to harmful pollutants<sup>23</sup>.

#### Mental health units

69. Removing the exemption will bring the law in line with general hospital service users and will aim to address health inequalities for persons suffering with mental health conditions. It will also bring Welsh law in line with England, which since 1 July 2008 requires all enclosed or substantially enclosed areas in residential mental health units in England to be smoke-free.

#### Managers of smoke-free premises and vehicles

70. Removing the specifications on the colour and size of no-smoking signs from the 2007 Regulations would allow premises to comply flexibly with their own signage providing it meets the proposed basic prescribed design principles.

71. Many of the pre-existing signs for voluntary smoking bans in hospital grounds and public playgrounds incorporate a version of the international no-smoking symbol; these may comply with the new reduced minimum requirements for no-smoking signs. Continued use of these signs would therefore be permitted provided they are supported by the proposed written warning.

---

<sup>22</sup> <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

<sup>23</sup> Inhalable Constituents of Third hand Tobacco Smoke: Chemical Characterization and Health Impact Considerations. Environ. Sci. Technol., 2014, 48 (22), pp 13093–13101 DOI: 10.1021/es5036333 <http://pubs.acs.org/doi/abs/10.1021/es5036333>

## Health

72. Legislation to ban smoking in enclosed public places was introduced in Wales in 2007 to protect the public from the harms associated with second-hand smoke. The smoking ban has been a public health success. Research commissioned by the Welsh Government shows air quality in enclosed public places has improved significantly since the smoking ban was introduced<sup>24</sup>. The number of non-smokers being exposed to second-hand smoke has also reduced from 66% in 2005-06 to 42% in 2007, and has remained fairly stable<sup>25</sup>. Extending the places where smoking is not permitted is therefore likely to have similar positive effects on the health of the people of Wales. Reducing opportunities to smoke and making it more difficult to do so may also encourage quit attempts by existing smokers.

### **Summary and preferred option**

73. Option One would maintain the existing situation and would not contribute to the ongoing denormalisation of smoking in society or promote behaviour change to smoking cessation.

74. Option Two would support the enforcement of the current voluntary bans in school grounds, hospital grounds and public playgrounds and would implement the provisions of the Act but without further impact on current smoke-free legislation.

75. Option Three is the preferred option as it would further extend the places that are smoke-free in Wales and therefore marks a step towards the Welsh Government's aim of a smoke-free society. Reinvigorating public awareness on the smoking ban may also have the added benefit of encouraging additional smokers to quit.

76. It is estimated that, on average, preventing the uptake of smoking results in one year life gain per individual<sup>26</sup>. This life gain is valued at £60,000<sup>27</sup> per person. Applying these figures, option Three would therefore need to prevent a minimum of seven children and a maximum of thirteen children in Wales from taking up tobacco smoking over the five-year period for this measure to be cost neutral.

### **Competition Assessment**

77. There are no anticipated effects on competition arising from this legislation. Table 5 below sets out the conclusions of the competition filter test and the

---

24 <http://gov.wales/topics/health/improvement/smoking/legislation/ban/?lang=en>

25 Tobacco and Health in Wales 2012 – <http://www.wales.nhs.uk/sitesplus/922/page/50314>

26 Age of Sale for Nicotine Inhaling Products: Impact Assessment. <https://www.gov.uk/government/consultations/nicotine-inhaling-products-introducing-a-minimum-age-of-sale>

• 27 HM Treasury Green Book, Annex A2, p73

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf)

A value of £60,000 is assigned to a Quality Adjusted Life Year. Where Quality Adjusted Life Year estimates are not readily available, and it is appropriate this value is used for Life Years. This is consistent with similar valuation of policies that mitigate mortality or morbidity risk by other Government departments, based upon studies of what members of the public are on average willing to spend to reduce their own mortality risk, or to improve their own health outcomes.

test does not indicate the need for a full competition assessment. There are no detrimental effects on competition expected.

Table 5 - *Competition filter test*

| The competition filter test  |                     |
|--|---------------------|
| Question   | Answer<br>yes or no |
| <b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?                               | No                  |
| <b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?                               | No                  |
| <b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?          | no                  |
| <b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?   | No                  |
| <b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?                                | No                  |
| <b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?  | No                  |
| <b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No                  |
| <b>Q8:</b> Is the sector characterised by rapid technological change?  | No                  |
| <b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?     | No                  |

### Post implementation review

78. As the provisions in the 2017 Act and the 2020 Regulations will be implemented at the same time, a review of this smoking legislation will take place three years after implementation to establish the actual costs and benefits and also whether it is achieving its desired effects.

79. The impact from the 2020 Regulations, as well as the 2017 Act will be monitored as part of wider health surveillance on smoking behaviours in the National Survey for Wales. However, it will be difficult to fully attribute certain population level trends (as may be identified through this type of data) to the effects of the legislation. Whilst the provisions seek to make a general contribution towards reducing smoking rates and uptake, particularly among children and young people by further restricting the visibility of smoking, it would not be possible for such a trend to be attributed solely to the legislation. This is because other areas of legislation such as the introduction of age restrictions on the sale of nicotine products, standardised packaging for tobacco products, and the Tobacco and Related Products Regulations 2016, which transpose the EU Tobacco Products Directive will also be having an effect, alongside other societal influences.





---

## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

---

**TITLE**            **Implementing the Smoke-free requirements in Chapter 1 of Part 3  
of the Public Health (Wales) Act 2017 and the Smoke-free  
Premises and Vehicles Regulations 2020**

**DATE**            **29 September 2020**

**BY**                **Vaughan Gething MS, Minister for Health and Social Services**

The Public Health (Wales) Act 2017 (“the 2017 Act”) replaces restrictions on smoking in enclosed and substantially enclosed public and work places previously found in the Health Act 2006 and gives Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles. The 2017 Act places restrictions on smoking in school grounds, hospital grounds, public playgrounds and outdoor care settings for children. The Smoke-free Premises and Vehicles (Wales) Regulations 2020 (“the 2020 Regulations”) will supplement certain provisions in Chapter 1 of Part 3 of the 2017 Act and will replace the Smoke-free Premises etc. (Wales) Regulations 2007. Taken together, the 2017 Act provisions and the 2020 regulations will introduce a new smoke-free regime in Wales that is aimed at protecting public health from the harms of second-hand smoke and at further denormalising smoking behaviour by restricting smoking in more public places, particularly where children are likely to be present on a regular basis (such as school grounds and public playgrounds).

On 23 June 2020 under the Technical Standards Directive 2015/1535/EU, the Welsh Government notified the EU Commission and Member States with the draft 2020 Regulations. The required three month standstill period ended on 24 September 2020 with no objections raised. I have therefore signed a Commencement Order, bringing enabling provisions found within Chapter 1 of Part 3 of the 2017 Act into force for the purpose of laying the 2020 Regulations before the Senedd today. I look forward to the debate on these Regulations, which is scheduled to take place on 20 October 2020.

In my Cabinet Written Statement issued on 24 June 2020, I explained that whilst I am keen for the measures in the 2017 Act and 2020 Regulations to be in place, I understand their success relies on the efforts of key stakeholders. Officials have undertaken a period of engagement with stakeholders to understand their views on the introduction of the legislation's requirements and what they would require to support implementation. I am grateful to all stakeholders that took part in this process. I am also encouraged by the support expressed and the views provided on how the benefits from the measures can be maximised. Based on this feedback, and to provide stakeholders with adequate time to prepare for the legislation's introduction, I have decided to bring the new smoke-free regime into force on 1 March 2021, subject to the agreement of the Senedd to the 2020 Regulations. My officials are developing the details of the implementation package, including guidance documents, and will be working closely with stakeholders during this process. If Members or stakeholders would like further information on this process or around implementation, please contact: TobaccoPolicy@gov.wales.

<https://senedd.wales/laid%20documents/sub-ld13531-em/sub-ld13531-em-e.pdf>

<https://senedd.wales/laid%20documents/sub-ld13531/sub-ld13531-e.pdf>

## SL(5)626 – Senedd Cymru (Disqualification) Order 2020

### Background and Purpose

Prior to each Senedd general election an Order in Council under section 16 of GOWA 2006 is made, that specifies offices whose holders are disqualified from membership of the Senedd.

At present, the National Assembly for Wales (Disqualification) Order 2015 is still in force, therefore persons holding any of the offices specified in the 2015 Order are disqualified from membership of the Senedd.

This will revoke the 2015 Order and set out an updated list of disqualifying offices before the next Senedd general election. The Order will take effect at the first Senedd election on or after 5 April 2021. It will sit alongside the disqualifications set out in section 16 of and Schedule 1A to the Government of Wales Act 2006, as amended by the Senedd and Elections (Wales) Act 2020 and any other specific disqualifications provided for in other legislation to produce the full list of disqualifying offices. The Explanatory Note to the Order makes clear that it should be read alongside section 16 of, and Schedule 1A to, the Government of Wales Act 2006.

Its purpose is to disqualify the holders of certain offices from membership of the Senedd (but not from being a candidate to be a Member of the Senedd) where this is necessary to protect the independence of the electoral process, prevent conflicts of interest, or to protect particular public offices from political bias.

### Procedure

Draft Affirmative.

### Technical Scrutiny

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

### Merits Scrutiny

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

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

The Explanatory Memorandum that accompanies this Order notes that the criteria used to form the basis of the list of disqualified offices emanates from this Committee's



recommendations in 2014 following its inquiry into the rules pertaining to disqualification from membership of the Senedd .

The Explanatory Memorandum states the following:

*"In 2014 the Constitutional and Legislative Affairs (CLA) Committee carried out an inquiry into the rules pertaining to disqualification from membership of the Senedd. This included 21 recommendations and proposed an overhaul of the legislative framework surrounding disqualifications from membership of the Senedd. The Welsh Government agreed with the overall thrust of the CLA Committee's report.*

*In its response to the CLA Committee's report the Welsh Government made a commitment to consult on the National Assembly for Wales (Disqualification) Order 2015 and by consulting on the draft Senedd Cymru (Disqualification) Order 2020 we continued to honour that commitment.*

*The consultation for the draft Senedd Cymru (Disqualification) Order 2020 was carried out between 22 June 2020 and 1 September 2020, and the draft Order takes account of the outcome of that consultation.*

*The criteria for determining which offices were to be included in the National Assembly for Wales (Disqualification) Order 2015 were based on the principles set out in the CLA Committee's report with some additional considerations by the Welsh Government. This same criteria has continued to be used for the draft Senedd Cymru (Disqualification) Order 2020. This criteria was published in the Welsh Government's consultation on the draft Senedd Cymru (Disqualification) Order 2020."*

## **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**

As a result of the consultation carried out between the 22<sup>nd</sup> June and 1<sup>st</sup> September 2020, the Explanatory Memorandum lists the following offices that have been added to the draft Order as disqualified offices:

*"The Chief Executive of the Local Democracy and Boundary Commission for Wales is currently a joint post with the Boundary Commission for Wales. However, this arrangement may not always be in place, and therefore we have included the Secretary of the Boundary Commission for Wales in the draft Order, as the Secretary would be the head of the Commission if the Boundary Commission for Wales became a standalone organisation with its own Secretariat.*

*After considering the response requesting that consideration should be given to the inclusion of the Information Commissioner the Welsh Government has concluded that as there is a need for the Information Commissioner to be able to make objective and impartial judgements about the conduct of the Welsh Government and Welsh Ministers in respect of data and information the Information Commissioner will be added to the draft Order.*



*It had been brought to our attention that the Commissioners and Non-Executive Board Members of the Law Commission should be included in the draft Order. The Wales Act 2014 allowed Welsh Ministers to refer projects to the Law Commission. The same Act also obliges the Welsh Ministers to report on Law Commission proposals in Welsh devolved areas, and required a Protocol to be established between the Law Commission and the Welsh Ministers.*

*Commissioners of the Judicial Appointments Commission (JAC) were also added to the draft Order as the JAC conducts appointments to devolved tribunals on behalf of Welsh Ministers by means of an agreement under Section 83 of the Government of Wales Act 2006.*

*The Judicial Appointments and Conduct Ombudsman will also be included in the draft Order as the Ombudsman can be involved in disciplinary cases for judges and members of the Welsh Tribunals."*

## Implications arising from exiting the European Union

None.

