

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 16 November 2020	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@senedd.wales

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

Informal pre-meeting (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest
09.30
- 2 Proposed negative instruments that raise no reporting issues
under Standing Order 21.3B
09.30–09.35 (Pages 1 – 3)
CLA(5)–33–20 – Paper 1 – Proposed negative statutory instruments with clear reports
 - 2.1 pNeg(5)36 – The Environmental Assessments and Town and Country
Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020
 - 2.2 pNeg(5)37 – The National Health Service (General Medical Services Contracts)
(Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020
 - 2.3 pNeg(5)38 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit)
Regulations 2020



2.4 pNeg(5)39 – The Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

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

09.35–09.40

(Pages 4 – 5)

CLA(5)–33–20 – Paper 2 – Statutory instruments with clear reports

Affirmative Resolution Instruments

3.1 SL(5)645 – The Additional Learning Needs Co-ordinator (Wales) Regulations 2020

3.2 SL(5)646 – The Legislation (Wales) Act 2019 (Amendment of Schedule 1) Regulations 2020

4 Instruments previously considered for sifting and now subject to scrutiny under Standing Orders 21.2 and 21.3

09.40–09.45

4.1 SL(5)650 – The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

(Pages 6 – 20)

CLA(5)–33–20 – Paper 3 – Report

CLA(5)–33–20 – Paper 4 – Regulations

CLA(5)–33–20 – Paper 5 – Explanatory Memorandum

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

09.45–09.55

Negative Resolution Instruments

5.1 SL(5)643 – The Waste (Wales) (Miscellaneous Amendments) Regulations 2020

(Pages 21 – 56)

CLA(5)–33–20 – Paper 6 – Report

CLA(5)–33–20 – Paper 7 – Regulations

CLA(5)–33–20 – Paper 8 – Explanatory Memorandum

**5.2 SL(5)647 – The Welsh in Education Strategic Plans (Wales) (Amendment)
(Coronavirus) Regulations 2020**

(Pages 57 – 69)

CLA(5)–33–20 – Paper 9 – Report

CLA(5)–33–20 – Paper 10 – Regulations

CLA(5)–33–20 – Paper 11 – Explanatory Memorandum

**5.3 SL(5)648 – The National Health Service (Performers Lists) (Wales)
(Amendment) Regulations 2020**

(Pages 70 – 80)

CLA(5)–33–20 – Paper 12 – Report

CLA(5)–33–20 – Paper 13 – Regulations

CLA(5)–33–20 – Paper 14 – Explanatory Memorandum

**5.4 SL(5)651 – The Health Protection (Coronavirus, International Travel) (Wales)
(Amendment) (No. 18) Regulations 2020**

(Pages 81 – 93)

CLA(5)–33–20 – Paper 15 – Report

CLA(5)–33–20 – Paper 16 – Regulations

CLA(5)–33–20 – Paper 17 – Explanatory Memorandum

CLA(5)–33–20 – Paper 18 – Letter from the Minister for Finance and
Trefnydd, 6 November 2020

CLA(5)–33–20 – Paper 19 – Written statement, 6 November 2020

**5.5 SL(5)652 – The Health Protection (Coronavirus, International Travel) (Wales)
(Amendment) (No. 19) Regulations 2020**

(Pages 94 – 108)

CLA(5)–33–20 – Paper 20 – Report

CLA(5)–33–20 – Paper 21 – Regulations

CLA(5)–33–20 – Paper 22 – Explanatory Memorandum

CLA(5)–33–20 – Paper 23 – Letter from the Minister for Finance and
Trefnydd, 6 November 2020

CLA(5)–33–20 – Paper 24 – Written statement, 5 November 2020

Made Affirmative Resolution Instruments

5.6 SL(5)649 – The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020

(Pages 109 – 180)

CLA(5)–33–20 – Paper 25 – Report

CLA(5)–33–20 – Paper 26 – Regulations

CLA(5)–33–20 – Paper 27 – Explanatory Memorandum

CLA(5)–33–20 – Paper 28 – Letter from the First Minister, 5 November 2020

CLA(5)–33–20 – Paper 29 – Written statement, 2 November 2020

5.7 SL(5)653 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020

(Pages 181 – 197)

CLA(5)–33–20 – Paper 30 – Report

CLA(5)–33–20 – Paper 31 – Regulations

CLA(5)–33–20 – Paper 32 – Explanatory Memorandum

CLA(5)–33–20 – Paper 33 – Letter from the Minister for Health and Social Services, 7 November 2020

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

10.00

6.1 SL(5)636 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020

(Pages 198 – 201)

CLA(5)–33–20 – Paper 34 – Report

CLA(5)–33–20 – Paper 35 – Welsh Government response

6.2 SL(5)638 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) Regulations 2020

(Pages 202 – 206)

CLA(5)–33–20 – Paper 36 – Report

CLA(5)–33–20 – Paper 37 – Welsh Government response

- 6.3 SL(5)641 – The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020**
(Pages 207 – 216)
- CLA(5)–33–20 – Paper 38 – Report
CLA(5)–33–20 – Paper 39 – Welsh Government response
- 7 Written Statements under Standing Order 30C**
10.00–10.05
- 7.1 WS–30C(5)199 – The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020**
(Pages 217 – 222)
- CLA(5)–33–20 – Paper 40 – Written statement
CLA(5)–33–20 – Paper 41 – Commentary
- 7.2 WS–30C(5)201 – The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020**
(Pages 223 – 227)
- CLA(5)–33–20 – Paper 42 – Written statement
CLA(5)–33–20 – Paper 43 – Commentary
- 7.3 WS–30C(5)202 – The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020**
(Pages 228 – 233)
- CLA(5)–33–20 – Paper 44 – Written statement
CLA(5)–33–20 – Paper 45 – Commentary
- 7.4 WS–30C(5)203 – The Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020**
(Pages 234 – 237)
- CLA(5)–33–20 – Paper 46 – Written statement
CLA(5)–33–20 – Paper 47 – Commentary
- 8 Papers to note**
10.05–10.10

- 8.1 Letter from the First Minister: The Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020**
(Pages 238 – 240)
CLA(5)–33–20 – Paper 48 – Letter from the First Minister, 9 November 2020
- 8.2 Letter from the Deputy Minister and Chief Whip: Statutory Instrument Consent Memorandum – The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020**
(Page 241)
CLA(5)–33–20 – Paper 49 – Letter from the Deputy Minister and Chief Whip, 12 November 2020
- 8.3 Letter from the First Minister: Scrutiny of regulations arising from the UK’s exit from the European Union**
(Page 242)
CLA(5)–33–20 – Paper 50 – Letter from the First Minister, 12 November 2020
- 9 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**
10.10
- 10 UK Internal Market Bill: Update on the Bill's progress in the House of Lords**
10.10–10.15 (Pages 243 – 258)
CLA(5)–33–20 – Paper 51 – Research Service briefing
- 11 Scrutiny of regulations made under the EU (Withdrawal) Act 2018: Update**
11.15–11.20 (Pages 259 – 260)
CLA(5)–33–20 – Paper 52 – Letter from the Minister for Finance and Trefnydd, 12 November 2020
- 12 Legislative Consent Memorandum on the UK Internal Market Bill: Consideration of draft report**
10.20–10.45 (Pages 261 – 293)

CLA(5)-33-20 - Paper 53 - Draft report

Date of the next meeting - 23 November 2020

Proposed Negative Statutory Instruments with Clear Reports

16 November 2020

Pn(5)36 – The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed negative

The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) are being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”) in order to address failures of retained EU law to operate effectively arising from the withdrawal of the United Kingdom from the European Union, and are therefore required to be laid for sifting. In accordance with the requirements of the 2018 Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to the Explanatory Memorandum to these Regulations.

This Regulations make amendments to two statutory instruments:

- The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the first Brexit SI”).
- The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the second Brexit SI”).

The first Brexit SI and the second Brexit SI made various amendments to legislation dealing with environmental impact assessment and town and country planning to ensure that the statute book remains operable following the UK’s exit from the EU, and addressed deficiencies in domestic legislation arising from EU Exit. The first Brexit SI also made minor amendments to existing legislation deriving from EU requirements.

The amendments made by these Regulations reflect the transition period in Article 127 of the Withdrawal Agreement. References to 31 January 2020, which currently read “exit day”, will be changed to “IP Completion Day” referring to 11pm on 31 December 2020.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



Pn(5)37 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

Procedure: Proposed negative

These Regulations amend the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004 (the Principal Regulations).

The Principal Regulations make provision as to the drugs, medicines or other substances that may be ordered for patients in the provision of medical services under a general medical services contract within the meaning of section 42 of the National Health Service (Wales) Act 2006.

These Regulations are being made in consequence of the UK's withdrawal from the European Union (EU). Amendments to the Principal Regulations are required to correct EU references to ensure the Principal Regulations remain operable at the end of the transition period following the UK's exit from the EU. In particular, these Regulations change references to "exit day" to references to "IP completion day".

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

Pn(5)38 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020

Procedure: Proposed negative

These Regulations amend the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 ("2019 Regulations") to make necessary technical changes to ensure that the legislation amended by the 2019 Regulations continues to operate effectively following the UK's withdrawal from the European Union. As a result of implementation of EU legislation since the 2019 Regulations were made, including amendments to various EU Directives made under the EU Circular Economy Package, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU



law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

These Regulations also revoke certain minor provisions in the Hazardous Waste (Wales) Regulations 2005 which will cease to function effectively after IP completion day.

The 2019 Regulations address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. Those amendments, in so far as they are amended by these Regulations, relate to the Waste (Wales) Measure 2010, the Landfill Allowances Scheme (Wales) Regulations 2004, the Hazardous Waste (Wales) Regulations 2005 and the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

Pn(5)39 – The Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed negative

These Regulations make amendments to subordinate legislation, which apply in relation to Wales in the areas of food and rural affairs, in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the EU, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, and to correct transitional provision.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



Agenda Item 3

Statutory Instruments with Clear Reports

16 November 2020

SL(5)645 – The Additional Learning Needs Co-ordinator (Wales) Regulations 2020

Procedure: Affirmative

The draft Regulations supplement section 60 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which requires governing bodies of maintained schools (except special schools) and further education institutions in Wales to designate a person (or persons) as the additional learning needs co-ordinator to be responsible for co-ordinating additional learning provision for pupils or students with additional learning needs.

The draft Regulations set out the qualifications or experience that additional learning needs co-ordinators must have and confer functions on additional learning needs co-ordinators relating to the additional learning provision for pupils or students with additional learning needs.

Parent Act: Additional Learning Needs and Education Tribunal (Wales) Act 2018

Date Made:

Date Laid: 03 November 2020

Coming into force date: 4 January 2021

SL(5)646 – The Legislation (Wales) Act 2019 (Amendment of Schedule 1) Regulations 2020

Procedure: Affirmative

These Regulations amend Schedule 1 to the Legislation (Wales) Act 2019, which sets out general definitions that apply to terms used in Acts of Senedd Cymru and Welsh subordinate instruments.

The Regulations insert provisions into Schedule 1 about the meaning of the following expressions—

Equality and Human Rights Commission;

National Trust;

Public Accounts Committee;

Sentencing Code.

They also amend the definition of the “standard scale” of fines for summary offences as a consequence of the Sentencing Code (the restatement of sentencing legislation set out in the Sentencing Act 2020).