## Government Response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**8 October 2020**



---

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

---

**2020 No.**

**CONSTITUTIONAL LAW**

**REPRESENTATION OF THE PEOPLE, WALES**

**The Senedd Cymru (Disqualification) Order 2020**

*Made* 11th November 2020

*Coming into force* 12th November 2020

At the Court at Buckingham Palace, the 11th day of November 2020

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 16(6) of the Government of Wales Act 2006<sup>(1)</sup> a draft of this Order was laid before, and approved by a resolution of, Senedd Cymru.

Accordingly, Her Majesty, in pursuance of sections 16(1) and (5) and 157(2) of that Act, is pleased, by and with the advice of Her Privy Council, to order as follows:

**Title and commencement**

1.—(1) The title of this Order is the Senedd Cymru (Disqualification) Order 2020.

(2) It comes into force on 12th November 2020 but articles 2 and 3 only have effect for the purposes of a Senedd Cymru election at which the poll is held on or after 5th April 2021.

**Designation of disqualifying offices**

2. The offices described in the Schedule are designated as offices disqualifying the holders of those offices from being Members of the Senedd.

**Revocation**

3. The National Assembly for Wales (Disqualification) Order 2015<sup>(2)</sup> is revoked.

---

(1) 2006 c. 32. Relevant amendments were made to section 16 by the Senedd and Elections (Wales) Act 2020 (anaw 1).

(2) S.I. 2015/1536.

*Name*  
Clerk of the Privy Council

## SCHEDULE

Article 2

### Offices disqualifying holders from membership of the Senedd

| <i>Offices and bodies in respect of which there are disqualifying offices</i>   | <i>The disqualifying offices</i>   |
|---|--|
| A National Park authority for a National Park in Wales  | All members  |
| A tribunal constituted under section 27 of, and Schedule 3 to the Education Act 2005 <sup>(1)</sup>   | All members  |
| A tribunal referred to in paragraph 10 of Schedule 26 to the School Standards and Framework Act 1998 <sup>(2)</sup>   | All members  |
| Adjudication Panel for Wales  | All members  |
| Advisory Committee on Dangerous Pathogens   | All members  |
| The advisory committee for Wales established under section 5(1) of the Food Standards Act 1999 <sup>(3)</sup>   | All members  |
| Advisory, Conciliation and Arbitration Service  | All members of the Council   |
| Agricultural Land Tribunal for Wales  | All members  |
| Arts Council of Wales   | All members  |
| Big Lottery Fund  | All members appointed under paragraph 1 of Schedule 4A to the National Lottery etc. Act 1993 <sup>(4)</sup> or of a committee established under paragraph 7(1)(b) of that Schedule                               |
| The Board of Community Health Councils in Wales   | Chair, and members appointed by the Welsh Ministers under regulation 34(1)(f) of the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 <sup>(5)</sup>                 |
| Board of Medical Referees   | All members appointed by the Welsh Ministers <sup>(6)</sup>  |
| Boundary Commission for Wales   | Commissioners and Secretary  |
| British Broadcasting Corporation Board  | All members  |
| British Council   | Chair and Chief Executive  |
| British Tourist Authority   | The member appointed by the Welsh Ministers  |
| British Transport Police Authority  | All members  |
| Certification Officer and any assistant certification officer having functions under the Trade Union and Labour Relations (Consolidation) Act 1992 <sup>(7)</sup> | Certification Officer and any Assistant Certification Officer  |
| Citizen Voice Body  | Non-executive members  |
| Consumer Council for Water  | All members of the Council and each regional committee of the Council established under section 27A of the Water Industry Act 1991 <sup>(8)</sup>  |
| Channel Four Television Corporation   | All members  |
| Community Health Councils   | All members appointed under regulations 3(1), 6, 7 and 8, and members co-opted by the Welsh Ministers under regulation 3(3A), of the Community Health Councils (Constitution, Membership and Procedures) (Wales) |



|   |  |
|---|--|
| Competition and Markets Authority   | Regulations 2010(9)<br>All members   |
| Development Bank of Wales Public Limited Company or any wholly owned subsidiary of Development Bank of Wales Public Limited Company                   | All Directors  |
| Education Workforce Council   | All members  |
| Emergency Ambulance Services Committee  | Chair  |
| Employment Tribunals and Employment Appeal Tribunal   | All members  |
| Financial Conduct Authority   | All members  |
| Fire and Rescue Service   | Inspector or Assistant Inspector appointed under section 28 of the Fire and Rescue Services Act 2004(10) |
| Firefighters' Pension Scheme Advisory Board for Wales   | All members  |
| First-tier tribunal   | All members  |
| Food Standards Agency   | All members  |
| Future Generations Commissioner   | Advisory Panel   |
| Gas and Electricity Markets Authority   | All members  |
| Health and Safety Executive   | All members  |
| Higher Education Funding Council for Wales  | All members, other than a member who is also an employee of the Council                                  |
| Human Fertilisation and Embryology Authority  | All members  |
| Human Tissue Authority  | All members  |
| Independent Adjudicator to Local Authorities in Wales   |  |
| Independent Case Examiner for the Department of Work and Pensions   | The Independent Case Examiner  |
| Independent Groundwater Complaints Administrator appointed under section 21 of and paragraph 27 of Schedule 7 to the Cardiff Bay Barrage Act 1993(11) |  |
| Independent Monitoring Authority for the Citizens' Rights Agreements  | All members  |
| Independent Office for Police Conduct Information Commissioner  | All members  |
| Joint Nature Conservation Committee   | All members  |
| Judicial Appointments Commission  | Commissioners  |
| Judicial Appointments and Conduct Ombudsman   |  |
| Law Commission  | Commissioners and Non-Executive Board members  |
| Local Government Pension Scheme Advisory Board  | Chair and Deputy Chair   |
| Local Health Board for an area in Wales   | All members, other than a member who is also an employee of the Board                                    |
| Marine Management Organisation  | All members  |
| Meat Promotion Wales  | All members  |
| Mental Health Review Tribunal for Wales   | All members  |
| National Employment Savings Trust   | All members  |

|   |   |
|---|---|
| Corporation   |   |
| National Health Service Trust all or some of whose hospital establishments or other facilities are situated in Wales  | Chair and Non-Executive Director  |
| National Library of Wales   | Trustees appointed by the Welsh Ministers   |
| National Museum Wales   | Trustees appointed by the Welsh Ministers   |
| Natural Resources Body for Wales known as Natural Resources Wales   | Chief Executive, Chair and members  |
| Office of Communications  | All members   |
| The Pensions Advisory Service   | Directors   |
| Pensions Ombudsman appointed under section 145 of the Pension Schemes Act 1993 <sup>(12)</sup> and any deputy to that Ombudsman appointed under section 145A of that Act                                      |   |
| Pension Protection Fund   | All members, and the Ombudsman for the Board of the Pension Protection Fund appointed under section 209 of the Pensions Act 2004 <sup>(13)</sup> and any deputy to that Ombudsman appointed under section 210 of that Act |
| Pensions Regulator  | All members, and committee members established by the Pensions Regulator under section 9 of the Pensions Act 2004 <sup>(14)</sup>   |
| Person holding a politically restricted post, within the meaning of Part 1 of the Local Government and Housing Act 1989 <sup>(15)</sup> , in:   |   |
| (a) a local authority in Wales, within the meaning of that Part,  |   |
| (b) a National Park Authority for a National Park in Wales  |   |
| Police and Crime Commissioner as established by section 1 of the Police Reform and Social Responsibility Act 2011 <sup>(16)</sup> , and any Deputy appointed by the Commissioner under section 18 of that Act |   |
| Professional Standards Authority for Health and Social Care   | All members   |
| Qualifications Wales  | All members   |
| Rent assessment committees for an area or areas every part of which is in Wales   | All members of a panel established under Schedule 10 to the Rent Act 1977 <sup>(17)</sup>   |
| Royal Commission on the Ancient and Historical Monuments of Wales   | Commissioners   |
| Sianel Pedwar Cymru   | All members   |
| Social Care Wales   | All members   |
| Special Educational Needs Tribunal for Wales  | All members   |
| Special Health Authority performing functions partly or wholly in respect of Wales  | Chair and all members, other than a member who is also an employee of the Authority   |
| Sports Council for Wales known as Sport Wales   | All members   |
| Statistics Board established by the Statistics and Registration Service Act 2007 <sup>(18)</sup>  | All members   |
| Student Loans Company Limited   | Chair and Chief Executive   |
| Transport for Wales   | Directors   |
| Upper Tribunal  | All members, other than Judges of the Upper Tribunal <sup>(19)</sup>  |
| Valuation Tribunal for Wales  | All members   |

|   |  |
|---|--|
| Wales Audit Office                          | All staff and auditors providing audit services to the Wales Audit Office or Auditor General for Wales |
| Water Services Regulation Authority         | All members  |
| Welsh Health Specialised Services Committee | Chair  |
| Welsh Industrial Development Advisory Board | All members  |
| Welsh Language Partnership Council          | All members  |
| Welsh Language Tribunal                     | All members  |
| Welsh Revenue Authority                     | Chairperson and other non-executive members  |

- (1) 2005 c. 18. There have been amendments to Schedule 3 to this Act that are not relevant to this Order.
- (2) 1998 c. 31. There have been amendments to paragraph 10(2) of Schedule 26 to this Act by section 53 of, and paragraphs 8 and 16(1) and (2) of Part 2 of Schedule 7 to, the Education Act 2005.
- (3) 1999 c. 28.
- (4) 1993 c. 39.
- (5) S.I. 2010/288 (W. 37). Regulation 34(1)(f) was inserted by regulation 23(7) of the Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015 (S.I. 2015/509 (W. 43)).
- (6) See paragraph 3 of Annex 2 to the Scheme in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072 (W. 110)) and paragraph 3 of Schedule 5 to the Scheme in Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (S.I. 2007/1073 (W. 111)).
- (7) 1992 c. 52.
- (8) 1991 c. 56. Section 27A was inserted by section 35(1) of the Water Act 2003 (c. 37).
- (9) S.I. 2010/288 (W. 37). Regulation 3(3A) was inserted by regulation 4(4), and regulation 6 was amended by regulation 6(2) and (3), of the Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015 (S.I. 2015/509 (W. 43)).
- (10) 2004 c. 21. Relevant amendments were made to section 28 of this Act by section 11 of the Policing and Crime Act 2017 (c. 3).
- (11) 1993 c. 42. There have been amendments to paragraph 27 of Schedule 7 to this Act that are not relevant to this Order.
- (12) 1993 c. 48. There have been amendments to section 145 of this Act that are not relevant to this Order.
- (13) 2004 c. 35. There have been amendments to section 209 of this Act that are not relevant to this Order.
- (14) 2004 c. 35. The Pensions Regulator is established by section 1 of this Act.
- (15) 1989 c. 42.
- (16) 2011 c. 13. There have been amendments to section 1 of this Act that are not relevant to this Order.
- (17) 1977 c. 42. There have been amendments to Schedule 10 to this Act that are not relevant to this Order.
- (18) 2007 c. 18.
- (19) Judges of the Upper Tribunal are disqualified from being a Member of the Senedd, and from being a candidate to be a Member of the Senedd, by virtue of section 16(A1)(b) of, and the Table in Part 2 of Schedule 1A to, the Government of Wales Act 2006.

## **EXPLANATORY NOTE**

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

This Order designates, for the purposes of a Senedd Cymru election at which the poll is held on or after 5 April 2021, offices whose holders are disqualified from being a Member of the Senedd (but not from being a candidate to be a Member of the Senedd). The offices are described in the Schedule to this Order.

Other disqualifying offices and categories of person disqualified from being a Member of the Senedd (and in some cases from being a candidate to be a Member of the Senedd) are prescribed by section 16 of, and Schedule 1A to, the Government of Wales Act 2006 (c. 32). This Order should be read with those provisions.

This Order revokes the National Assembly for Wales (Disqualification) Order 2015 (S.I. 2015/1536), though that Order continues to have effect for a Senedd Cymru election at which the poll is held before 5 April 2021.

**Explanatory Memorandum to the Senedd Cymru (Disqualification) Order 2020**

This Explanatory Memorandum has been prepared by the Office of the First Minister 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 Senedd Cymru (Disqualification) Order 2020.

Mark Drakeford MS  
First Minister of Wales  
29 September 2020

## **PART 1**

### **Description**

1. Section 16 of the Government of Wales Act 2006 allows an Order in Council to designate particular offices so that, if a person holds one of those offices, they are disqualified from being a Member of the Senedd (but not from being a candidate to be a Member of the Senedd). While the Welsh Government believes that disqualification from membership of the Senedd should be restricted to as few citizens as possible, we recognise that political activity is inappropriate for the holders of certain offices. In particular, there is a need to protect certain public offices from political bias, and to ensure that the independence of the electoral process is upheld.

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

2. In 2014 the Constitutional and Legislative Affairs (CLA) Committee carried out an inquiry into the rules pertaining to disqualification from membership of the Senedd<sup>1</sup>. This included 21 recommendations and proposed an overhaul of the legislative framework surrounding disqualifications from membership of the Senedd. The Welsh Government agreed with the overall thrust of the CLA Committee's report<sup>2</sup>.
3. In its response to the CLA Committee's report the Welsh Government made a commitment to consult on the National Assembly for Wales (Disqualification) Order 2015 and by consulting on the draft Senedd Cymru (Disqualification) Order 2020 we continued to honour that commitment.
4. The consultation for the draft Senedd Cymru (Disqualification) Order 2020 was carried out between 22 June 2020 and 1 September 2020, and the draft Order takes account of the outcome of that consultation.
5. The criteria for determining which offices were to be included in the National Assembly for Wales (Disqualification) Order 2015 were based on the principles set out in the CLA Committee's report with some additional considerations by the Welsh Government. This same criteria has continued to be used for the draft Senedd Cymru (Disqualification) Order 2020. This criteria was published in the Welsh Government's consultation on the draft Senedd Cymru (Disqualification) Order 2020.

---

<sup>1</sup>[Constitutional and Legislative Affairs Committee Inquiry into the Disqualification from Membership of the National Assembly for Wales July 2014](#)

<sup>2</sup>[Response of the Welsh Government to the Constitutional and Legislative Affairs Committee, Inquiry into the Disqualification from Membership of the National Assembly for Wales](#)

6. General principles, as set out in recommendation 1 of the CLA Committee's report:

Principle 1: Promoting democratic participation and the right to stand as a member of the Senedd are paramount.

Principle 2: Disqualification from membership of Senedd Cymru should be restricted to as few citizens as possible.

Principle 3: Political activity is inappropriate for some citizens in order to:

- i. protect the independence of the electoral process;
- ii. prevent conflicts of interest arising on election; and
- iii. protect certain public offices from political bias

Principle 4: The following citizens should be affected by a disqualification order:

- i. those whose role involves an over-riding requirement for impartiality,
- ii. including those whose responsibilities include the electoral process itself;
- iii. those who hold any public office which carries with it a significant financial benefit from the Welsh Government;
- iv. those who hold public office and in that role provide formal advice to the Welsh Government;
- v. those who hold any public office which is subject to scrutiny by the Senedd.

Principle 5: Where disqualifications are necessary they must be:

- i. in line with these principles;
- ii. clear and unambiguous;
- iii. proportionate.

- The offices described in recommendation 12 should be disqualified, and should be included in the Disqualification Order unless they are already disqualified under section 16 of GOWA 2006.
- Members of judicial tribunals should be disqualified.
- Normally, persons appointed by Welsh Ministers should be disqualified, but there may be instances where such persons should not be disqualified (in which case consideration of the five principles referred to above will be important).
- Public staff as described in recommendation 13 (e.g. staff of National Park, Police, Fire and Rescue Authorities, staff of Welsh Government Sponsored Bodies) should not be disqualified – it can be safely assumed such staff would give up their employment if elected, as continuing with employment at the same time as discharging Senedd member responsibilities would make impossible demands on the individual.

## Legislative background

7. Section 16 of the Government of Wales Act 2006 lists persons who are disqualified from being a Member of the Senedd. In addition to those offices listed in section 16, the Government of Wales Act 2006 provides for an Order in Council (“Disqualification Order”) to designate further offices, the holders of which would be disqualified from becoming Members of the Senedd. Such an Order may only be made by Her Majesty in Council, if a draft has been laid before, and approved by, a resolution of the Senedd.

### *The Senedd and Elections (Wales) Act 2020*

8. Other recommendations from the CLA Committee’s report of 2014 were that the Government of Wales Act 2006 be amended to provide that disqualification from a particular public office should in relation to certain posts take effect on taking the oath or affirmation of allegiance as a Member of the Senedd. Likewise that the relevant provisions in the National Assembly for Wales (Representation of the People) Order 2007 requiring candidates, when accepting nomination, to declare that to the best of their knowledge and belief, they do not hold a disqualifying office be amended to reflect this.
9. In relation to Senedd elections at which the poll is held on or after 5 April 2021<sup>3</sup>, Part 4 of the Senedd and Elections (Wales) Act 2020 amends section 16 of the 2006 Act to create a distinction between disqualification both from being a Member of the Senedd and from being a candidate for election to the Senedd, and disqualification from membership only.
10. Section 16 has also been amended to provide that persons holding an office specified in an Order in Council are not disqualified if the person resigns the office before taking the oath (or making the corresponding affirmation) as a Member of the Senedd.
11. By contrast, new provision has been inserted into section 16 of the 2006 Act to provide that a person is disqualified from being a Member, and from being a candidate to be a Member of the Senedd, if they fall within any of the categories of person specified in Part 1 of new Schedule 1A to the 2006 Act, or hold any of the offices specified in Part 2 of Schedule 1A (inserted by section 29(7) of the Senedd and Elections (Wales) Act 2020). If a person who is disqualified from being a candidate for membership of the Senedd is nominated as a candidate at an election, the nomination is void<sup>4</sup>.
12. The draft Senedd Cymru (Disqualification) Order 2020 has been drafted to reflect these changes and should be read alongside these. So, where an office is now listed in the new Schedule 1A of the Government of Wales Act 2006 (as introduced by Schedule 3 to the Senedd and Elections (Wales) Act 2020), or is already disqualified from membership of the Senedd by section

---

<sup>3</sup> See section 42 (coming into force) of the Senedd and Elections (Wales) Act 2020.

<sup>4</sup> See section 18A of the Government of Wales Act 2006 as amended by section 34 of the Senedd and Elections (Wales) Act 2020.



16 of the Government of Wales Act 2006, these offices have not been included in the new draft 2020 Order.

13. Ahead of 5 April 2021 changes will be made to the National Assembly for Wales (Representation of the People Order) 2007 to amend the requirement for people to declare that they do not hold a disqualifying office before accepting nomination as a candidate.

### **Purpose and intended effect of the legislation**

14. Prior to each Senedd general election an Order in Council under section 16 of GOWA 2006 is made, that specifies offices whose holders are disqualified from membership of the Senedd.
15. At present, the National Assembly for Wales (Disqualification) Order 2015 is still in force, therefore persons holding any of the offices specified in the 2015 Order are disqualified from membership of the Senedd.
16. The intended effect of this draft Order, therefore, is to revoke the 2015 Order, and set out an updated list of disqualifying offices before the next Senedd general election. The Order will take effect at the first Senedd election on or after 5 April 2021. It will sit alongside the disqualifications set out in section 16 of and Schedule 1A to the Government of Wales Act 2006, as amended by the Senedd and Elections (Wales) Act 2020 and any other specific disqualifications provided for in other legislation to produce the full list of disqualifying offices. The Explanatory Note to the Order makes clear that it should be read alongside section 16 of, and Schedule 1A to, the Government of Wales Act 2006.
17. Its purpose is to disqualify the holders of certain offices from membership of the Senedd (but not from being a candidate to be a Member of the Senedd) where this is necessary to protect the independence of the electoral process, prevent conflicts of interest, or to protect particular public offices from political bias.

### **Consultation**

18. On 22 June 2020, the Welsh Government issued a consultation on the draft Senedd Cymru (Disqualification) Order 2020. This consultation sought views on which offices should be included in the new Order which will revoke and replace the current Order, the National Assembly for Wales (Disqualification) Order 2015.
19. The consultation closed on 1 September 2020. As well as being publicly available on the Welsh Government website, offices that were listed for disqualification under the draft Order were contacted directly, to ensure they had the opportunity to give their views on whether they deemed their inclusion in the Order appropriate, and whether there were any other offices that they considered should be included.