Parent Act: Legislation (Wales) Act 2019

Date Made:

Date Laid: 03 November 2020

Coming into force date: In accordance with regulation 1(2)



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

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Legislation, Justice and Constitution Committee

Agenda Item 4.1

SL(5)650 – The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Background and Purpose

The Environment (Miscellaneous Amendment) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) are made under paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

The purpose of the Regulations is to ensure that retained EU law operates effectively once the UK leaves the EU.

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) made amendments to the Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433) which transposed the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality in Europe.

Regulation 2(5)(a) of the 2019 Regulations makes reference to Directive 2008/1/EC concerning integrated pollution prevention and control. This Directive is no longer in force.

Regulation 3 of these Regulations amends the 2019 Regulations by substituting reference to Directive 2008/1/EC with reference to Directive 2010/75/EU concerning industrial emissions (integrated pollution prevention and control).

The Regulations also amend articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

These Regulations have previously been laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

The purpose of the Regulations is to ensure that retained EU law operates effectively once the UK leaves the EU. Regulations 1 and 2 come into force on the Implementation Period



completion day, which is at 23:00 on 31 December 2020 ("IP completion day"). Regulation 3 comes into force immediately before IP completion day. This triggers the consultation requirement set out in paragraph 4 of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State before the regulations are made. The Regulations confirm that the Welsh Ministers have consulted with the Secretary of State.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 November 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. 1215 (W. 274)

**EXITING THE EUROPEAN
UNION, WALES**

**ENVIRONMENTAL
PROTECTION, WALES**

The Environment (Miscellaneous
Amendments) (Wales) (EU Exit)
Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 makes amendments to the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W. 230)).

Regulation 3 amends the Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/390 (W. 95)), which itself amends the Air Quality Standards (Wales) Regulations 2010 (S.I. 2010/1433 (W. 126)).

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. 1215 (W. 274)

**EXITING THE EUROPEAN
UNION, WALES**

**ENVIRONMENTAL
PROTECTION, WALES**

The Environment (Miscellaneous
Amendments) (Wales) (EU Exit)
Regulations 2020

Sift requirements satisfied 2 November 2020

Made 4 November 2020

Laid before Senedd Cymru 6 November 2020

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018⁽¹⁾.

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied⁽²⁾.

In accordance with paragraph 4 of Schedule 2 to that Act, the Welsh Ministers have consulted with the Secretary of State.

(1) 2018 c. 16.

(2) The reference in Schedule 7 to the European Union (Withdrawal) Act 2018 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).

Title and commencement

1.—(1) The title of these Regulations is the Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

(2) These Regulations come into force on IP completion day except for regulation 3 which comes into force immediately before IP completion day.

Amendment of the Natural Resources Body for Wales (Establishment) Order 2012

2.—(1) The Natural Resources Body for Wales (Establishment) Order 2012⁽¹⁾ is amended as follows.

(2) For article 11(3), substitute—

“(3) The Welsh Ministers or the Secretary of State may give the Body general or specific directions for—

- (a) securing that any retained EU obligation is met, or
- (b) the implementation of any international obligation of the United Kingdom.”

(3) For article 11A(2)(b), substitute—

“(b) under any other enactment for the purpose of—

- (i) securing that any retained EU law obligation is met, or
- (ii) the implementation of any international obligation of the United Kingdom.”.

(4) For article 11A(4), substitute—

“(4) Paragraph (4A) applies if the Welsh Ministers or the Secretary of State vary or revoke any direction given to the Body (whether under article 11 or under any other enactment) for the purpose of—

- (a) securing that any retained EU law obligation is met, or
- (b) the implementation of any international obligation of the United Kingdom.

(4A) Where this paragraph applies, the person making the variation or revocation must—

- (a) publish the variation or revocation as soon as reasonably practicable;
- (b) make copies of the variation or revocation available on request.”

(1) S.I. 2012/1903 (W. 203), as amended by S.I. 2013/755 (W. 90) and 2013/1821 (W. 1821).

**Amendment of the Air Quality Standards (Wales)
(Amendment) (EU Exit) Regulations 2019**

3. In regulation 2(5)(a) of the Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019⁽¹⁾, for “Directive 2008/1/EC” substitute “Directive 2010/75/EU”.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
4 November 2020

(1) S.I. 2019/390 (W. 95).

Explanatory Memorandum to the Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Environment and Communities Division 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 Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths AS
Minister for Environment, Energy and Rural Affairs
6 November 2020

PART 1

1. Description

This instrument makes amendment to regulation 2(5)(a) of The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019, specifically by replacing reference to Directive 2008/1/EC with reference to Directive 2010/75/EU.

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 made amendments to The Air Quality Standards (Wales) Regulations 2010 in order to address failures of retained EU law to operate effectively following the withdrawal of the UK from the EU.

The instrument also amends articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

Regulation 3 of these Regulations comes into force immediately before IP completion day. This is to allow the amendment to the Air Quality (Wales) (Amendment) (EU Exit) Regulations 2019 to take effect, and for the amendments within that SI to operate immediately on IP completion day.

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

This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the “2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the negative resolution procedure. The instrument makes a minor amendment and should therefore be subject to annulment.

In order for this provision to take effect on IP completion day (and immediately before IP completion day in relation to regulation 3) these Regulations will need to come into force sooner than 21 days after their laying before the Senedd.

Regulation 3 of the 2020 regulations comes into force immediately before Implementation Period completion day. This triggers the consultation requirement set out in paragraph 4 of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State before the regulations are made.

The Legislation, Justice and Constitution Committee (LJCC) considered a draft of these regulations on 2 November 2020, and agreed that the negative procedure is appropriate for these regulations. A copy of the published LJCC's report can be accessed via the following link:

<https://senedd.wales/laid%20documents/cr-ld13657/cr-ld13657-e.pdf>

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK's exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before exit day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The purpose of the instrument is to ensure retained EU law operates effectively once the UK leaves the EU. This means maintaining the substantive elements of the EU legislative regime in the fields of fisheries and marine management (following the work of addressing identified deficiencies).

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 made amendments to The Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433) which transposed the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality in Europe.

Regulation 2(5)(a) of The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 makes reference to Directive 2008/1/EC concerning integrated pollution prevention and control. This Directive is no longer in force.

Regulation 3 of The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 amends The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 by substituting reference to Directive 2008/1/EC with reference to Directive 2010/75/EU concerning industrial emissions (integrated pollution prevention and control).

The instrument also amends articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of this instrument is solely to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to these Regulations as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement which the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have	A statement to explain why it is appropriate to create such a sub-delegated power.

		committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd Cymru (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. There are benefits to the continuation of operable air quality standards legislation following EU exit.”

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

SL(5)643 – The Waste (Wales) (Miscellaneous Amendments) Regulations 2020

Background and Purpose

These Regulations are supplementary to the Waste (Circular Economy) (Amendment) Regulations 2020 (“the UK Regulations”) and are required in order to make a number of consequential amendments to certain Welsh primary and secondary legislation to ensure consistency and to transpose changes introduced by the EU Circular Economy Package (“the CEP”).

These Regulations update references in Welsh legislation to two EU Directives that have been amended as part of the CEP in order to refer to the latest versions of those Directives. They also amend the Hazardous Waste (Wales) Regulations 2005 in order to implement other EU obligations arising from the CEP.

The provision made by these Regulations is equivalent in effect to provision made by the UK Regulations in relation to England-only legislation.

Procedure

Negative.

Technical Scrutiny

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

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

In regulation 4(7)(a), the quotation marks that denote the wording to be substituted are not in the correct place - the opening quotation mark should precede “Council”, not “for”. Although the reader may be able to infer what is to be substituted, the provision as drafted does not express this clearly.

Merits Scrutiny

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

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



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

"The, [sic] Welsh, Scottish Northern Ireland and UK governments decided that these measures will be transposed as described in the [joint public statement](#), without a formal consultation, given the changes are relatively minor and technical.

However, a light-touch form of engagement was conducted with key representatives of the landfill and incineration sector across England and Wales. The aim of these discussions was to inform industry of the proposed legislative changes and how they would be implemented, and to seek their views on those changes."

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

The footnote to regulation 5(1) refers to the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011, but it appears to cite the wrong SI number. We assume the reference should be "S.I. 2011/725 (W.152)" [*emphasis added*] not "S.I. 2011/725 (W.154)".

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the reference could be updated to reflect the correct regulations.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

Technical Scrutiny point 1:

While the Welsh Government believes the intention is clear, the point reflects a drafting error, which we will correct at the next suitable opportunity.

Merit Scrutiny point 2:

The point identifies a drafting error, although as noted it does not alter the law. Moreover, insofar as the footnote is provided to assist the reader, we believe this is achieved by the SI number, without danger of serious confusion. Nevertheless, to better assist the reader we will correct at the next suitable opportunity.

Legal Advisers

Legislation, Justice and Constitution Committee

5 November 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. 1179 (W. 265)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste (Wales) (Miscellaneous
Amendments) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend certain Welsh primary and secondary legislation by bringing up to date references in the legislation to two EU Directives that have been amended as part of the European “Circular Economy Package” (“CEP”), so as to refer to the latest versions of those Directives. The CEP consists of the amendment of a number of EU Directives for the purpose of moving towards a more resource efficient, circular economy. There are additional amendments to the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)), implementing other EU obligations arising from the Circular Economy Package.

The Directives are Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312 22.11.2008, p. 3) (“the Waste Framework Directive”) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182 16.7.1999, p. 1) (“the Landfill Directive”).

The Waste Framework Directive was last amended by Directive (EU) 2018/851 (OJ L 150 14.6.2018, p. 109) and the Landfill Directive, by Directive (EU) 2018/850 (OJ L 150 14.6.2018, p. 100).

These Regulations apply in relation to Wales. In conjunction with UK regulations made by the Secretary of State, they form part of the transposition into domestic law, of the amendments made to the Waste Framework Directive and the Landfill Directive.

Regulation 2 amends the Waste (Wales) Measure 2010 (2010 nawm 8) to bring up to date references to

the Landfill Directive and the Waste Framework Directive.

Regulation 3 amends the Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)), to bring up to date references to the Landfill Directive and the Waste Framework Directive.

Regulation 4 amends the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)). Amendments to regulations 2, 47 and 48 bring up to date references to the Waste Framework Directive and Landfill Directive. The amendment of regulation 5 gives effect to changes in the definition of “management” of waste. Amendments to regulations 19 and 20 give effect to changes made by the CEP in relation to the mixing of waste oils and the mixing of hazardous waste, respectively.

Regulation 5 amends the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 152)), to bring up to date references to the Waste Framework Directive.

Regulation 6 amends the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (S.I. 2017/567 (W. 136)), to bring up to date references to the Waste Framework Directive.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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. 1179 (W. 265)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste (Wales) (Miscellaneous
Amendments) Regulations 2020**

Made 27 October 2020

Laid before Senedd Cymru 28 October 2020

Coming into force 19 November 2020

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ (“the ECA 1972”) in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste⁽³⁾ and the prevention, reduction and management of waste⁽⁴⁾.

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- (1) By virtue of section 59(2) of the Government of Wales Act 2006 (c.32) (“GOWA 2006”) the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 (c.68) (“the ECA 1972”) in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose. Paragraph 28(1) of Schedule 11 to GOWA 2006 provides that designations made under section 2(2) of the ECA 1972 by virtue of section 29(1) of the Government of Wales Act 1998 (c.38) which are in force immediately before the commencement of the repeal of that subsection by GOWA 2006 continue to have effect after the commencement of that repeal as if made by virtue of section 59(1) of GOWA 2006.
- (2) 1972 c. 68. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the ECA 1972 continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the ECA 1972 was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (3) S.I. 2005/850.
- (4) S.I. 2010/1552.