20. Eleven substantive responses were received to the consultation. Most of these responses were from bodies who confirmed they were content with the proposed disqualification of the offices listed in the draft Order which were relevant to them. A summary of the changes to the draft Order post consultation are as follows:
21. The Chief Executive of the Local Democracy and Boundary Commission for Wales is currently a joint post with the Boundary Commission for Wales. However, this arrangement may not always be in place, and therefore we have included the Secretary of the Boundary Commission for Wales in the draft Order, as the Secretary would be the head of the Commission if the Boundary Commission for Wales became a standalone organisation with its own Secretariat.
22. After considering the response requesting that consideration should be given to the inclusion of the Information Commissioner the Welsh Government has concluded that as there is a need for the Information Commissioner to be able to make objective and impartial judgements about the conduct of the Welsh Government and Welsh Ministers in respect of data and information the Information Commissioner will be added to the draft Order.
23. It had been brought to our attention that the Commissioners and Non-Executive Board Members of the Law Commission should be included in the draft Order. The Wales Act 2014 allowed Welsh Ministers to refer projects to the Law Commission. The same Act also obliges the Welsh Ministers to report on Law Commission proposals in Welsh devolved areas, and required a Protocol to be established between the Law Commission and the Welsh Ministers.
24. Commissioners of the Judicial Appointments Commission (JAC) were also added to the draft Order as the JAC conducts appointments to devolved tribunals on behalf of Welsh Ministers by means of an agreement under Section 83 of the Government of Wales Act 2006.
25. The Judicial Appointments and Conduct Ombudsman will also be included in the draft Order as the Ombudsman can be involved in disciplinary cases for judges and members of the Welsh Tribunals.
26. These additions were consistent with Principle 4 of the criteria adopted by the Welsh Government to decide which offices should be included.
27. All the organisations outlined above have been emailed directly to inform them that the offices relevant to their organisation will be included in the draft Order.
28. It was also brought to our attention that the UK Commission for Employment and Skills closed in March 2017 and as such has been removed from the draft Order.

29. An analysis of the consultation responses is available as part of the Welsh Government's response to the consultation, published on the Welsh Government website:

<https://gov.wales/sites/default/files/consultations/2020-09/the-draft-senedd-cymru-disqualification-order-2020-responses-document.pdf>

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

30. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. 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 the Order as the draft Senedd Cymru (Disqualification) Order falls within the exemption contained within the Code where routine technical amendments or factual amendments are required to update regulations.

31. A Welsh Government Integrated Impact Assessment has been completed for the draft Senedd Cymru (Disqualification) Order 2020. The changes brought about by the draft Order (relative to the 2015 Order) are technical in nature and specific in their application to the people who occupy the designated offices. Throughout this process no impacts have been identified on the people, culture and Welsh language, economy and environment of Wales as a result of the draft Senedd Cymru (Disqualification) Order 2020.

32. This Order has no impact on the statutory duties of Welsh Ministers relating to equality of opportunity (section 77 of GOWA 2006), the Welsh language (section 78 GOWA), or sustainable development (section 79 GOWA 2006), and will have no impact on the local government, voluntary sector or business schemes under section 73, 74 and 75 of GOWA 2006 respectively.

33. Section 1 and Section 7 of the Welsh Government's Integrated Impact Assessment for the draft Senedd Cymru (Disqualification) Order 2020 are available on the Welsh Government website:

<https://gov.wales/sites/default/files/consultations/2020-09/integrated-impact-assessment-summary-for-the-draft-senedd-cymru-disqualification-order-2020.pdf>

## **SL(5)627 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 and designate the county boroughs of Conwy and Wrexham and the counties of Denbighshire and Flintshire as local health protection areas subject to local restrictions and requirements.

The effect in respect of each of these new areas is to:

- provide that no household within each area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibiting persons living in each area from leaving or remaining away from each area without reasonable excuse;
- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of each area entering the area without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations must be reviewed before the end of 7 October 2020 and then at least once every 7 days.

### **Procedure**

Made Affirmative

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



## Technical Scrutiny

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

## Merits Scrutiny

The following 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 that these Regulations introduce a tightening of coronavirus restrictions in Conwy, Denbighshire, Flintshire and Wrexham.

The Explanatory Memorandum states that the Regulations are a response “to the threat to human health from coronavirus” and “to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely”.

We believe that, where coronavirus restrictions are being tightened in any significant way, Explanatory Memorandums should set out the evidence on which the Welsh Government relies in deciding that such tightening is necessary and proportionate. We believe the same principle should apply where restrictions are being lifted.

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that:

- (a) Conwy, Denbighshire, Flintshire and Wrexham should go into local lockdown in the way they did;
- (b) the need for local lockdown in those areas was so urgent that there was no time for the Senedd to approve a draft of the Regulations in advance;
- (c) other areas of Wales did not need to go into local lockdown.

Providing this evidence will aid transparency as well as the Committee’s scrutiny of coronavirus restrictions, in particular in the event that areas of Wales will go into a series of ‘rolling lockdowns’ in the coming months.

We also believe that including evidence in Explanatory Memorandums will help raise public awareness of Explanatory Memorandums and the statutory instruments themselves.

### **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**

As noted above, these Regulations introduce a tightening of coronavirus restrictions in Conwy, Denbighshire, Flintshire and Wrexham.



We note the Welsh Government's view in the Explanatory Memorandum that any interference with human rights arising from these new restrictions is justified in pursuing the legitimate aim of responding to the coronavirus pandemic.

### **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**

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

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

*More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the areas of Conwy, Denbighshire, Flintshire and Wrexham as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas.*

*Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained to Members in the Senedd yesterday [29 September 2020] the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been widely reported by the media.*

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

None.

## **Welsh Government response**

A Welsh Government response to the first merits point is required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 October 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. 1066 (W. 240)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 2) (Wales)  
(Amendment) (No. 16) (Conwy,  
Denbighshire, Flintshire and  
Wrexham) 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.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020. The amendment designates the county boroughs of Conwy and Wrexham and the counties of Denbighshire and Flintshire as local health protection areas that are subject to specific restrictions and requirements.

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. 1066 (W. 240)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 2) (Wales)  
(Amendment) (No. 16) (Conwy,  
Denbighshire, Flintshire and  
Wrexham) Regulations 2020**

*Made at 3.28 p.m. on 30 September 2020*

*Laid before Senedd  
Cymru at 5.30 p.m. on 30 September 2020*

*Coming into  
force at 6.00 p.m. on 1 October 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.

---

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

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

**Title and coming into force**

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020 and they come into force at 6.00 p.m. on 1 October 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<sup>(1)</sup> are amended as follows.

(2) In Schedule 4A, in paragraph 1, after paragraph (l) insert—

- “(m) Conwy County Borough;
- (n) the County of Denbighshire;
- (o) the County of Flintshire;
- (p) Wrexham County Borough.”

*Mark Drakeford*

First Minister, one of the Welsh Ministers  
At 3.28 p.m. on 30 September 2020

---

(1) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/984 (W. 221), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227), S.I. 2020/1035 (W. 229), S.I. 2020/1040 (W. 230), S.I. 2020/1043 (W. 232) and S.I. 2020/1049 (W. 235).

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) 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. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020.

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

30 September 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. The Welsh Ministers are of the opinion that the restrictions now being imposed in relation to the County Boroughs of Conwy and Wrexham and the Counties of Denbighshire and Flintshire are necessary and proportionate as a public health response to the current threat posed by coronavirus.

### European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include four new local health protection areas in the County Boroughs of Conwy and Wrexham and the Counties of Denbighshire and Flintshire. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First

Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. Additionally the Welsh Ministers must, by 7 October, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve in respect of local health protection areas, and do so at least once every seven days thereafter.

### **3. Legislative background**

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

### **4. Purpose and intended effect of the legislation**

The principal Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The principal Regulations were amended<sup>1</sup> with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area'. There are currently twelve local health protection areas<sup>2</sup>, and these Regulations now extend the restrictions and requirements to the County Boroughs of Conwy and Wrexham and the Counties of Denbighshire and Flintshire. The effect of this in respect of each of these new areas is to:

- provide that no household within each area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibiting persons living in each area from leaving or remaining away from each area without reasonable excuse;
- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;

---

<sup>1</sup> See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (SI 2020/961 (W. 215))

<sup>2</sup> the County Boroughs of Blaenau Gwent, Bridgend, Caerphilly, Merthyr Tydfil, Neath Port Talbot, Rhondda Cynon Taf, Torfaen and the Vale of Glamorgan; the City and County Borough of Newport; 13 electoral wards of Llanelli; and the City and County of Cardiff and of Swansea.

- prohibit people outside of each area entering the area without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations come into force at 6.00 p.m. on 1 October 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 7 October, and at least once every seven days thereafter.

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 introducing these requirements and restrictions by means of the amendments made to the principal Regulations is 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, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the areas of Conwy, Denbighshire, Flintshire and Wrexham as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained to Members in the Senedd yesterday the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been widely reported by the media.

## **6. Regulatory and other impact assessments**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.



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

30 September 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) 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 at 6.00 p.m. tomorrow. 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 3 November 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 Plenary on 13 October 2020.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, 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  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[YP.PrifWeinidog@llyw.cymru](mailto:YP.PrifWeinidog@llyw.cymru) • [ps.firstminister@gov.wales](mailto: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.

---

**STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

**TITLE**      **Update on Local Coronavirus Restrictions**  
**DATE**      **29 September 2020**  
**BY**         **Vaughan Gething MS, Minister for Health and Social Services**

Llywydd, thank you for the opportunity to today update Members about the very latest situation across Wales.

The First Minister, myself and the Minister for North Wales have just come from a meeting of local authority leaders, the police, the NHS and public health experts to discuss the rise in coronavirus in parts of North Wales.

Unfortunately, we are seeing a similar pattern of transmission in coronavirus in Wrexham, Denbighshire, Flintshire and Conwy as we have seen in parts of South Wales. Rates remain low in Gwynedd and Anglesey at the moment.

After extensive discussions, it was agreed by everyone in the meeting that urgent action is needed now to control the spread of the virus in North Wales and to protect people's health.

We will therefore be introducing local restrictions – the same local restrictions which are in place in other parts of South Wales – in Wrexham, Denbighshire, Flintshire and Conwy from 6pm on Thursday October 1.

Llywydd, over the last few weeks, we have seen a significant rise in the number of new cases of coronavirus in Wales overall.

Nationally we must remember that:

1. People are not allowed to meet socially anywhere indoors with people they do not live with and who are not part of an extended household. If people have formed an extended household, they can meet indoors in a group of up to six



people from that extended household at any one time. Under 11s are not included when counting the six as long as they are part of that extended household.

2. People must not gather outdoors in groups of more than 30.
3. Face coverings are mandatory in indoor public spaces (subject to certain exemptions and exceptions)
4. Licensed premises must not sell alcohol after 10pm. This includes pubs, restaurants, Off licenses, supermarkets and other retail outlets.

Whilst case numbers are continuing to rise nationally we have no immediate plans for any further national restrictions. We will of course act if we feel further national restrictions are need to prevent the spread of coronavirus and outweigh the wider harms such restrictions can cause.

We have seen spikes in case numbers in a number of our local authority areas. As a result, a large part of the population of South Wales are now living in areas under local restrictions to protect their health and prevent the spread of coronavirus.

The areas under local restrictions at the moment are:

1. **Caerphilly** (Tuesday 8<sup>th</sup> September at 6pm)
2. **Rhondda Cynon Taf** (Thursday 17<sup>th</sup> September 6pm)
3. **Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport** (Tuesday 22<sup>nd</sup> September 6pm)
4. **Llanelli** (Saturday 26<sup>th</sup> September 6pm)
5. **Cardiff and Swansea** (Sunday 27<sup>th</sup> September at 6pm)
6. **Neath Port Talbot, the Vale of Glamorgan and Torfaen** (Monday 28<sup>th</sup> September at 6pm)

The local restrictions are the same in each designated area:

1. People are not be allowed to enter or leave the area without a reasonable excuse.
2. People are not allowed to meet indoors with anyone they do not live with for the time being – this includes extended households (sometimes called a “bubble”) – they have been suspended for the time being.
3. All licensed premises have to stop serving alcohol at 10pm.
4. Everyone must work from home wherever possible.

To be clear, a reasonable excuse to leave or enter an area includes going to work where people cannot work from home, or using public services that are not available locally. It also includes visiting family or close friends on compassionate grounds if necessary.

People who have urgent hospital appointments can leave or enter an area, although we recommend that all non-urgent appointments are postponed.

For those who share parental responsibility for a child, they can continue existing arrangements for access and contact, including leaving or entering a local area if needed.

Similarly childcare arrangements can continue. That includes where this is provided by grandparents although clearly there are increased risks with older people and we recommend that alternative care arrangements are found if possible. As a minimum everyone should ensure they are regularly washing their hands and that wider guidance on managing the virus is followed.

Routine visits to care homes in areas under local restrictions have been suspended at the present time. Visits to care homes may still take place in exceptional circumstances such as end of life, however this should be discussed with the individual care home before travelling.

Children, providing they are well, should continue to go to school, keeping schools open remains our top priority.

This is not a regional lockdown. We have introduced a series of local restrictions in these South Wales local authority areas to respond to a specific rise in cases in each area, all of which have distinct and unique chains of transmission.

The local measures have been selected to maximise the impact on reducing coronavirus transmission and minimise the wider harms such restrictions can cause. The measures are designed to supplement and enhance local responses from the local authority, local health boards and police that are already underway.

We will keep these measures under constant review and we will continue to hold meetings with public health experts, local authority leaders, the NHS, police and police and crime commissioners to assess the latest position in each of these areas.

In Caerphilly and Newport, we have seen real falls in case numbers and we are hopeful that will be able to take action to relax these restrictions in these areas if the case numbers continue to fall.

It is important everyone follows the rules where they live. We need everyone's help to bring coronavirus under control. It is only by working together that we will be able to reduce coronavirus, protect ourselves and our loved ones and keep Wales safe.

**Check against delivery**

## **SL(5)629 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”). The amendments –

- (a) allow a household made up of no more than one adult (whether or not children also live in the household) living in a local health protection area and another household that also lives in the area, to form an extended household temporarily;
- (b) permit skating rinks to open, but measures must be taken to minimise the risk of exposure to coronavirus on the premises;
- (c) make minor consequential amendments.

A household may form a temporary extended household in accordance with the amendment made by these Regulations whether or not it had previously formed an extended household (with up to three other households) before its area became a local health protection area.

### **Procedure**

Made Affirmative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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

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



*The Regulations permit a single adult household in a local health protection area to form an extended household, with one other household in the same local health protection area. This will engage rights under Article 8 (right to respect for family and private life) and enable people greater enjoyment of this right, through the formation of extended households in such circumstances, therefore easing the current interference with those rights, which itself has been justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and has been proportionate to that aim. The listing of ice rinks as open premises will similarly allow greater enjoyment of rights, particularly under Article 1 of the First Protocol.*

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

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

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

*More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I outlined the intention to make these changes in a statement to Members and a press conference held earlier today; the proposed changes have been widely reported by the media.*

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

None.

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 October 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. 1079 (W. 242)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 2) (Wales)  
(Amendment) (No. 17) 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.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”). The amendments—

- (a) allow a household made up of no more than one adult (whether or not children also live in the household) living in a local health protection area and another household that also lives in the area, to form an extended household temporarily;
- (b) permit skating rinks to open, but measures must be taken to minimise the risk of exposure to coronavirus on the premises (in

accordance with regulation 12 of the principal Regulations);

(c) make minor consequential amendments.

A household may form a temporary extended household in accordance with the amendment made by these Regulations whether or not it had previously formed an extended household (with up to three other households) before its area became a local health protection area.

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. 1079 (W. 242)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 2) (Wales)  
(Amendment) (No. 17) Regulations  
2020**

*Made at 1.25 p.m. on 2 October 2020*

*Laid before Senedd  
Cymru at 3.50 p.m. on 2 October 2020*

*Coming into force 3 October 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,

---

(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. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020 and they come into force on 3 October 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<sup>(1)</sup> are amended as follows.

(2) In regulation 2A, in paragraph (3)(a), for “and regulation 14(1)(b)(i)” substitute “; regulation 14(1)(b)(i) and paragraph 2 of Schedule 4A”.

(3) In regulation 12B, omit paragraph (5).

(4) In Schedule 2, omit paragraph 10.

(5) In Schedule 4, after paragraph 45 insert—

“46. Skating rinks.”

(6) In Schedule 4A, for paragraph 2 substitute—

#### **“Restriction on extended households**

2.—(1) Where, before the area in which a household lives became a local health protection area, the household agreed to be treated as being in an extended household with other households in accordance with regulation 2A—

(a) that household is not to be treated as being in the extended household from the time at which the area became a local health protection area, and

(b) the other households continue to be treated as an extended household (provided they are not living in a local health protection area) and regulation 2A applies to those households accordingly.

(2) Despite regulation 2A(1), no household living in a local health protection area may

---

(1) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227), S.I. 2020/1035 (W. 229), S.I. 2020/1040 (W. 230), S.I. 2020/1043 (W. 232), S.I. 2020/1049 (W. 235) and S.I. 2020/1066 (W. 240).



agree to be treated as an extended household with other households.

(3) But a household comprising of no more than one adult (and any number of children) living in a local health protection area and another household also living in that area, may agree to be treated as a temporary extended household.

(4) A household ceases to be treated as being in a temporary extended household if—

- (a) the household ceases to live in the local health protection area, or
- (b) the area ceases to be a local health protection area.

(5) Paragraphs (2) to (6) of regulation 2A apply to (two) households treated as a temporary extended household under sub-paragraph (3) as they apply to (up to four) households treated as an extended household under regulation 2A(1).

(6) But regulation 2A(4) does not prevent—

- (a) two households being treated as a temporary extended household under sub-paragraph (3) where either household—
  - (i) was treated as being in an extended household in accordance with regulation 2A, and
  - (ii) is no longer treated as being in an extended household by virtue of sub-paragraph (1)(a);
- (b) up to four households being treated as an extended household under regulation 2A(1) where at least one of the households—
  - (i) was treated as being in a temporary extended household in accordance with sub-paragraph (3), and
  - (ii) is no longer treated as being in a temporary extended household by virtue of sub-paragraph (4).”

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 1.25 p.m. on 2 October 2020

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) 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. 17) Regulations 2020.

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

2 October 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. The Welsh Ministers are of the opinion that the requirements now being introduced are necessary and proportionate as a public health response to the current threat posed by coronavirus.

### European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations permit a single adult household in a local health protection area to form an extended household, with one other household in the same local health protection area. This will engage rights under Article 8 (right to respect for family and private life) and enable people greater enjoyment of this right, through the formation of extended households in such circumstances, therefore easing the current interference with those rights, which itself has been justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and has been proportionate to that aim. The listing of ice rinks as open premises will similarly allow greater enjoyment of rights, particularly under Article 1 of the First Protocol.

### **3. Legislative background**

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

### **4. Purpose and intended effect of the legislation**

The principal Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The local health protection areas, (LHPA[s]) were imposed to respond to rapid increases in Covid-19 cases in these areas based on scientific evidence, health advice and at the request of the local Incident Management Teams (IMTs). The principal Regulations were amended<sup>1</sup> with effect from 8 September 2020 to introduce restrictions in respect of an LHPA. This prohibited any household within such an area to be included within an extended household and prohibited the formation of any new extended household. This had the effect that existing extended households ended for individuals and families as soon as the area in which they were living became an LHPA.

These Regulations now provide that a single-adult household (for example a household with a lone parent) in a LHPA may agree to be treated as an extended household with one other household also in the same local health protection area.

In addition, these Regulations permit permanent ice rinks to re-open, subject to the duties to take reasonable measures to minimise risk of exposure to, and spread of, coronavirus, and make minor technical and consequential amendments to the principal Regulations.

The Regulations come into force on 3 October 2020.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that introducing these amendments to the principal Regulations is proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

---

<sup>1</sup> See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 SI 2020/961 (W. 215)

## **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.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I outlined the intention to make these changes in a statement to Members and a press conference held earlier today; the proposed changes have been widely reported by the media.

## **6. Regulatory and other impact assessments**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.



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

2 October 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 17) 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 tomorrow. 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 5 November 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 Plenary on 13 October 2020.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, 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  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[YP.PrifWeinidog@llyw.cymru](mailto:YP.PrifWeinidog@llyw.cymru) • [ps.firstminister@gov.wales](mailto:ps.firstminister@gov.wales)



---

## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

---

**TITLE**            **Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**

**DATE**            **2 October 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 require businesses, which 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).

This week, Ministers have carried out the three-week review of the coronavirus regulations to ensure they remain proportionate to the public health risk posed by the virus.

Since the last weeks of August, we have seen sharp and rapid increase in the number of cases across Wales, starting in South East Wales but spreading to most parts of the country.

We have introduced a series of local restrictions to respond to these increases in local authority areas across Wales and we have also introduced some additional national measures, including the ending of alcohol sales after 10pm.

The deteriorating public health situation across Wales means we will not be making any major changes to the rules at a national level. The only very modest change is that skating rinks will be able to reopen from 3 October, as signalled at the last review.

We will however, change the local restrictions to ensure that single people living alone, including single parents, are not put at increased risk of loneliness or isolation,

as a result of the introduction of local lockdowns in areas where there have been sharp and sudden increases in coronavirus.

The new rules, which will come into force tomorrow, will enable single adult households to temporarily join an extended household – or bubble – with another household in their local area, while local restrictions are in place.

This will enable single adult and single parent households to meet other people indoors during a local lockdown and hopefully reduce the emotional impact of local restrictions. The rule of six will apply to these single people bubbles.

Over the course next week, we will also be strengthening local authority powers to restrict drinking in public areas. This will help local authorities stop people gathering and drinking in certain areas where there is a risk of coronavirus being transmitted.