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the ECA 1972, make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Waste (Wales) (Miscellaneous Amendments) Regulations 2020.

(2) These Regulations come into force on 19 November 2020.

Amendment of the Waste (Wales) Measure 2010

2.—(1) The Waste (Wales) Measure 2010(1) is amended as follows.

(2) In section 9(3), for “Council Directive 2011/97/EU” substitute “Directive (EU) 2018/850”.

(3) In section 17(2), for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

Amendment of the Landfill Allowances Scheme (Wales) Regulations 2004

3.—(1) The Landfill Allowances Scheme (Wales) Regulations 2004(2) are amended as follows.

(2) In regulation 2(1), in the definition of “waste facility” for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

(3) In regulation 7(10), for “Council Regulation 2011/97/EU” substitute “Directive (EU) 2018/850”.

Amendment of the Hazardous Waste (Wales) Regulations 2005

4.—(1) The Hazardous Waste (Wales) Regulations 2005(3) are amended as follows.

(2) In regulation 2(1)(a), for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

(3) In regulation 5(2), in the definition of “management”, after “recovery” insert “(including sorting)”.

(4) For regulation 19(4) substitute—

“(4) Paragraph (1) applies to the mixing of waste oil only where such mixing would impede

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- (1) 2010 nawm 8. Amended by S.I. 2019/414 (W. 96). There are other amendments not relevant to these Regulations.
- (2) S.I. 2004/1490 (W. 155) amended by S.I. 2005/1820 (W. 148), 2015/1417 (W. 141) and 2019/414 (W. 96). There are other amendments not relevant to these Regulations.
- (3) S.I. 2005/1806 (W. 138) amended by S.I. 2009/2861 (W. 250), 2011/971 (W. 141), 2013/755 (W. 90), 2018/721 (W. 140) and 2019/414 (W. 96). There are other amendments not relevant to these Regulations.

regeneration or another recycling operation delivering an equivalent or a better overall outcome than regeneration.

(5) In paragraph (4)—

“recycling” means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes, including the reprocessing of organic material but not including energy recovery or reprocessing into materials that are to be used as fuels;

“regeneration” means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils.”.

(5) In regulation 20—

(a) in paragraph (1)—

(i) for “This regulation” substitute “Paragraph (2)”;

(ii) in sub-paragraph (b)(i), omit “and economically”;

(b) after paragraph (2) insert—

“(2A) Where separation is not required pursuant to paragraph (2), the holder must make arrangements for mixed hazardous waste to be treated at a facility authorised by a waste permit to treat that waste.”.

(6) In regulation 47(5B)—

(a) for “Council Directive 2011/97/EU” substitute “Directive (EU) 2018/850”;

(b) at the end insert “or (3)”.

(7) In regulation 48(6B)—

(a) “for Council Directive 2011/97/EU” substitute “Directive (EU) 2018/850”;

(b) at the end insert “or (3)”.

Amendment of the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

5.—(1) The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011(1) are amended as follows.

(1) S.I. 2011/1014 (W. 154) amended by S.I. 2019/414 (W. 96). There are other amendments not relevant to these Regulations.

(2) In regulation 2(1), in the definition of “Waste Framework Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

Amendment of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

6.—(1) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017⁽¹⁾ are amended as follows.

(2) In Schedule 1—

- (a) in paragraph 9, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (b) in paragraph 10, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

27 October 2020

(1) S.I. 2017/567 (W. 136) amended by S.I. 2018/1216 (W. 249). There are other amendments not relevant to these Regulations.

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) Regulations 2020

This Explanatory Memorandum has been prepared by the Resource Efficiency and Circular Economy Division within the Economy, Skills and Natural Resources Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (Wales) (Miscellaneous Amendments) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs
28 October 2020

PART 1

1. Description

These Regulations are supplementary to The Waste (Circular Economy) (Amendment) Regulations 2020¹. They make amendments to several Welsh Statutory Instruments and certain primary legislation for the purpose of transposing for Wales, the EU Circular Economy Package (CEP).

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

None.

3. Legislative background

The Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. Section 59(2) of the Government of Wales Act 2006 empowers the Welsh Ministers to exercise the section 2(2) powers if they have been appropriately designated for the purposes of section 2(2). The Welsh Ministers are designated in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste, and the prevention, reduction and management of waste. The relevant Designation Orders are SI 2005/850 and SI 2010/1552 respectively. With respect to S.I. 2005/850, the relevant functions were originally conferred on the National Assembly for Wales, but are exercisable by the Welsh Ministers by virtue of the operation of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006. By virtue of section 59(3) of the 2006 Act, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure. The Regulations have been drafted as suitable for negative procedure, on the basis that the changes are relatively minor and technical, notwithstanding that regulation 2 makes minor amendments to the Waste (Wales) Measure 2010, which is primary legislation. We are only transposing EU requirements, or dealing with matters arising from those requirements, not introducing new policy.

4. Purpose and intended effect of the legislation

The CEP is being transposed principally through a UK Statutory Instrument, the Waste (Circular Economy) (Amendment) Regulations 2020 (“the UK Regulations”) via negative procedure. A Statutory Instrument Consent Memorandum has been laid before the Senedd as the UK Regulations make provision in relation to Wales amending primary legislation within the legislative competence of the Senedd². The UK Regulations amend the legislation that

¹ <https://www.legislation.gov.uk/ukxi/2020/904/contents/made>

² <https://senedd.wales/laid%20documents/sicm-ld13439/sicm-ld13439-e.pdf>

transposed the relevant Directives in England and Wales and some legislation that partially transposed the relevant Directives in Scotland and Northern Ireland to ensure compliance with the relevant Directives as amended.

The Waste (England and Wales) Regulations 2011 transposed the revised Waste Framework Directive in England and Wales on a composite basis. As some amendments required are to UK/GB wide legislation, the changes have not been made compositely this time. Part 4 of the UK Regulations' Explanatory Memorandum sets out the territorial extent of each regulation. This approach avoids the need to duplicate amendments, which would have been the case if each administration was to make the same amendments to the existing shared legislation.

The Waste (Wales) (Miscellaneous Amendments) Regulations 2020 are required in order to make a number of consequential amendments to Welsh SIs to ensure consistency and to transpose changes introduced by the CEP to update definitions. The provision made by these Regulations is equivalent in effect to provision made in the UK Regulations in relation to England-only legislation. The Regulations are therefore supplemental to the UK Regulations and should be considered alongside them.

The Waste (Wales) (Miscellaneous Amendments) Regulations 2020

The amendments listed in Regulations 2, 3, 5 and 6 are minor, essentially substituting references to the latest version of the relevant European Directives. The amendments in Regulation 4 relate to the mixing of waste oils and the mixing of hazardous waste:

Regulation 2 amends the Waste (Wales) Measure 2010 to update references to the Landfill Directive and the Waste Framework Directive;

Regulation 3 amends the Landfill Allowances Scheme (Wales) Regulations 2004 to update references to the Landfill Directive and the Waste Framework Directive;

Regulation 4 amends the Hazardous Waste (Wales) Regulations 2005. Amendments to regulations 2, 47 and 48 update references to the Waste Framework Directive and Landfill Directive. The amendment of regulation 5 gives effect to changes in the definition of "management" of waste. Amendments to regulations 19 and 20 give effect to changes made by the CEP in relation to the mixing of waste oils and the mixing of hazardous waste, respectively.

Regulation 5 amends the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 to update references to the Waste Framework Directive.

Regulation 6 amends the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 to update references to the Waste Framework Directive.

Set out below is more information about the amendments to regulations 19 and 20 of the Hazardous Waste (Wales) Regulations 2005:

The revised Article 18(3) of the Waste Framework Directive requires unlawfully mixed hazardous waste to be separated where it is technically feasible (the requirement for it to also be “economically feasible” has been deleted) and necessary to comply with Article 13 i.e. to protect human health and the environment. Where separation is not required the mixed waste must be treated in a facility permitted to treat such a mixture. This is being implemented in Wales by amending regulation 20 of the Hazardous Waste (Wales) Regulations 2005 (regulation 4(5) refers); and

Article 21(1)(c) of the Waste Framework Directive, which relates to waste oils, has been amended. This is being implemented in Wales by amending regulation 19(4) of the Hazardous Waste (Wales) Regulations 2005 so that mixing waste oils is prohibited only where mixing would impede the regeneration, or other recycling operation of the waste oil delivering an equivalent or a better overall environmental outcome, in accordance with the waste hierarchy (regulation 4(4) refers). NRW will have to review operational practices at any sites that are permitted to mix waste oils to ensure that mixing does not impede regeneration.

Annex I of the [joint public statement](#)³ summarises the 2020 CEP measures and proposed approaches to transposition.

The UK Government and the Welsh Government are transposing the CEP through the UK Regulations and these Regulations. It follows that although these Regulations comprise only a limited element of the transposition, they are essential to it and failure to make them could be viewed as a failure to transpose the changes to the Directives in full. Member States are required to transpose the CEP by 5 July 2020. There is a risk of infraction proceedings if there is a further delay in implementing these remaining changes to the Directives.

5. Consultation

The, Welsh, Scottish Northern Ireland and UK governments decided that these measures will be transposed as described in the [joint public statement](#)⁴, without a formal consultation, given the changes are relatively minor and technical.

³ The four nations Circular Economy Package policy statement was published on 30 July.

⁴ The four nations Circular Economy Package policy statement was published on 30 July.

However, a light-touch form of engagement was conducted with key representatives of the landfill and incineration sector across England and Wales. The aim of these discussions was to inform industry of the proposed legislative changes and how they would be implemented, and to seek their views on those changes. These measures were broadly welcomed by the sector who saw them as a driver to encourage treatment of material further up the waste hierarchy by ensuring higher levels of extraction of recyclable material from the waste stream. Any concerns raised were either settled during the discussion or resolved by clarifications afterwards.

Furthermore, the Deputy Minister for Housing and Local Government published a Written Statement on the EU Circular Economy joint public statement to keep Members of the Senedd informed⁵.

Because mixing hazardous waste is already illegal, the changes required by Article 18 will have minimal impact on the regulators and industry.

The changes required by Article 21(1)(c) should have little impact on waste oil managers. This is because few permits authorise the mixing of waste oils and waste oils are not routinely mixed in a way that would impede regeneration. NRW are to review operational practices at any sites that are permitted to mix waste oils to ensure that mixing does not impede regeneration.

⁵ The Deputy Minister for Housing and Local Government published a [Written Statement: EU Circular Economy Package policy statement](#) on 6 August.

PART 2 – REGULATORY IMPACT ASSESSMENT

These Regulations are supplemental to the UK Regulations which amend the legislation that transposed the relevant Directives in England and Wales and some legislation that partially transposed the relevant Directives in Scotland and Northern Ireland to ensure compliance with the relevant Directives as amended.

[Annex II of the public statement is a Regulatory Triage Assessment \(RTA\)](#) which analyses the impact across the UK (over a ten year period). An RTA has been prepared instead of an Impact Assessment because the equivalent annual net direct cost to businesses is below a £5m threshold, this is in line with UK Government processes.