Local restrictions are now in place in 15 local authority areas and in Llanelli. A weekly review of these restrictions is required in the regulations. This week was the second review and we have concluded that it is too soon to lift restrictions in any of the local health protection areas.

It is encouraging that the incidence of coronavirus has continued to fall in Caerphilly borough over the last seven days, which is down to the efforts of people who live in the area. However, we need to see rates come down further before restrictions are relaxed. We will use the next seven days to work with Caerphilly County Borough Council and other local authorities, public health doctors, the police, and others, to agree a phased route out of these restrictions.

If we all continue to work together, we can protect ourselves and families and keep Wales safe.



## **SL(5)619 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (**the Principal Regulations**).

The amendments—

- (a) provide that in premises licensed for the sale of alcohol for consumption on the premises, food or drink may only be served to customers who are seated (subject to certain exemptions for buffets, workplace canteens and premises in educational establishments such as university canteens), and customers must be seated when consuming the food or drink,
- (b) provide that premises licensed for the sale of alcohol (whether for consumption on the premises or off the premises) may not serve or supply alcohol after 10.00 p.m. (and may not serve or supply alcohol again before 6.00 a.m. the following morning);
- (c) provide that premises licensed for the sale of alcohol for consumption on the premises must close at or before 10.20 p.m. (and may not reopen before 6.00 a.m. the following morning);
- (d) remove the exemption from the requirement to wear a face covering applicable in premises where food or drink is sold, replacing it with a reasonable excuse for customers not to wear a face covering while seated.

### **Procedure**

Made Affirmative

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

### **Technical Scrutiny**

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



## Merits Scrutiny

The following 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**

The Committee notes that these Regulations introduce a general tightening of restrictions in respect of premises that sell food and drink in Wales.

We also note the Welsh Government's justification for any potential interference with human rights. The Explanatory Memorandum to these Regulations states:

*"The Regulations impose restrictions and requirements in relation to licensed premises including times after which alcohol may not be sold, opening and closing times, with some exceptions albeit in such cases premises will be prohibited from selling alcohol, and the operation of a seated service becoming a specific reasonable measure under the duty of those responsible for premises to take reasonable measures to minimise the risk or exposure to, and spread of, coronavirus. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and is proportionate to that aim."*

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

We note there has been no public consultation on these Regulations and what the First Minister says in the Explanatory Memorandum regarding informing the public about these particular Regulations:

*"I outlined the intention to impose the restrictions and requirements achieved through these Regulations in a televised broadcast on the evening of 22 September; the proposed changes have been widely reported by the media."*

### **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**

We make these points with regard to the Principal Regulations as a whole, rather than the Principal Regulations as specifically amended by these Regulations.

3.1 We note that keeping up to speed with all the changes is becoming increasingly difficult and confusing for members of the public. We note in particular the following recent news



story that highlights the confusion in Blaenau Gwent: <https://www.bbc.co.uk/news/av/uk-wales-54269020>

We are concerned that similar confusion is happening across Wales.

3.2 We also note, generally in respect of the Principal Regulations, that:

- (a) Deleting regulation 12B(3)(b) of the Principal Regulations means that regulation 12B(5) is no longer required. However, regulation 12B(5) remains in the Principal Regulations.
- (b) Regulation 4(2) of the Principal Regulations placed a duty on the Welsh Ministers to review the need for local restrictions by 24 September 2020 and then every 7 days. The local restrictions in Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport (**the No.11 Restrictions**) were slotted into the Principal Regulations on 22 September 2020. It is unclear what the Welsh Government's approach was to reviewing the No.11 Restrictions within the pre-existing timescale of 24 September 2020.

## Implications arising from exiting the European Union

None.

## Welsh Government response

A Welsh Government response to the third merits point is required.

## Committee Consideration

The Committee considered the instrument at its meeting on 5 October 2020 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020**

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 30 September 2020.

### **Merits scrutiny points:**

#### *Point 3.1: pace of changes to the Regulations*

2. The draft Report notes that the frequency of amendments to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”) makes it difficult for the public to keep up with the current legal position.
3. In the current extraordinary circumstances, there is a balance to be struck between ensuring that the law is as clear and accessible as possible and the need to make rapid changes to the legislation when the circumstances surrounding the coronavirus pandemic change (both in order to introduce restrictions where necessary from a public health perspective and to ease restrictions as soon as possible where it is proportionate to do so, so as to avoid imposing restrictions on the public for any longer than is necessary). As an aid to accessibility, the Welsh Government publishes a revised version of the principal Regulations which is updated after every revision (<https://gov.wales/health-protection-coronavirus-restrictions-no-2-wales-regulations-2020-amended>). Those updates are made on the day that amending Regulations are made so as to ensure that the public has access to the up to date Regulations as soon as possible. The Welsh Government understands that this practice is not replicated elsewhere in the United Kingdom.

#### *Point 3.2(a): Regulation 12B(5)*

4. The draft Report notes that regulation 12B(5) remains in the principal Regulations despite the revocation of regulation 12B(3)(b). This has been rectified in the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020 made on 2 October 2020.

#### *Point 3.2(b): Timing of reviews of local restrictions*

5. The draft Report seeks clarification of the timescales for reviewing local restrictions, particularly in light of the introduction of local restrictions being imposed in Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport on 22 September and the first review of local restrictions being required by 24 September. The Welsh Government considers it important that all the areas subject to local restrictions are reviewed on the same 7-day cycle. That can lead to the first review in respect of some areas taking place very soon after the restrictions have been imposed.

6. Although the result of such an early review is most likely to result in no change (as there would not be any time for the effect of the restrictions to be reliably assessed) the Welsh Government nevertheless considers the importance of maintaining a consistent review cycle to outweigh the disadvantage of conducting an apparently superfluous review of recently introduced restrictions.

# Agenda Item 4.2

## **SL(5)621 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) 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 a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. 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 (“exempt countries and territories”) are not required to isolate. These Regulations amend the list of exempt countries and territories to remove Curacao, Denmark, Iceland and Slovakia, and make associated transitional provisions.

In addition, these Regulations:

1. add an exemption to the isolation requirements for UK-resident elite athletes (and persons providing elite athletes with coaching or other support) when returning from overseas training programmes;
2. make exceptions from the isolation requirements for elite athletes and support staff to attend medical screenings and for new signings to participate in competitions; and
3. insert additional events into the list of specified sporting events in Schedule 4, in order to except persons competing in (or providing coaching or other support to persons competing in) those events from the requirements to isolate.

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



In the Welsh language version of the Regulations, there is an incorrect cross reference in the heading preceding regulation 3, which reads:

*'Darpariaeth drosiannol mewn cysylltiad â rheoliad 24'.*

The reference to *'rheoliad 24'* should be a reference to *'rheoliad 2'*. The English version is correct.

## 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 of public policy likely to be of interest to the Senedd**

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution 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 25 September 2020.

In particular, we note that the letter confirms as follows:

*"Not adhering to the 21 day convention 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."*

## Implications arising from exiting the European Union

None.

## Welsh Government response

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

## Committee Consideration

The Committee considered the instrument at its meeting on 5 October 2020 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020**

Technical Scrutiny point

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

In the Welsh language version of the Regulations, there is an incorrect cross reference in the heading preceding regulation 3, which reads:

*'Darpariaeth drosiannol mewn cysylltiad â rheoliad 24'.*

The reference to *'rheoliad 24'* should be a reference to *'rheoliad 2'*. The English version is correct.

### **Response**

We note the technical scrutiny point and confirm that the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.13) Regulations 2020 (“the No.13 Regulations”), which were made on the 2 October 2020, addresses this at regulation 4.

Regulation 4 of the No.13 Regulations amends the Welsh language text of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 to correct the heading of regulation 3, by substituting “rheoliad 24” with “rheoliad 2”.



## **C(5)042 – The Senedd and Elections (Wales) Act 2020 (Commencement) Order 2020**

### **Background and Purpose**

This Order brings section 28 of, and Schedule 2 to, the Senedd and Elections (Wales) Act 2020 (the Act), which makes provision about financial and oversight arrangements of the Electoral Commission, fully into force on 1 October 2020.

### **Procedure**

No procedure – the Order is not required to be laid before the Senedd.

### **Scrutiny under Standing Order 21.7**

We note the provisions of the Act commenced by this Order, and the update provided by the First Minister in a [letter](#) to the Llywydd dated 28 September 2020, in particular:

*I am writing further to my letter of 4 June 2020, in which I asked Business Committee to initiate work to implement the provisions in section 28 of and Schedule 2 to the Senedd and Elections (Wales) Act 2020 which relate to the financing and accountability of the Electoral Commission.*

*I indicated that the Welsh Government would bring forward an Order to bring into force those provisions, subject to the completion of the necessary Standing Order changes, the establishment of a Llywydd's Committee, and the negotiation of an inter-institutional funding agreement.*

*As sufficient progress has been made in respect of that work, I consider the conditions I set out are met. I am therefore pleased to confirm that I will bring into force the relevant provisions on 1 October.*

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

None.

### **Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 October 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. 1052 (W. 236) (C. 31)**

**REPRESENTATION OF THE  
PEOPLE, WALES**

The Senedd and Elections (Wales)  
Act 2020 (Commencement) Order  
2020

**EXPLANATORY NOTE**

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

This Order is the first commencement order made by the Welsh Ministers under the Senedd and Elections (Wales) Act 2020 (“the Act”).

This Order brings section 28 of, and Schedule 2 to, the Act, which makes provision about financial and oversight arrangements of the Electoral Commission, fully into force on 1 October 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. 1052 (W. 236) (C. 31)**

**REPRESENTATION OF THE  
PEOPLE, WALES**

The Senedd and Elections (Wales)  
Act 2020 (Commencement) Order  
2020

*Made*

*28 September 2020*

The Welsh Ministers make the following Order in exercise of the power conferred on them by section 42(3)(b) of the Senedd and Elections (Wales) Act 2020<sup>(1)</sup>.

**Title and interpretation**

**1.**—(1) The title of this Order is the Senedd and Elections (Wales) Act 2020 (Commencement) Order 2020.

(2) In this Order, “the Act” means the Senedd and Elections (Wales) Act 2020.

**Appointed day**

**2.** The appointed day for the coming into force of the following provisions of the Act is 1 October 2020—

- (a) section 28;
- (b) Schedule 2.

*Mark Drakeford*

First Minister, one of the Welsh Ministers  
28 September 2020

---

(1) 2020 anaw 1.



Elin Jones MS  
Llywydd and Chair of Business Committee  
Llywydd@senedd.wales

Llywodraeth Cymru  
Welsh Government

28 September 2020

Dear Elin

I am writing further to my letter of 4 June 2020, in which I asked Business Committee to initiate work to implement the provisions in section 28 of and Schedule 2 to the Senedd and Elections (Wales) Act 2020 which relate to the financing and accountability of the Electoral Commission.

I indicated that the Welsh Government would bring forward an Order to bring into force those provisions, subject to the completion of the necessary Standing Order changes, the establishment of a Llywydd's Committee, and the negotiation of an inter-institutional funding agreement.