Two options have been considered:

Option 1: Do Nothing

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2: Transpose EU law

The following extract from the RTA provides an assessment of the likely impact of these Regulations relative to the 'Do Nothing' scenario. A copy of the full RTA is enclosed below, it is not bilingual as it is a UK wide technical document.

Waste Framework Directive Article 18 – Ban on mixing hazardous waste

Article 18(1), which sets out the mixing ban, and Article 18(2), which provides a derogation from the ban, remain unchanged. Article 18(3) amendments require illegally mixed hazardous waste to be separated in certain circumstances. In particular, Article 18(3) has been changed to remove the ability to consider economic feasibility when deciding whether illegally mixed waste must be separated. Separation must now be carried out if technically feasible and necessary to protect human health and the environment from the impact of waste management.

Secondly, a new second paragraph has also been added to Article 18(3). This requires that, where separation is not required, the illegally mixed waste is treated at a facility that is authorised to accept it. The Regulations remove the words 'and economically' from regulation 20(1)(b)(i). It is already an offence to mix hazardous waste without a permit in Wales under regulation 65(A) of The Hazardous Waste (Wales) Regulations 2005. Guidance will be updated to reflect this change.

Costs and benefits: Amending the hazardous waste regulations to reflect the new wording will require minimal change from the regulators and industry. This is because mixing hazardous waste is already illegal, and the change means those undertaking the illegal mixing are more likely to have to pay to separate the

illegally mixed waste. The change therefore provides a further economic incentive to comply with existing law and may possibly benefit the legitimate businesses in terms of higher profits.

There may be costs to those that had previously not followed the guidance and used the argument of 'expensive separation' to avoid separating illegally mixed waste. From now on, they can no longer use such arguments as they have an option of sending such hazardous waste to sites that are permitted to separate them. It is not possible to place financial value to this amendment due to data limitations.

Waste Framework Directive Article 21(1)(c) – Mixing of waste oils

Article 21(1)(c) removes the caveat that the prohibition on mixing waste oils with other waste oils of different characteristics, or other waste, only applies if it is technically and economically viable not to mix waste oils. There is also a change to clarify that priority should be given to regeneration when treating waste oils and that the mixing of waste oils of different characteristics should not impede regeneration.

Regulation 19(4) of the Hazardous Waste (Wales) Regulations 2005 are being amended to reflect the new wording of Article 21(1)(c). In addition to this, Natural Resources Wales (NRW) will review operational practices at any sites that are permitted to mix waste oils to ensure that mixing does not impede regeneration.

Costs and benefits: The impact of this change depends on how waste oils are currently managed by industry. If waste oils are mixed at permitted sites because it was not technically or economically viable to keep them separate, then this practice must stop. Similarly, if waste oils are mixed in a way that does not impede treatment, but does impede regeneration, this will also need to stop. Due to the small number of permits authorising the mixing of waste oils and because waste oils are not routinely mixed in a way that would impede regeneration the impact on management of waste oils is understood to be low.

There is no impact on charities or voluntary bodies from the measures in these Regulations.

The legislation applies to activities that are undertaken by small businesses. No action is considered necessary to minimise the impact on small businesses.

Option 2: Transpose EU law is the preferred option. As explained above, there is a risk of infraction proceedings if we fail to implement these changes.

Annex II – Regulatory Triage Assessment (RTA)

PB14626b

Regulatory Triage Assessment	
For Self-Certified Measures in Defra	
Policy teams are advised to submit this assessment to their Better Regulation Business Partner, and, once signed-off, to upload the checklist alongside the relevant entry on SIPI. The assessment will need to be self-certified by Defra's BRU G7 Economist. The RTA fields have been amended to reflect the latest Better Regulation Framework updates which have introduced a de-minimis threshold, and a self-certification and call-in process.	
Title of Measure	Circular Economy Package – 2020 measures
Lead Department/Agency	Defra
Expected Date of Implementation	Autumn 2020 tbc
Origin (Domestic or International)	
Date of Assessment	26/06/2020
Lead Departmental Contact	Waste-EUExit@defra.gov.uk
RMT ID / Legislative ID	
Rationale for intervention and intended effects	
<p>In 2015, the European Commission published proposals to amend six EU Waste Directives, including the Waste Framework Directive (WFD), the Landfill Directive (LFD) and the Packaging and Packaging Waste directive (PPWD). Known as the Circular Economy Package (CEP), the proposal entered into force on the 4th July 2018. This RTA responds to where the UK is taking a legislative approach to meet its legal obligation to transpose the 2020 measures. The objectives of CEP measures are to reduce the adverse impacts of waste generation and the overall impacts of resource use by: a) ensuring appropriate application of waste hierarchy by placing restrictions for landfilling and incineration and b) changes to the arrangements affecting hazardous waste and waste oils.</p> <p>More specifically these measures will entail:</p> <ul style="list-style-type: none"> • Landfill and incineration restrictions: waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome. • Hazardous waste and waste oils: minor changes to the ban on mixing of hazardous waste; additional requirements for the mixing of waste mineral and synthetic oils; changes to recording and reporting requirements for data on hazardous waste. 	
Viable policy options (including alternatives to regulation)	
<p>Option 1: 'Do nothing' – do not transpose the CEP.</p> <p>The UK would not transpose the CEP legislation into domestic law, leading to the risk of infraction procedures (fines) from the EU at the point when transposition is required. Additionally, failing to align with EU requirements during the transition period could affect negotiations for a trade deal.</p> <p>Option 2: Transposition of amendments to Articles 10(4), 18, and 21(1)(c) and Article 35(1) & (4) of Directive 2008/98/EC on waste (Waste Framework Directive) and Article 5(3)(f) of Directive 1991/31/EC on the landfill of waste (Landfill Directive) into UK law.</p> <p>This, in combination with non-legislative changes and legislative changes with a minor impact that are not the subject of this RTA, would transpose the 2020 measures. This RTA focuses on two main measures: landfill and incineration restrictions of separately collected waste; hazardous waste and waste oils amendments. Other CEP measures are outside the scope of this RTA but have been analysed in other IAs published in 2019. Option 2 is our preferred option as it allows the UK Government to meet its legal obligation to transpose the CEP 2020 measures and its objectives as we have set out in the Resources and Waste Strategy.</p> <p>Given that the CEP is an amendment of the regulatory framework, there are no realistic alternatives to regulation.</p>	
Description of Novel and Contentious Elements (if any)	
N/A	
Assessment of Impacts on Business	

Landfill and incineration restrictions: over a 10 year period (discounted values) England - waste holders face additional costs of £2.1m (£0.7m Local Authorities, £1.4m private businesses) as a result of sending recycling rejects of separately collected material from material recycling facilities' gates to mechanical biological treatment (MBT) plants for treatment or other treatment facilities instead of landfill and incineration; incineration operators lose £4.3m while landfill operators lose £0.1m. The UK Government loses £3.3m in landfill tax revenue.

Record keeping of hazardous waste: business costs in submitting additional information (£0.8m), business costs in adjusting to new requirements (£15.9m), regulator costs in ensuring waste site operators submit additional information (£0.05m), Government costs of amending IT systems (£0.2m); all values are discounted over the 10 year period.

Other CEP measures: either covered in other IAs, or minimal or unknown costs – please refer to the analysis of Option 2.

Further public and private costs might be associated with regulatory adjustments in areas of collection of waste oils, ban on mixing hazardous waste, and amendments to rules on mixing of waste oils. These are either currently unknown or regarded as very minimal given current practice. This is because mixing hazardous waste is already illegal, and the change means those undertaking the illegal mixing are more likely to have to pay to separate the illegally mixed waste. The change therefore provides a further economic incentive to comply with existing law and may possibly benefit the legitimate businesses in terms of higher profits. Additionally, there are very few sites permitted to mix waste oils, therefore it isn't envisaged that the legislative changes will have a significant material impact.

Landfill and incineration restrictions: Greenhouse gas (GHG) emissions savings of £6.4m as a result of diverting waste from landfill and incineration up the waste hierarchy (recycling and MBT); additional revenue to MBT operators (£6.5m) and recycling sector (£0.5m).

Other CEP 2020 measures: either covered in other IAs, minimal/unknown benefits – please refer to the analysis of Option 2.

As part of the reporting requirements (e.g. recycling calculation rules or hazardous waste record keeping), Government and businesses are expected to benefit from greater transparency of the waste and secondary material movements and from better information around the availability of secondary materials derived from hazardous waste treatments and processes. For businesses, there is a value to the materials and products resulting from treatment of hazardous waste. As a result, businesses will already likely be keeping these records. For Government, we already know how much waste goes into a site but these new requirements will ensure we can account for near enough 100% of the waste at the end of a process. This could help reduce waste crime as it will contribute to the tracking of waste from 'cradle to grave'.

Summary of monetised impacts

This analysis indicates the following impacts on key players across the UK (all over a ten year period, discounted):

- Government and public sector (discounted costs over 10 year period): additional Regulator costs in ensuring operators submit additional information and advising on new requirements (£0.05m); Government cost of amending IT system (£0.2m); loss in tax revenues (£3.3m).
- Businesses: adjustment and administrative costs to hazardous waste site operators in submitting additional information (£0.8m); additional net costs to private business waste holders (£1.4m) and additional net benefit to Mechanical Biological Treatment (MBT) plants or other treatment (£6.5m), additional net benefits to recycling centres (£0.5m).
- Environment: GHG emissions savings in England (£6.4m) as a result of diverting separately collected materials from incineration and landfill.

The cumulative impact of these amendments results in a net present social cost of £13.4m. The net direct cost to business is £2.6m per year, and this excludes benefits to MBT facilities and recycling facilities as they are considered indirect. We have looked at the RPC guidance on direct benefits, and although we believe this might be considered direct, we have taken the conservative decision to treat them as indirect, and the EANDCB is still below the £5m threshold.

The remaining CEP 2020 measures are currently understood to be very low or no-cost to either businesses or the public sector (Article 18: minor changes to the ban on the mixing of hazardous waste; Article 21(1)(c): further restrictions on waste oil). Thus, this assessment discusses these measures in a qualitative manner only.

Rationale for producing an RTA (as opposed to an IA)

The proposal has an EANDCB below the £5m threshold.

The cumulative impact of these amendments results in a net present social cost of £13.4m.

The net direct cost to business is £2.6m per year.

Business net present value -£15.5m.

	Name, Role	Date
Departmental sign off	Chris Preston	26/06/2020
Economist sign off (senior analyst)	Tom Murray	26/06/2020
Better Regulation Unit Sign off	Craig Stevenson	26/06/2020
Confirmation of self-certification by the BRU G7 Economist	Aftab Malik	26/06/2020

Supporting evidence

Executive Summary

In December 2015 the European Commission published proposals to amend six EU Waste Directives as part of a package of measures to promote the Circular Economy which introduce new waste management targets regarding reuse, recycling and landfilling; strengthen provisions on waste prevention and extended producer responsibility; and streamline definitions, reporting obligations and calculation methods for targets to the six Directives:

1. The Waste Framework Directive (WFD)
2. The Landfill Directive (LFD)
3. The Packaging and Packaging Waste Directive (PPWD)
4. The Waste Electrical and Electronic Equipment Directive (WEEE)
5. The Batteries and Accumulators and Waste Batteries and Accumulators Directive (BAWBAD)
6. The End-of-Life Vehicles Directive (ELD).

A provisional agreement was reached with the European Parliament on all six Directives on 17th December 2017. The Circular Economy Package (CEP) was voted through at European Parliament Plenary on 18th April 2018 and adopted by the European Parliament Environment Committee at Council on 22nd May 2018. It was subsequently published in the Official Journal (OJ) on 14th June 2018, with transposition for many of the measures required by 2020. After much scrutiny and assessment of the final amendments, including cost-benefit analysis of the key measures such as municipal recycling targets, the UK Government decided to support the package and voted in favour.

The production, use and end of life, i.e., when waste is generated, stages can result in negative externalities that are potentially harmful to the environment and human health if unregulated. The aim of the CEP is to ensure the value of products, materials and resources are maintained in the economy for as long as possible. This will reduce the generation of waste and negative impacts on the environment. It should enhance the security of the supply of raw materials, increase competitiveness, innovation, and growth, and create jobs, all of which are an essential contribution to the UK's efforts to develop a sustainable, low carbon, resource efficient and competitive economy. These measures are in line with domestic policy commitments in, for example, the Government's Resources and Waste Strategy for England⁶.

This RTA responds to the legal obligation as set out under the European Communities Act 1972 and Article 288 of the Treaty of the Functioning of the EU to review the CEP directives. This RTA covers two main waste management directives (WFD and LFD), where substantive changes have been made and require the UK to make changes to existing arrangements. The remaining four directives (PPWD, WEEE, BAWBAD and ELD) don't require the UK to make any immediate legislative changes with a significant impact. The measures examined through this RTA and further referenced as '2020 measures' are:

- Landfill and incineration restrictions: waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.
- Hazardous waste and waste oils: minor changes to the ban on mixing of hazardous waste; additional requirements for the mixing of waste mineral and synthetic oils; changes to recording and reporting requirements for data on hazardous waste.

The preferred option is to transpose those measures required by law. This analysis indicates the following impacts on key players across the UK (all over a ten year period, discounted):

⁶ <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england>

- Government and public sector (discounted costs over 10 year period): additional Regulator costs in ensuring operators submit additional information and advising on new requirements (£0.05m); Government cost of amending IT system (£0.2m); loss in tax revenues (£3.3m).
- Businesses: adjustment and administrative costs to hazardous waste site operators in submitting additional information (£0.8m); additional net costs to private business waste holders (£1.4m) and additional net benefit to Mechanical Biological Treatment (MBT) plants or other treatment (£6.5m), additional net benefits to recycling centres (£0.5m).
- Environment: GHG emissions savings in England (£6.4m) as a result of diverting separately collected materials from incineration and landfill.

The cumulative impact of these amendments results in a net present social cost of £13.4m. The net direct cost to business is £2.6m per year, and this excludes benefits to MBT facilities and recycling facilities as they are considered indirect. We have looked at the RPC guidance on direct benefits, and although we believe this might be considered direct, we have taken the conservative decision to treat them as indirect, and the EANDCB is still below the £5m threshold.

The remaining CEP 2020 measures are currently understood to be very low or no-cost to either businesses or the public sector (Article 18: minor changes to the ban on the mixing of hazardous waste; Article 21(1)(c): further restrictions on waste oil). Thus, this assessment discusses these measures in a qualitative manner only.

1. The policy issue and rationale for Government intervention

Global waste is currently projected to reach 3.4 billion tonnes annually by 2050, a 70% increase relative to 2016 (2.0 billion tons)⁷. Waste generation yields negative effects on humanity, wildlife and the environment. For example, increased waste generation depletes raw materials and pollutes land, water and air. To promote a more circular economy, the European Commission published in 2015 proposals to amend six EU Waste Directives as part of a suite of measures referred to as the Circular Economy Package (CEP). The UK Government voted in favour of the CEP.

The production, use and end of life, i.e., when waste is generated, stages can result in negative externalities that are potentially harmful to the environment and human health if unregulated. These externalities consist of environmental and disamenity impacts which are subsequently not reflected in market prices. The CEP 2020 measures are expected to drive changes towards a more circular and resource efficient economy resulting in environmental and wider societal benefits. This RTA responds to the legal obligation to review the waste management of two directives (WFD and LFD) where substantive changes were made that require changes in UK law.

Landfill and incineration restrictions

The treatment of waste in landfill and energy recovery via incineration generates negative environmental externalities due to the emission of GHGs. Landfilling and incineration also depletes natural resources. When waste cannot be prevented, recycling can minimise the environmental costs of products/materials being disposed of and create value by providing valuable materials for manufacturing. Landfill and incineration restrictions of materials separately collected for recycling will strengthen the application of waste hierarchy in this case and, as estimated below, will result in reduced UK GHGs.

Hazardous waste and waste oils

Hazardous waste is a relatively small waste stream, contributing around 2% of total waste arising in the UK⁸ but its proper management is crucial in order to prevent it from having serious negative environmental impacts; from hazardous chemical contamination which can cause irreparable damage to wildlife and food chains, to the effects on human health posed by asbestos. Comprehensive

⁷ <https://www.worldbank.org/en/news/press-release/2018/09/20/global-waste-to-grow-by-70-percent-by-2050-unless-urgent-action-is-taken-world-bank-report>

⁸ BIPRO (2017) on behalf of the European Commission, [Support to selected Member States in improving hazardous waste management based on assessment of Member States' performance.](#)

documentation and management of hazardous waste is therefore necessary to mitigate any potential negative impacts.

The removal of hazardous substances, components and mixtures from some hazardous waste is already commonplace. Such activities are waste treatment operations that must be carried out in accordance with the conditions of an environmental permit or licence, or a relevant exemption, ensuring protection of human health and the environment. The revised regulations will remove caveats and make small clarifications that will further protect the environment and human health from the effects of hazardous waste.

2. Policy objectives and intended effects

The UK Government's ambition is to "leave the natural environment in a better state than we inherited it" and become a world leader in resource efficiency, including targets for recycling, packaging, and diversion from landfill as well as a wider set of producer responsibility reforms and waste prevention measures. Such ambitions are aligned to various commitments and measures stated in recent Government strategies, including the Resource and Waste Strategy for England, 25 Year Environment Plan, Clean Growth Strategy, Industrial Strategy, and Litter Strategy for England. Wales set a target to use only its fair share of resources and achieve zero waste by 2050 in Towards Zero Waste, the overarching Waste Strategy for Wales. The aims of the CEP align to the UK's domestic objectives, and ensures the value of products, materials and resources are maintained in the economy for as long as possible, reducing waste generation and negative environmental impacts. We want to enhance the security of the supply of raw materials, increase competitiveness, innovation, and growth, and create jobs, all of which are an essential contribution to the UK's efforts to develop a sustainable, low carbon, resource efficient and competitive economy. The CEP aligns with our ambitions here.

The changes made to the Directives that constitute the CEP seek to build on the existing framework and further tackle the environmental and health issues that result from certain types of waste management across the EU. It requires intervention by law to reduce the adverse impacts of waste generation and management by applying the waste hierarchy as a priority order in terms of waste prevention and management legislation and policies.

The objectives of the measures considered in this RTA are to reduce the adverse impacts of the generation of waste and the overall impacts of resource use by:

- Ensuring appropriate application of waste hierarchy by placing restrictions on landfilling and incineration.
- Amending hazardous waste management requirements.

3. Description of options considered

This RTA has considered only two options with respect to the EU's Circular Economy Package. No other options, such as voluntary or non-regulatory measures, were deemed as realistic given the legislative nature of the CEP measures. Additionally, the UK Government voted in favour of the CEP and fully committing to meeting transposing changes that fall within the Transition Period.

Option 1: 'Do nothing' (business as usual)

With this option the UK would continue with existing resources and waste regulatory framework, and not transpose the amendments made to the six Directives covered by the CEP. This would leave the UK waste sector operating at a different level to that of the EU for many areas, such as determining end-of-waste criteria or controls for hazardous wastes. This would leave the UK open to possible infraction risks for the non-transposition of EU law. Additionally, failing to align with EU requirements during the transition stage could affect negotiations for a trade deal.

Option 2: Transposition of amendments to Articles 10(4), 18, and 21(1)(c) Article 35(1) &(4) of Directive 2008/98/EC on waste (Waste Framework Directive) and Article 5(3)(f) of Directive 1991/31/EC on the landfill of waste (Landfill Directive) into UK law

The measures below are examined through this RTA and further referenced as '2020 measures':

- 1 Waste Framework Directive Article 10(4) / Landfill Directive Article 5(3)(f) – Incineration and landfill restrictions: waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.
- 2 Hazardous waste and waste oils:
 - a. Article 18 – Article 18(3) has been changed to remove the consideration of economic feasibility when deciding whether illegally mixed waste must be separated. Where separation of illegally mixed hazardous waste is not required, the waste must be treated at a facility that is authorised to accept it.
 - b. Article 21 – Article 21(1)(c) removes the caveat that the prohibition on mixing waste oils with other waste oils of different characteristics or other waste only applies if it is technically and economically viable not to mix waste oils.
 - c. Article 35 – Hazardous waste record keeping: requirement for authorised hazardous waste treatment sites to report on non-waste materials and products that result from waste treatment; requirement to use an electronic registry or coordinated registries, covering the whole of the UK, to record data on hazardous waste.

4. Analysis of options

The economic impacts of Options 1 and 2 were calculated in line with the HM Treasury’s Green Book guidelines. For some of the 2020 measures, quantitative analysis is currently not feasible either due to limited evidence base or early stage of policy development.

Please note bio-waste is not included in the analysis as it is out of scope. Moreover, also waste rejected at kerbside is not included as is out of scope.

Option 1 – do not transpose the Circular Economy Package

Under a ‘do nothing’ option, there are no additional costs or benefits as a result of not transposing the CEP package, except for potential infraction fines from the European Commission for failing to transpose the package. The following sections describe the current practice in relevant areas.

Landfill and incineration restrictions

Currently a proportion of waste separately collected for preparing for reuse and recycling is either sent to landfill or incineration either because it is too contaminated (i.e. it is rejected from its intended purpose and has to be treated as residual waste) or it is non-target material⁹ for either the recycling and reprocessing sectors. If separately collected waste presented for recycling is so contaminated that it is rejected at Material Recycling Facility (MRF) gates, it is managed through a mix of incineration (possibly via Refuse Derived Fuel production) and landfill. The choice of which treatment option depends on local location and contract arrangements of most waste holders.

England and Wales

In England and Wales, Schedule 9 (part 2) of the Environmental (England and Wales) Permitting Regulations 2016 requires MRFs to sample materials collected for recycling before and after they are sorted into separate material streams. For Wales, this is the case for MRFs that handle more than 1,000 tonnes of waste per year. This is to determine the extent of material that is not suitable for recycling or not specifically targeted for recycling.

Permits to handle waste issued to some municipal waste incinerators now include conditions that restricts waste being accepted that has been separately collected for recycling. This is to ensure that only waste unsuitable for recycling, for example where it is contaminated, is accepted by the plants. However, these restrictions do not currently apply to all incinerators likely to accept wastes covered by the new Article 10(4) provision within the CEP. Unlike the new Article 5(3)(f), landfill operators are not currently required, through permit conditions or otherwise, to refuse waste separately collected for recycling.

In Wales, through Towards Zero Waste and the sector plans, the Welsh Government has adopted the target of no more than 5% of total waste to landfill by 2025. The Welsh Government also intends to consult on a potential target to halve food waste by 2025, which will also further reduce the landfilling of

⁹ E.g. plastic packaging included in ‘plastic bottles only’ collections

biodegradable waste. In Wales, landfills generally do not receive separately collected fractions, and Energy from Waste facilities (incinerators) are not authorised to accept separately collected recyclate unless it can be demonstrated it is unsuitable for recycling and therefore expect no impact on Welsh operators and no increase in cases per year.