As sufficient progress has been made in respect of that work, I consider the conditions I set out are met. I am therefore pleased to confirm that I will bring into force the relevant provisions on 1 October.

I am copying this letter to the Chairs of the Finance and Legislation, Justice and Constitution Committees, to the Auditor General for Wales and to the Head of the Electoral Commission in Wales.

Yours sincerely

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[YP.PrifWeinidog@llyw.cymru](mailto:YP.PrifWeinidog@llyw.cymru) • [ps.firstminister@gov.wales](mailto: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.

---

**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

|              |   |
|--------------|---|
| <b>TITLE</b> | <b>The Environment (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020</b> |
| <b>DATE</b>  | <b>29 September 2020</b>  |
| <b>BY</b>    | <b>Rebecca Evans MS, Minister for Finance and Trefnydd</b>                        |

**The Environment (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020  
("2020 Regulations")**

The 2020 Regulations amend legislation which apply in Wales. The 2020 Regulations also amends other legislation on an England-only basis:

EU Regulations

- Directive 2008/50/EC establishing the requirements on ambient air quality and cleaner air for Europe;
- National Emissions Directive 2016/2284/EU that sets national emission reductions targets for Member States and the EU.
- Decision 2019/2010 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for waste incineration;
- Decision 2019/2031 establishing best available techniques (BAT) conclusions for the food, drink and milk industries, under Directive 2010/75/EU of the European Parliament and of the Council; and
- Decision (EU) 2020/4053 establishing best available techniques (BAT) conclusions for surface treatment using organic solvents including preservation of wood and wood products with chemicals, under Directive 2010/75/EU of the European Parliament and of the Council.

## Secondary legislation

- The Air Quality Standards Regulations 2010 (England only);
- The National Emission Ceilings Regulations 2018;
- The Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019; and
- The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019

### **Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence**

The 2020 Regulations relates to areas within devolved competence. The amendments ensure existing functions of the Welsh Ministers are retained as far as possible in relation to retained EU law. Existing powers of the Welsh Ministers, in order to address deficiencies, have been amended to ensure certain environmental laws continue to operate effectively after the implementation period ends.

### **The purpose of the amendments**

The 2020 Regulations are subject to the proposed-negative procedure and makes corrections and technical amendments to The Air Quality Standards Regulations 2010, The National Emission Ceilings Regulations 2018, The Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019 and The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) 2018. In addition, the 2020 Regulation amends several dates in the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019. It substitutes references to “exit day” with references to “Implementation Period completion day”.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environment-miscellaneous-amendments-eu-exit-regulations-2020>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 167 - The Environment (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020

*Laid in the UK Parliament: 24 September 2020*

#### Sifting

|  |                   |
|--|-------------------|
| Subject to sifting in UK Parliament?   | Yes               |
| Procedure:   | Proposed Negative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | 6 October 2020    |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee   | 6 October 2020    |
| Date sifting period ends in UK Parliament  | 12 October 2020   |
| Written statement under SO 30C:  | Paper 38          |
| 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 2(2) of the European Communities Act 1972, section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

These Regulations make amendments to environmental laws to address minor errors and to ensure they continue to operate effectively after the end of the implementation period, and also make necessary amendments to directly applicable retained EU law.

In particular, these Regulations:

- Amend the Air Quality Standards Regulations 2010 and the National Emission Ceiling Regulations 2018 to ensure that the legislation implements the relevant EU law as intended;

- Ensure that the Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019 continues to operate effectively;

- Correct errors and update previous EU Exit instruments to ensure that deficiencies in the legislation amended by those instruments are addressed as intended.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 September 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 Nutrition (Amendment etc) (EU Exit) Regulations 2020**  
**DATE**        **01 October 2020**  
**BY**            **Rebecca Evans MS, Minister for Finance and Trefnydd**

**The Nutrition (Amendment etc) (EU Exit) Regulations 2020**

**The law which is being amended**

The Nutrition (Amendment etc.) (EU Exit) Regulations 2019

The Nutrition (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Commission Delegated Regulation 2016/127, supplementing Regulation (EU) No 609/2013 with regards to the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding

Regulation 2019/343, providing derogations from Article 1(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on food for the use of certain generic descriptors.

Commission Regulation (EU) 2019/651, refusing to authorise a health claim made on foods and referring to children's development and health to ensure that they work properly in domestic law at the end of the transitional period.

2009/980/EU: Commission Decision authorising a health claim on the effect of water-soluble tomato concentrate on platelet aggregation and granting the protection of proprietary data under Regulation (EC) No 1924/2006 of the European Parliament and of the Council.

## **Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence**

There is no impact on legislative or executive competence.

## **The purpose of the amendments**

The purpose of the amendments is to give effect to the Northern Ireland Protocol (NIP) by amending the 2019 The Nutrition (Amendment etc) (EU Exit) Regulations 2019 to dis-apply Parts 2, 4, 5 from applying in Northern Ireland. The Regulations 2020 will therefore only apply to Great Britain rather than the whole of the UK.

Specifically the Regulations will:

- Revoke the Nutrition (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. Those Regulations amended EU-derived domestic legislation. As a consequence of the NIP, those amendments are no longer required.
- Account for changes in EU nutrition, labelling, composition and standards legislation that have come into force since March 2019.
- Correct an anomaly in the list of permitted health claims in the Annex of retained Commission Regulation (EU) No 432/2012. This means that a health claim on the effect of water-soluble tomato concentrate on platelet aggregation will be included in the list of authorised health claims following the end of the Transition Period.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348212549/contents>

## **Why consent was given**

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on the policy for the corrections. 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 during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

**UK MINISTERS ACTING IN DEVOLVED AREAS**

**168 - The Nutrition (Amendment etc.) (EU Exit) Regulations 2020**

*Laid in the UK Parliament: 29 September 2020*

**Sifting**

|  |                   |
|--|-------------------|
| Subject to sifting in UK Parliament?   | No                |
| Procedure:   | Draft affirmative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | NA                |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee   | NA                |
| Date sifting period ends in UK Parliament  | NA                |
| Written statement under SO 30C:  | Paper 40          |
| SICM under SO 30A (because amends primary legislation)                                 | Not required      |

**Scrutiny procedure**

|  |                   |
|--|-------------------|
| Outcome of sifting   | NA                |
| 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 sections 8(1), 8C(1) and 23 of, and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/651) and The Nutrition (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/650), which come into force immediately following the end of the Implementation Period (“IP”), were made to remedy deficiencies retained EU and existing domestic nutrition legislation arising from the withdrawal of the UK from the EU.

In order to reflect the Northern Ireland Protocol, this instrument amends S.I. 2019/651 and revokes S.I. 2019/650, so that certain functions to be transferred from the EU Commission and European Food Safety Authority following the end of the IP will no longer be transferred in relation to Northern Ireland.

This instrument also makes amendments to account for changes to EU nutrition legislation that have come into force since March 2019, and other minor amendments.

Legal Advisers agree with the statement laid by the Welsh Government dated 1 October 2020 regarding the effect of these Regulations, save that the statement contains the following errors:

1. Under the heading “The law which is being amended”, in the reference to Commission Regulation (EU) 2019/651, the wording “to ensure that they work properly in domestic law at the end of the transitional period” does not describe that Regulation and should be omitted; and
2. Under the heading “The purpose of the amendments”, in the first paragraph, there is an erroneous additional instance of “2019” in the second line and an erroneous reference to “2020” in the third line. The subject regulations do apply (in part) to Northern Ireland.

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.

Mick Antoniw MS  
Chair, Legislation, Justice and Constitution Committee  
Senedd Cymru  
Tŷ Hywel  
Cardiff Bay CF99 1SN

5 October 2020

Dear Mick,

Thank you for your follow-up letter resulting from the Committee's session on 21 September.

I can confirm that the Plenary debate on the Welsh Government's legislative consent motion for the UK Fisheries Bill has been rescheduled for 6 October. It is regrettable that the MoU has not yet been finalised, and this is not the way in which we would ideally have preferred to proceed. However, given the wide ranging nature of the MoU it is still in development, and with the timetable for this Bill, it was impossible to share in advance of the Senedd's consent decision.

With regard to the section 109 order, the UK Government has not provided me with an explanation for the delay. The Secretary of State for Wales has confirmed, however, that he remains committed to bring the Order forward. Our officials are working to agree a new timetable and finalising the drafting.

Turning to the issue of Covid-19, the volume of legislation related to that has had a major impact on the timing of the EU exit related subordinate legislation, both SIs emanating from the UK Government and in respect of the Welsh SIs required to address EU exit issues. For the Welsh Government, we have made a very large number of pieces of subordinate legislation related to coronavirus and Covid-19, with over 110 having been made to date.

This work has taken up a very significant amount of resources across the Welsh Government and has, unavoidably, resulted in a greater amount of EU exit subordinate legislation being made in the latter half of 2020 than we would have liked.

The risks of not having all the necessary legislation in place at the end of transition would involve not having a functioning statute book and not delivering the Withdrawal Agreement and related agreements and post-transition domestic regimes. This would also apply to any treaty with the EU and Free Trade Agreements with third countries.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@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.

Prioritisation exercises have been, and are being, undertaken by the UK and Welsh Governments, to ensure, as far as possible, that all necessary legislation can be delivered by the end of the year.

A further resurgence of Covid-19 could create another significant challenge for the delivery of the legislative programme for the end of transition. That is one reason why we, as a responsible Government, asked the UK Government to seek an extension to the transition period.

I am copying this letter to the Llywydd, as the Chair of the Business Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized, cursive script.

**Jeremy Miles MS**

Y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

# Agenda Item 7.2



Ref: 215SOS20

**Rt Hon Simon Hart MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

T: 0292 092 4216  
E: Correspondence@ukgovwales.gov.uk

**Mick Antoniw MS**

Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff, CF99 1SN

3<sup>rd</sup> October 2020

*Daw Mick.*

**UK Internal Market Bill**

Thank you for the letter of 18 September regarding application of the Sewel Convention to the UK Internal Market Bill.

The Government remains fully committed to the convention on legislative consent. As you note, the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill. In line with usual practice the UK government ministers responsible for the Bill wrote to the Minister for Economy, Transport and North Wales ahead of the Bill's introduction to set this position out in detail and ask that he begin the process for seeking the Senedd's consent.

We are working closely with the Welsh Government as the Bill progresses through Parliament to understand and respond to the concerns outlined in the legislative consent memorandum published on 25 September. It is very much the Government's intention that this work will result in a recommendation that the Senedd supports the Bill.

I am copying this letter to the Secretary of State for Business, Energy and Industrial Strategy, the Minister of State for the Constitution and Devolution, the Minister for Small Business, Consumers and Labour Markets, the Chairs of the External Affairs and Additional Legislation Committee, Finance and Constitution Committee, Committee for the Executive Office, the Welsh Affairs Committee, the Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.