Northern Ireland

Northern Ireland is proposing to further amend regulation 9 of the Landfill Regulations (Northern Ireland) 2003 (S.R. 2003 No.496) to prohibit other separately collected waste being landfilled. We are transposing the landfill and incineration restriction for England and Wales only, therefore we have not analysed impacts for Northern Ireland.

Scotland

Separately collected waste is banned from going to both landfill and incineration in Scotland. It is banned from landfill under Regulation 11 of the 2003 Landfill (Scotland) Regulations, and banned from Incineration under Regulation 29 of the Pollution Prevention and Control (Scotland) Regulations 2012).

The Waste (Scotland) Regulations 2012 introduced a ban on separately collected metal, glass, paper, card and food from being landfilled or incinerated from January 2014¹⁰. The regulations also provided that, from January 2021, all bio-degradable municipal waste will be banned from landfill.

Hazardous waste and waste oils

Article 18 of the Waste Framework Directive, which bans the mixing of hazardous waste, was implemented through Regulation 20 of the Hazardous Waste (England and Wales) Regulations 2005 (as amended) in England and the Hazardous Waste (Wales) Regulations 2005 (as amended) in Wales. In Northern Ireland, regulation 14 of the Hazardous Waste Regulations (Northern Ireland) 2005 implements Article 18. The regulators have issued guidance to their officers on the requirements of this Article of the Waste Framework Directive who, in turn, provide guidance to operators on how to comply with their authorisation. In Scotland a ban on mixing of special waste such as Hazardous waste and waste oils is already in place under Regulation 17 and 17A of The Special Waste Regulation 1996.

Once waste oils, which are hazardous wastes, have been stored separately by waste producers, oil waste holders cannot currently mix them with different types of oils, other wastes, substances or materials. This would be a breach of regulation 19 of the Waste Regulation 2011, which implements the mixing ban in Article 18 of the Waste Framework Directive. They can, and do routinely, bulk together oils of the same type.

Article 21(1)(c) sets further requirements on mixing that relate to waste mineral and synthetic oils only. The effect of this Article is to place further restrictions on waste oil even at an authorised facility. Article 21(1)(c) is implemented through regulation 19(4) of the Hazardous Waste (England and Wales) Regulations 2005 as amended by the Waste Regulations 2011 and the Hazardous Waste (Wales) Regulations 2005 (as amended). In Northern Ireland, Article 21(1)(c) is implemented through regulation 19(5) of the Hazardous Waste (Northern Ireland) Regulations 2005 as amended by the Waste Regulations (Northern Ireland) 2011. In Scotland, Article 21(1)(c) is implemented through Regulation 15 of the Waste Management Licensing (Scotland) Regulations 2011.

The current record keeping requirement is implemented by Regulation 49 of the Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005, which require all holders of waste to keep a register containing the required information that is relevant to them. Further to this, those waste holders that have an environmental permit to keep, treat or dispose of waste must also keep records of waste received and waste removed in accordance with permit conditions. The requirement to provide information on request is implemented by Regulation 53 of the Hazardous Waste (England and Wales) Regulations 2005, and the Hazardous Waste (Wales) Regulations 2005, which requires hazardous waste consignees to submit returns to the Environment Agency or Natural Resources Wales.

¹⁰ Scottish Environment Protection Agency (2019), [Zero waste](#).

Option 2 – Transposition of amendments to Articles 10(4), 18, and 21(1)(c) of Directive 2008/98/EC on waste (Waste Framework Directive) and Article 5(3)(f) of Directive 1991/31/EC on the landfill of waste (Landfill Directive) into UK law

The following sections discuss the key elements of 2020 measures and our current understanding of implied costs and benefits per each measure over the period of next ten years (2020-2029).

Landfill and incineration restrictions across the UK

Article 5(3)(f) is a new measure in the Landfill Directive which requires us to take measures to ensure waste separately collected for re-use and recycling is not accepted in landfill, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which landfilling delivers the best environmental outcome.

Similarly, Article 10(4) under the Waste Framework Directive requires us to take measures to ensure that waste separately collected for recycling or recovery operations should not be incinerated with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome.

As both Articles aim to achieve the same objective, this RTA proposes the same policy option to meet Article 5(3)(f) and Article 10(4). This would put in place a regulatory change that will introduce statutory permit conditions to which all landfill and incineration sites should adhere to. This will mean that a legislative condition on all English landfill and incineration permit holders will be introduced to not accept any separately collected waste that has not undergone some form of recovery operation, where feasible. In Wales, landfills generally do not receive separately collected fractions, and Energy from Waste facilities (incinerators) are not authorised to accept separately collected recyclate unless it can be demonstrated it is unsuitable for recycling and therefore expect no impact on Welsh operators and no increase in cases per year.

We have considered other options such as varying all existing landfill and incineration permits. There are currently 19 municipal waste incineration plants and 150 landfill sites in England, 11 incinerators and 19 landfill sites in Wales whose permits would need to be amended. This would need to include conditions that would restrict the acceptance of separately collected waste for recycling that has not undergone any recovery operation. These are estimated to cost £5,600 and £8,000 per permit¹¹, respectively. However, this option is more costly to businesses than other options and therefore has been ruled out. On this basis, we assess the costs and benefits of introducing a regulatory change that will allow for statutory permit conditions. This is our preferred option as presented below.

Under our preferred policy option, landfill and incineration operators will not be allowed to accept any waste that was separately collected for reuse or recycling and has not undergone any other treatment operation. Some materials that are separately collected may be rejected at the gates of material recovery facilities (MRFs) if, for example, they are contaminated to such an extent that they would reduce the quality of recycling. Reject rates at MRF gates is estimated to be 0.4%¹². Waste holders will continue to apply the waste hierarchy when seeking further treatment for gate rejects; for example, waste should be sent for further treatment, such as MBT, where facilities are available and present the best environmental outcome.

For Scotland, we expect no changes to the current practice. At present separately collected waste is banned from going to both landfill and incineration. It is banned from landfill under Regulation 11 of the 2003 Landfill (Scotland) Regulations and banned from incineration under Regulation 29 of the Pollution Prevention and Control (Scotland) Regulations 2012.

In terms of the size of the landfill and incineration restrictions, we estimate that these CEP requirements would affect around 0.4% of total waste collected for recycling in 2020¹³. This is based on the estimated tonnage collected for recycling in the municipal sector, in line with Defra's consultation RTA on the consistent municipal recycling collections (Option 3M)¹⁴, and then applying assumed recycling reject rates at recovery facility gates. We have anecdotal evidence that this rejects rate is lower for non-household municipal waste, however because we do not have a robust evidence to apply to Non-Household Municipal (NHM) waste we have used the 0.4% rate. This means that the tonnages considered below are an overestimate, and in turn also costs (see Annex A for other types of collections and materials).

¹¹ These estimates are based on EA's permit revision costs charged to either landfill or municipal waste incinerator permit holders

¹² This is based on a 3 year average calculated from WasteFlow database.

¹³ This would not affect the reported recycling rate as these rejects are removed before recording recycling tonnages.

¹⁴ Defra (2019), [Consistent municipal recycling collections in England](#).

Table 1 shows the tonnages of recycling rejects that we expect to be moved up the waste hierarchy, e.g. either diverted from landfill and incineration to MBT facilities. This rejected waste is highly contaminated so other options to dispose of this waste, for example exporting it, would not be feasible. In terms of the net impact on MBTs, we assumed that all the estimated rejects in England would be additional to the current practice since we are not aware of detailed data reported on rejects' current treatment. This means that the net impact on MBTs might be lower in reality. Tolvik (2017) reported the total residual waste inputs to MBT facilities in the UK in 2015/16 were 2.6Mt, or around 9% the total market. Almost all of this residual waste was delivered by local authorities under term contracts. The total 2017 capacity operational or in construction was estimated to be around 4.0Mt¹⁵. Therefore, we expect minimal new infrastructure implications on the MBT facilities from this measure.

Table 1: Recycling rejects to be diverted from incineration and landfill (-/+ decrease/increase) over 2020-2029, England

Diverted from	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
<i>Landfill</i>	-615	-639	-641	-591	-552	-586	-613	-648	-700	-727
<i>Incineration</i>	-5,533	-5,748	-5,768	-5,322	-4,964	-5,276	-5,518	-5,834	-6,300	-6,539

Under the new regulation these recycling rejects will not be allowed to go to incineration or landfill unless they have gone through a treatment process and provide the best environmental outcome.

Tables 2 and 3 provide the estimated costs and benefits of the proposed changes respectively, all in nominal values.

In England we expect to see increased costs to waste holders (both local authorities and private waste management companies) caused by diverting waste from landfill and incineration to MBT plants. This is because MBT plants gate fees are, on average, higher (£97/tonne) than when sending waste to energy from waste plants (£89/t) but cheaper than landfill treatment (£113/t, including landfill tax)¹⁶. Net costs to waste holders are estimated at £2.1m over 10 years (between 2020 and 2029), i.e. costs to waste holders of using MBT services less savings from reduced landfill and incineration use. Of this, we estimate £0.7m to be associated with household recycling rejects managed by local authorities and £1.4m with private business waste holders (discounted values).

In England, incineration operators see a reduced stream of rejects and thus a net loss in revenue of £4.3m over the 10-year period (discounted values). MBT operators largely benefit from this policy, with additional revenue of £6.5m over the same period (discounted values). Recycling sector sees a slight increase in revenue as a result of recyclates captured by MBT plants, resulting in additional revenue of £0.5m over the period¹⁷.

All these costs are regarded as economic transfers to other parties in the recycling and waste management sector that are benefitting from these changes.

¹⁵ TOLVIK Consulting (2017), [Mechanical Biological Treatment - 15 years of UK experience.](#)

¹⁶ See Annex A for price details. EfW and landfill costs are median not averages as MBT.

¹⁷ The waste industry impacts, in terms of additional revenue or reduced revenue, are all based on the tonnage processed in a given scenario and gate fee prices observed at the market (see Annex A). Thus, this analysis shows a net revenue impact rather than a net profit impact as we do not have robust data on profit margins made across different waste treatment plants. These benefits are however excluded from the EANCDDB.

Table 2: Undiscounted costs of introducing statutory permit conditions, £m¹⁸

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
England											
Increased costs to LA waste holders of using MBT services¹⁹	£0.10	£0.10	£0.10	£0.08	£0.08	£0.08	£0.08	£0.08	£0.08	£0.08	£0.9
Increased costs to private business of using MBT services²⁰	£0.14	£0.14	£0.14	£0.14	£0.14	£0.15	£0.16	£0.17	£0.19	£0.20	£1.6
Net loss in revenue to incineration operators due to waste holders shifting to MBTs²¹	£0.5	£0.5	£0.5	£0.5	£0.4	£0.5	£0.5	£0.5	£0.6	£0.6	£5.1
Net loss in revenue to landfill operators	£0.01	£0.02	£0.02	£0.01	£0.01	£0.01	£0.01	£0.02	£0.02	£0.02	£0.15

There are greenhouse gas (GHGs) emission savings attributed to slight increase in recycling and, mainly, reduced amount of waste going to energy from waste and landfill sites. We applied the relevant carbon factors per each recycling and waste treatment option and material to derive the GHGs emission savings. These are the UK GHGs emissions savings of 0.06 million tonnes CO₂e in traded and 0.03 million tonnes of CO₂e in non-traded sectors over the decade. Applying the relevant carbon prices results in discounted societal savings of £6.4m in England between 2020 and 2029.²²

¹⁸ These costs might be different from other places in the RTA because they are presented as undiscounted

¹⁹ These costs are net of savings from reduced landfill use

²⁰ These costs are net of savings from reduced landfill use

²¹ This loss in revenue to incineration operators is net of the increase in revenue from MBTs as more waste will shift from incineration to MBTs facilities. Therefore this loss in revenue in England is net of the increase in revenues that MBTs facilities will gain as waste coming to those facilities will increase. Equation is: net loss in revenue = loss in revenue from incineration operators – increased revenue from MBTs operators

²² See Annex A for details on used carbon factors and carbon prices.

Table 3: Undiscounted benefits of introducing statutory permit conditions (transfers in italic), £m

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
England											
Gain in revenue to MBTs from waste holders	0.75	0.76	0.77	0.71	0.66	0.70	0.74	0.78	0.84	0.88	£7.6
Gain in revenue to recycling sector	0.06	0.07	0.07	0.06	0.06	0.06	0.06	0.06	0.07	0.07	£0.6
GHG emissions savings (traded, non-traded)	£0.5	£0.5	£0.6	£0.6	£0.6	£0.7	£0.8	£0.9	£1.1	£1.2	£7.7

Note: Figures may not add up due to rounding of numbers

Waste Framework Directive Article 18 – Ban on mixing hazardous waste

Article 18(1), which sets out the mixing ban, and Article 18(2), which provides a derogation from the ban, remain unchanged. Article 18(3) amendments requires illegally mixed hazardous waste to be separated in certain circumstances.

In particular, Article 18(3) has been changed to remove the ability to consider economic feasibility when deciding whether illegally mixed waste must be separated. Separation must now be carried out if technically feasible and necessary to protect human health and the environment from the impact of waste management.

Secondly, a new second paragraph has also been added to Article 18(3). This requires that, where separation is not required, the illegally mixed waste is treated at a facility that is authorised to accept it. It is proposed to remove the words ‘and economically’ from regulation 20(1)(b)(i). It is already an offence to mix hazardous waste without a permit in England, Wales and Scotland under regulation 65(A) of The Hazardous Waste (England and Wales) Regulations 2005 (as amended), The Hazardous Waste (Wales) Regulations 2005 (as amended) and The Special Waste Regulations 1996 17 and 17A (England, Wales and Scotland) and NI Hazardous Waste Regulations 2005.

Costs and benefits: Amending the hazardous waste regulations to reflect the new wording will require minimal change from the regulators and industry. This is because mixing hazardous waste is already illegal, and the change means those undertaking the illegal mixing are more likely to have to pay to separate the illegally mixed waste. The change therefore provides a further economic incentive to comply with existing law and may possibly benefit the legitimate businesses in terms of higher profits.

There may be costs to those that had previously not followed the guidance and used the argument of ‘expensive separation’ to avoid separating illegally mixed waste. From now on, they can no longer use such arguments as they have an option of sending such hazardous waste to sites that are permitted to separate them. It is not possible to place financial value to this amendment at the moment due to data limitations.

Waste Framework Directive Article 21(1)(c) – Mixing of waste oils

Article 21 (1)(c) removes the caveat that the prohibition on mixing waste oils with other waste oils of different characteristics, or other waste, only applies if it is technically and economically viable not to mix waste oils. There is also a change to clarify that priority should be given to regeneration when treating waste oils and that the mixing of wasting oils of different characteristics should not impede regeneration. We intend to transpose this by amending Regulation 19(4) of the Hazardous Waste Regulations 2005 (England) and the Hazardous Waste (Wales) Regulations 2005 (as amended) to reflect the new wording of Article 21(1)(c). Northern Ireland will amend regulation 19(5) of the Hazardous Waste (Northern Ireland) Regulations 2005. In Scotland the mixing of waste oils has already been banned under Regulation 15 to the Waste Management Licensing Regulations 2011. Therefore, no costings for Scotland will be required at any stage of this RTA.

In addition to this, the Environment Agency (EA), Natural Resources Wales (NRW) and Northern Ireland Environment Agency (NIEA) will have to review operational practices at any sites that are permitted to mix waste oils to ensure that mixing does not impede regeneration.

Costs and benefits: The impact of this change depends on how waste oils are currently managed by industry. If waste oils are mixed at permitted sites because it was not technically or economically viable to keep them separate, then this practice must stop. Similarly, if waste oils are mixed in a way that does

not impede treatment, but does impede regeneration, this will also need to stop. Our understanding from discussions with the relevant trade association and regulators is that this change will have little impact on waste oil managers. This is because few permits authorise the mixing of waste oils and waste oils are not routinely mixed in a way that would impede regeneration.

Waste Framework Directive Article 35 – Record keeping of hazardous waste

The CEP amends Article 35 of the Waste Framework Directive (2008) to address a number of aspects:

- a) Records must now be kept of the quantity and nature of materials and products resulting from preparation for re-use, recycling or other recovery of hazardous waste.
- b) Where relevant, records must also be kept on the mode of waste transport
- c) All the records required by Article 35 must now be made available to the relevant regulators through the electronic registry system required by Article 35(4)

Any treatment of hazardous waste that produces materials or products will be carried out under the conditions of an environmental permit/license, or in some cases, a registered waste exemption. We intend to amend the quarterly waste returns, which permit holders are already required to submit to the regulators, to require provision of this additional information.

Exempt sites are not required to submit waste returns so we are proposing a different approach to transposition of this requirement at these sites. The relevant Regulations in England, Wales and Northern Ireland will be amended, as appropriate, to implement this requirement for exempt site operators to keep and make available records. The exact form and frequency of submission will be determined by the regulators.

Furthermore, we will develop a simple and proportionate approach that allows the Consignee Return system to be used for the collection of information on mode of waste transport.

This is appropriate given that UK Government is currently working with the devolved administrations and considering the development of a new electronic waste tracking system that may replace the systems that are in place after 2020.

The costs to business will include administrative costs such as familiarisation costs (the time necessary to read, understand and implement the requirements) with additional requirements. Based on our understanding of the amendments, we estimate this could be about two hours of operators' time per quarter which translates to about one official day of operators' time per year. This task would be carried out by an administrative member of staff, i.e. costs of £97.70 per site per year²³. With 4,075 hazardous waste treatment sites in the UK this will cost businesses circa £398,000²⁴. We assume the familiarisation costs to occur in the first two years of the implementation period.

As with compliance, there will also be transitional costs to hazardous waste operators in the form of oversight functions which will be carried out by waste managers at each site. This will include development of a new process so that the required information is recorded and made available to staff members responsible for reporting. We estimate one-off costs in the first year to be £15.9m. This is estimated by assuming waste managers will need to spend four working weeks²⁵ over the first year, with an average salary cost (including overheads) of £3,909 across 4,075 hazardous waste treatment sites in the UK²⁶.

There will be an additional cost in sourcing and procuring the additional information related to the quantity and nature of materials and products to the regulators and potentially amending IT systems to report this additional information. Permitted hazardous sites will be required to report on a quarterly basis while exempt hazardous waste sites will only be required to report annually. The impact of this

²³ This is simply the expected wage/salary cost of £80.08 (ONS, Annual Survey of Hours and Earnings) plus overheads. Overheads are assumed to be 22% of the wage rate as per [RPC guidance](#). i.e. £80.08*1.22=£97.70

²⁴ As per information sourced from environment agencies, number of hazardous authorised and exempt treatment sites affected by the policy in each nation: England (3,260), Scotland (349), Wales (282), Northern Ireland (184). See Annex A – Table A.5 for further details.

²⁵ This is an estimate

²⁶ Methodology: 4,075 hazardous sites x £3,909 (ONS, Annual Survey of Hours and Earnings) = £15,929,175.

element is impossible to quantify at this stage due to lack of data around the reporting costs, although we would expect minimal costs.

Costs to UK environment agencies of amending IT systems to collect information on mode of transport have been estimated to be one-off costs of £25,000 for England and for Wales. Costs of amending IT systems to collect information on materials and products are also estimated to be one-off costs of approximately £100,000 for England and Wales. These estimates were provided through engagement with experts in the Environment Agency and Natural Resource Wales

Overall, the costs to Welsh and English environment agencies to amend their IT systems to collect information on mode of transport and materials and products are estimated at around £250,000 in the first year.

There will be compliance cost to the regulators in making sure that operators adhere to the additional information reporting and potentially amending IT systems to report this additional information, which would be about two-hours of work per quarter; hence one day of cumulative staff cost over one year. This is determined by the average fully costed wage of an employee in the EA hazardous waste team including overheads which is £571/week, prorated to £114/day, or £137 a year once including 20% overheads with a probable span of two years. Therefore, for the UK as a whole we anticipate these costs to be around £548 per year over the first two years. These costs have been sense-checked by policy officials in Defra and the Environment Agency.

There will also be some transitional costs to regulators of advising hazardous waste treatment sites operators on new requirements – based on the discussions with policy experts and the Environment Agency, we assumed this to be one month's work (one-off) of an EA Grade 5 whose fully costed monthly salary is £6,521 once including overheads. Therefore, total costs for all UK regulators are estimated at £26,084. These are expected to occur over the first two years.

Given our estimates above, overall costs to the public sector are anticipated to be around £276,632 in the first year and £26,632 in the second year (remaining compliance costs to regulators).

Table 4: Costs of Article 35 amendments – hazardous waste record keeping (£m, undiscounted)

£m	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Business admin costs in submitting additional information	£0.4	£0.4	£0	£0	£0	£0	£0	£0	£0	£0	£0.8
Business admin costs of adjusting to new requirements	£15.9	£0	£0	£0	£0	£0	£0	£0	£0	£0	£15.9
Regulator costs²⁷	<£0.03	<£0.03	£0	£0	£0	£0	£0	£0	£0	£0	<£0.06
Regulator costs of amending IT systems	£0.25	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0.25

Businesses are expected to benefit from greater transparency of the hazardous waste movements and from better information around the availability of secondary materials derived from such hazardous waste treatments and processes. It is expected that with the compliance to the new policy, hazardous waste treatment operators would keep records of valuable secondary materials and products created during hazardous waste treatment.

The policy would make this information more accessible to the Regulator and businesses. There will be potential efficiency savings associated with availability of additional information on secondary materials and products.

Furthermore, the new CEP requirements will help regulators have more streamlined and centralised record keeping of hazardous waste which will facilitate easier referencing, operational research and investigations of activities. This will also allow greater visibility and transparency on operators' activities with regards to hazardous waste and the ability to detect non-compliance seamlessly. Improved record keeping could lead to an improved understanding of waste flows, allowing the regulator to identify and combat waste crime; improve efficiency of landfill tax collections; fill data gaps and improve information on the availability of underutilised waste materials. These benefits remain unquantifiable.

Small and micro business assessment (SaMBA)

This section discusses estimated costs and benefits to small and micro businesses with respect to the quantified measures only. At this stage, it is not possible to assess impacts of other measures on small and micro businesses, though the overall impacts are thought to be either minimal or are currently unknown.