*Simon Hart*

**Rt Hon Simon Hart MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

# Agenda Item 9

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

Document is Restricted



# Agenda Item 10

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

Document is Restricted



Ein cyf/Our ref MA/JH/3258/20

Mick Antoniw MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
Crickhowell House  
Cardiff Bay  
CF99 1NA

John Griffiths MS  
Chair  
Equality, Local Government and Communities Committee  
Senedd Cymru  
Crickhowell House  
Cardiff Bay  
CF99 1NA

06 October 2020

Dear Chair,

Thank you for your joint letter of 30 September about the Legislative Consent Memorandum (LCM) that was recently laid with regards to the UK Government's Domestic Abuse Bill (the Bill). You asked me three questions in relation to the LCM.

You have asked for an explanation as to why there was a delay in laying the LCM before the Senedd, when the Bill was introduced to the House of Commons on 3 March but the LCM was not laid before the Senedd until 3 August. The Bill was introduced before the UK Parliament for its first reading on 3 March and my officials were involved in ongoing discussions with their counterparts in the UK Government; specifically regarding the powers for the proposed Domestic Abuse Commissioner and the ability of the Senedd to scrutinise the same. Further work on reviewing the Bill in its totality was then halted as both Legal Services and policy officials responded to the unprecedented and fast moving work as a result of COVID-19. The scrutiny of the Bill has only recently restarted and my officials have resumed dialogue with UK Government officials and are considering the Bill as a whole. It is unfortunate that the LCM was not laid from the outset due to the huge volume of work created by COVID -19, however, I believe that now presents an opportune time to scrutinise

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Jane.Hutt@llyw.cymru](mailto:Gohebiaeth.Jane.Hutt@llyw.cymru)  
[Correspondence.Jane.Hutt@gov.wales](mailto:Correspondence.Jane.Hutt@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.

**Back Page 242**  
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 Bill, given that the UK Government amendments have been recently notified to us and that the Bill is now proceeding before the House of Lords.

You have also asked for details of the analysis undertaken in order to determine that clauses 3, 65, 66, 68 and 73 fall within the Senedd's competence, and why clause 1 and 2 are not included in the LCM. You highlight that the UK Government's Explanatory Notes to the Bill states that the Bill is not within legislative competence of Senedd Cymru, and therefore consent is not required. It remains my view that there are good arguments as to why the provisions identified are within the legislative competence of the Senedd Cymru. The overall purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, the prevention of domestic abuse, including strengthening support for victims of abuse and their families; this has a clear impact on devolved matters.

The Legislative Consent Motion process must be viewed in the context of the Sewell convention as set out in section 107(6) of the Government of Wales Act 2006 and the Devolution Guidance Note, 'Parliamentary and Assembly Primary Legislation Affecting Wales', which provides that Parliament will not legislate "with regard to devolved matters" without the consent of the Senedd Cymru. Domestic abuse in general is a devolved area, as highlighted by the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

I hope my letter clarifies these matters. I look forward to receiving your report next month and, as you know, I remain committed to eliminating all elements of domestic abuse and look forward to discussing this Bill with Members of the Senedd during the debate on 10 November.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane', with a horizontal line above it.

**Jane Hutt AS/MS**

Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip

Document is Restricted

# Agenda Item 12

## LEGISLATIVE CONSENT MEMORANDUM

### NON-DOMESTIC RATING (LISTS) (NO.2) BILL

1. This legislative consent memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before the Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Non-Domestic Rating (Lists) (No.2) Bill (the Bill) was introduced in the House of Commons on 8 September 2020. The Bill can be found at:  
<https://bills.parliament.uk/bills/2774>
3. Its purpose is to move the date for the next non-domestic rates valuation to 1 April 2023 and adjust the deadline for the submission of proposed non-domestic rating lists from 30 September to 31 December in the year preceding revaluation.
4. A previous bill was introduced in Parliament in June 2019 to set the date for valuation at 1 April 2021. The Senedd approved a legislative consent motion on that bill on 9 July 2019. However the bill fell when Parliament was prorogued in September 2019.
5. A further bill with the same purpose, the Non-Domestic Rating (Lists) Bill, was introduced in the House of Lords on 18 March 2020. A legislative consent memorandum (LCM) in respect of that bill was laid before the Senedd on 28 April 2020 and a revised LCM was laid on 8 July.
6. In light of COVID-19, the UK Government subsequently decided not to progress that bill and determined to move the date of the next revaluation from 1 April 2021 to 1 April 2023.
7. On 11 August, the Welsh Government announced its intention to move the date of the next revaluation to 1 April 2023.
8. Primary legislation is required to effect this change.

#### **Policy Objective(s)**

9. The UK Government's stated policy objective is to ensure that non-domestic rates bills more accurately reflect the current rental value of properties.
10. The Valuation Office Agency (VOA) has a statutory duty to maintain accurate valuation lists for non-domestic rating (NDR) and council tax purposes in Wales and England. The VOA compiles and maintains the valuation data which is held on the lists. These lists support the collection of over £2.7 billion (net) of local tax revenue each year in Wales. All this revenue is used to support local government spending on services.

11. Periodic revaluations of properties are required for non-domestic rating purposes. These comprise the review of the rateable values of all non-domestic properties at a particular point in time. Revaluation is not a revenue-raising exercise. It is carried out to maintain fairness in the system by redistributing the total rates payable between ratepayers to reflect changes in the property market. At revaluation, the VOA assesses the rateable values of non-domestic properties so that they better reflect market conditions, primarily the rental market.
12. The valuation cycles are governed by the Local Government Finance Act 1988 (the 1988 Act). For NDR, revaluations are required to take place every five years. As the previous revaluation took effect on 1 April 2017, the next revaluation in Wales is scheduled to take place on 1 April 2022.
13. In July 2018, the Cabinet Secretary for Finance announced that the next NDR revaluation exercise for Wales would be brought forward from 2022 to 1 April 2021. This ensured that revaluation in Wales would take place in line with that in England.
14. Following the coronavirus outbreak, the Minister for Finance and Trefnydd announced on 11 August that the next revaluation would instead take place on 1 April 2023. This is to ensure that property values in Wales reflect the impact of the pandemic on economic conditions. The change also aligns with the date announced by the UK Government.
15. As this increases the period since the previous revaluation (in 2017) from five years to six, there is a need to amend the 1988 Act to alter the revaluation date. This may only be achieved through primary legislation.

### **Summary of the Bill**

16. The Bill is sponsored by the Ministry of Housing, Communities and Local Government (MHCLG).
17. The provisions for Wales in the Bill will amend the 1988 Act and move the NDR revaluation date in Wales from 1 April 2022 to 1 April 2023.
18. In addition, the Bill will extend the deadline by which the VOA is required to publish a draft list, from 30 September to 31 December in the year preceding revaluation.

### **Provisions in the Bill for which consent is required**

19. The Bill amends the Local Government Finance Act 1988 and postpones the non-domestic rates revaluation from 2022 until 2023 in England and Wales and adjusts the deadline for the submission of proposed non-domestic rating lists from 30 September in the year preceding revaluation to 31 December. These amendments are set out in clauses 1(2)(b), 1(3)(b) and 1(4) of the provisions in the Bill as they relate to Wales and consent is sought in respect

of those provisions. The amended clauses do not contain any subordinate legislation powers for Welsh Ministers.

20. Consent is required for these provisions because they fall within the legislative competence of the Senedd Cymru insofar as they have the effect of modifying functions of valuation officers of the VOA.
21. The VOA is an executive agency sponsored by HMRC and valuation officers, as holders of an office that has functions of a public nature, are a “public authority” under paragraph 8(4) of Part 1 of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). Paragraph 10(1) of Part 1 of Schedule 7B to GOWA 2006 provides that a provision of an Act of the Senedd may not remove or modify (or confer power by subordinate legislation to remove or modify) any functions of a public authority. Therefore, in accordance with paragraph 10(1) of Part 1 of Schedule 7B to GOWA 2006, the consent of HM Treasury would be required to change the date or frequency of NDR revaluations and adjust the deadline for the submission of proposed NDR Lists from 30 September of the year preceding revaluation to 31 December.

### **Reasons for making these provisions for Wales in The Non-Domestic Rating (Lists) (No.2) Bill**

22. Considerable preparatory work is required in preparing new rating lists to take effect on 1 April 2023 and in making ratepayers aware of the prospective changes. The confirmation of the valuation date in legislation provides the statutory basis for this work.
23. The possibility of making this change through a future Welsh Government Bill has been discounted because there is no suitable legislative opportunity within the timescale required to enable the VOA to complete the necessary valuation work. Also, using a later Welsh Government Bill would result in less certainty for businesses and other ratepayers in Wales in the interim.
24. The Bill will also ensure that the timing of the revaluation in Wales aligns with that in England and that valuations are carried out in a consistent manner.

### **Financial implications**

25. Periodic revaluations are a required feature of the non-domestic rating system and the costs are built into budget planning. It is estimated that the work involved in preparing new rating lists for 1 April 2023 will cost a total of £5.4m over two years.
26. The VOA assesses the value of every non-domestic property with reference to a specified date, the Antecedent Valuation Date (AVD). To allow for the work necessary to assess all properties and draw up new lists to apply from 1 April 2023, the AVD will need to be set as 1 April 2021. This will be achieved through an Order laid before the Senedd.

## **Conclusion**

27. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The interconnected nature of the Welsh and English systems for administering revaluations for rating purposes also supports the provisions being taken forward at the same time and in the same legislative instrument.

**Rebecca Evans MS**  
**Minister for Finance and Trefnydd**  
**September 2020**



Document is Restricted

Mick Antoniw MS  
Chair, Legislation, Justice and Constitution Committee

08 October 2020

Dear Mick

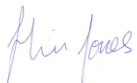
## **Covid-19 Regulations**

On 6 October the Business Committee discussed the timing of debates of Covid-19 Regulations. In particular, the Committee considered what the appropriate balance should be between the need to allow sufficient time for committee scrutiny on one hand, and on the other the importance of ensuring that Members are given the opportunity to debate the Regulations in a timely manner. The Committee's conclusion was that the Welsh Government's more recent pattern of scheduling debates within two weeks of Regulations having been laid, combined with the ability of the Legislation, Justice and Constitution Committee to consider and report on those Regulations within that timescale, struck a satisfactory balance. The importance of the LJC committee's role in the scrutiny of such legislation was reaffirmed.

However, there was further discussion about the possibility of taking a different approach to those Regulations for which the general purpose had already been considered in the scrutiny of previous Regulations. This point was felt to be particularly relevant in the case of Regulations relating to local restrictions, where a series of Regulations have introduced specific restrictions in a number of County Boroughs in turn and have been scrutinised in detail. One potential option raised in discussion was for Welsh Government to flag new Regulations where the underlying principle had already been scrutinised, to enable a decision to be taken by the Business Committee about the level of further scrutiny which might be required before the debate.

The Business Committee is therefore seeking the LJC Committee's views on the possibility of enabling certain Regulations to be prioritised for debate in such circumstances.

Yours sincerely,



**Elin Jones MS**  
Y Llywydd and Chair of the Business Committee