Landfill and incineration restrictions

As discussed above, private business waste holders, incineration operators and landfill operators are estimated to experience increased net costs or reduced revenue. On the other hand, mechanical biological treatment (MBT) plant operators and recycling facilities are expected to experience net gains when additional revenues are taken into account.

The waste collection sub-sector is one of the main types of waste holders. ONS figures, as presented in Table 5, show that within the waste collection sub-sector 94% of businesses are classed as micro or small and these businesses generate 8% and 15% of sub-sector turnover respectively. As shown in Tables 2 and 3, waste holders are estimated to see additional net costs of £1.6m (undiscounted) over 10 years which equates to £0.16m annually on average. Costs to waste holders accrue through the requirement to divert waste from landfill and incinerators to MBTs which have a higher gate fee per tonne of waste accepted than incinerators but lower gate fee than landfill. Costs to individual businesses are therefore proportional to the volume of waste handled, which in turn is expected to be proportional to turnover. On this basis, we estimate that micro and small waste collection businesses would encounter total annual net costs of £13,000 and £2,000 respectively. Small and micro waste collection businesses generate combined turnover of £2,100m, however this figure is inclusive of hazardous waste businesses who are

²⁷ Compliance costs to regulators (£548/year) and transitional costs to regulators of advising hazardous waste treatment sites on new requirements (£26,084).

not impacted. Further ONS figures show that hazardous waste businesses make up 4% of businesses in this sub-sector. Assuming this is proportional to turnover, it is estimated that small and micro non-hazardous waste collection businesses generate £2,008m in turnover. As shown in Table 6, additional costs to small and micro waste holders represent 0.001% of this turnover.

Due to the high capital costs of energy from waste facilities it is not expected that any incinerator operators would be classed as micro, however some are classed as small. Further, some landfill businesses may be classed as micro. Incinerator and landfill operator businesses fall within the waste disposal sub-sector. In this sub-sector 63% of businesses are classed as micro and 26% are classed as small. These businesses account for 20% and 23% of turnover in this sub-sector respectively. Landfill operators are estimated to encounter additional net costs of £0.15m (undiscounted value) with incinerator operators' additional net costs at £5.06m (undiscounted value) over 10 years. This works out at £0.02m and £0.5m annually on average respectively. Again, additional costs, in the form of revenue losses, to these businesses occur on a volume basis and are therefore expected to be proportional to turnover. As such we estimate that micro and small business landfill operators would expect total additional annual costs of £3,000 and £4,000. Small incinerator businesses would see additional net costs of £0.12m annually. Small and micro waste disposal and treatment businesses generate £1,684m in turnover. This includes turnover generated by hazardous waste businesses, who make up 10% of the sub-sector and are not impacted. Additional net costs to small and micro landfill operators and small incinerator operators represents 0.0082% of the £1,516m of the estimated turnover of small and micro non-hazardous waste treatment and disposal businesses.

Table 5: Sub-sector number of businesses and turnover by business size²⁸

Sub-sector (SIC code)	Business size	Number of businesses	Number of businesses as percentage of sub-sector	Turnover (£m)	Turnover as percentage of sub-sector
Waste collection (381)	Micro	1,265	69%	£734	8%
	Small	455	25%	£1,366	15%
Waste treatment and disposal (382)	Micro	815	63%	£770	20%
	Small	515	26%	£914	23%
Materials recovery (383)	Micro	755	63%	£873	11%
	Small	370	31%	£2,220	29%

MBT plant operators and other recycling sector businesses are expected to see net gains overall with increased revenues of £6.5m and £0.5m respectively (10 year period – discounted values). These businesses fall within the materials recovery sub-sector. In this sub-sector micro and small businesses make up 63% and 31% of businesses and generate 11% and 29% of turnover respectively. This is a particularly diverse sub-sector and it is therefore difficult to know whether these figures are representative of the MBT and recycling businesses impacted by this regulation. However, based on the high proportion of micro and small businesses in this sub-sector, there is potential that some of the increased revenues will accrue to small and micro businesses.

Table 6: Net cost to businesses (undiscounted over 10 years)

²⁸ BEIS, Business Population Estimates for the UK and Regions 2019

Business type	Additional net cost to businesses for full 10-year appraisal (£m)	Annual net cost to small and micro businesses (£m)	Costs to small and micro businesses as percentage of sub-sector small and micro non-hazardous waste business turnover
Waste holders	£1.59	£0.02	0.001%
Landfill operators	£0.15	£0.01	<0.001%
Incinerator operators	£5.06	£0.12	0.0082%

6.2 Article 35 Hazardous waste record keeping

Hazardous waste disposal firms fall within the waste disposal sub-sector. As shown in Table 5 in the previous section, ONS figures show that micro and small businesses make up 63% and 26% firms and generate 20% and 23% of turnover in this sub-sector respectively. Additional costs to hazardous waste firms are only estimated for two years with the maximum additional annual cost at £16.4m. Again, if additional costs to micro and small firms are proportional to their sub-sector turnover, we estimate additional costs of £3.2m and £3.8m respectively for this year for these firms. Hazardous waste disposal firms make up 10% of the whole waste disposal subsector. Assuming small and micro hazardous waste firms generate 10% of the £1,684m turnover generated by small and micro businesses in this sub-sector, these additional costs represent 4% of the turnover generated by small and micro hazardous waste disposal firms²⁹.

Implementation plan

The legislative process will commence to ensure the required legal provisions are in place for when the measures are due to enter into force.

Monitoring and Evaluation

At this stage we are unable to provide a clear overview of what will be reviewed and when.

Annex A: Description of key assumptions, data and risks

This Annex provides further details on the key sources and assumptions made through the RTA. It then discusses key risks associated with the current analysis.

Tables A.1-A.2 below show the main technical and price assumptions made with respect to modelling landfill and incineration restrictions.

²⁹ As in the previous section, it is not certain as to whether turnover is proportional to the number of businesses in this context however this estimate is still able to give an indication of the scale of additional costs to micro and small businesses.

Table A.1: Assumed recycling rejection rates and other waste treatment assumptions, UK, Percentages

Assumptions	Source	
Kerbside pre-gate rejects	Multi-stream collection ³⁰ : 2% of tonnage collected	WRAP Routemap model assumption
	Twin stream collection: 8% of tonnage collected	WRAP Routemap model
	Co-mingled collection: 12.5% of tonnage collected	WRAP Routemap model
Material reprocessing facility - gate rejects	Dry material recycles ³¹ : 0.4%	Defra 2018 published Q100 data
MBT mass balance	MBT residual waste input: 100% Incineration / refuse derived fuel exports: 77% Moisture loss: 5% Plastics recycling: 4% Metals recovery: 2% Heavies (glass and stone): 2.5% Rejects to landfill: 9%	Based on Tolvik 2017 MBT briefing report 32 and expert judgement

Table A.2 Price assumptions

Assumed price	Source	
MBT output material prices	Energy from waste / RDF: £86	Comparing the costs of alternative waste treatment options, WRAP, 2018
	Plastics: £65	Tolvik 2017 MBT briefing report ³³
	Ferrous metals: -£50	Tolvik 2017 MBT briefing report
	Non-ferrous metals: -£300	Tolvik 2017 MBT briefing report
	Heavies (glass and stone): £50	Tolvik 2017 MBT briefing report
Residual waste treatment costs (gate fee)	MBT plants: £97	Comparing the costs of alternative waste treatment options, WRAP, 2019
	Landfill: £24 (£113 with landfill tax)	
	Energy from waste: £89	

Tables A.3-A.5 present underpinning information used to calculate the GHGs emissions impacts of the landfill and incineration restrictions. This covers used carbon prices, materials' carbon emissions factors and derived emissions savings.

Table A.3: Traded and non-traded carbon prices, UK, 2020-2029

Year	Traded prices (£/t CO2e)	Non-traded prices (£/t CO2e)
2020	27.69	103.91
2021	37.04	105.65
2022	46.40	107.38
2023	55.75	109.11
2024	65.11	110.85
2025	74.46	112.58
2026	83.82	114.31

³⁰ These include materials from households such as paper, cardboard, cans, glass, plastic bottles, plastic pots, tubs and trays.

³¹ These include materials from wider municipal, non-household sector such as paper, cardboard, plastic, metal and glass.

³² TOLVIK Consulting (2017), [Mechanical Biological Treatment - 15 years of UK experience.](#)

³³ TOLVIK Consulting (2017), [Mechanical Biological Treatment - 15 years of UK experience.](#)

2027	93.17	116.04
2028	102.53	117.77
2029	111.88	119.51

Source: BEIS UK traded carbon values for policy appraisal; Table 3 from Green Book's supplementary guidance – supporting the toolkit and the guidance. The value placed on changes in greenhouse gas (GHG) emissions is currently under review, now the UK has increased its domestic and international ambitions. Accordingly, current central carbon values are likely to undervalue GHG emissions, though the scale of undervaluation is still unclear. The potential impact of placing a higher value on GHG emissions can be illustrated by using the existing high carbon values series. HMG is planning to review the carbon values.

Table A.4: Traded and non-traded greenhouse gas emissions' factors

Tonnes of CO2e avoided per tonne of material diverted	Recycling vs. landfill (traded)	Recycling vs. landfill (non-traded)	Recycling vs. energy-from-waste (traded)	Recycling vs. energy-from-waste (non-traded)
Paper/board	-0.06	-1.04	-0.06	0.33
Glass (mixed)	-0.09	-0.01	-0.09	-0.01
Aluminium	-4.03	-2.56	-4.03	-2.56
Steel	-1.27	-0.01	-1.27	-0.01
Plastics (average)	-1.05	-0.01	-1.05	-0.78
Wood	-0.14	-0.83	-0.14	0.51

Source: WRAP/Defra greenhouse gas emissions' factors

Table A.5: Traded and non-traded emission savings, thousand metric tons of CO2 equivalent, 2020-29

Country	Sector	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020-2029
England	Traded	61.0	63.3	63.3	58.6	54.8	58.4	61.2	64.8	70.2	73.0	628.8
	Non-traded	27.7	28.8	28.9	26.6	24.9	26.6	28.0	29.7	32.2	33.6	286.9

Note(s): Column totals may not add up due to rounding of numbers; Defra own calculations

Article 35: Records keeping of hazardous waste

We list below some of the key assumptions made and data sources used with respect to costing Article 35:

- Administrative cost to business consists of the cost of employee time and effort associated with procuring and recording the additional required information.
- Cost estimate to the Regulator, of amending the existing electronic recording system have been applied where appropriate to provide some measure of possible one-off cost of about £165,000.
- Our focus with regards to operators on this RTA is on authorised and exempt hazardous waste treatment in the UK. There are currently a total of 2,061 authorised hazardous sites in England, 281 in Scotland, 172 in Wales and 128 in Northern Ireland. The number of exempt hazardous sites in England, Wales, Scotland and Northern Ireland are estimated at 1,199, 110, 68 and 56 respectively, as reported by the EA, NRW, SEPA. SEIA. Thus, the total cost to business covers 4,075 sites (See Table A6 below).
- The average fully costed wage of an administrative staff to a hazardous waste treatment site operator is about £19,219/year prorated to £80.08/day. Also, the average fully costed wage of a waste manager to an operator to carry out a compliance role is given to be £39,097/annum,

hence £3,258/month/site. To estimate the costs accounting for overheads, we multiply the salary by a factor of 1.2.

- These annual salaries were taken from the ONS Annual Survey of Hours and Earnings 2014 and adjusted to current average salaries based on an average wage growth rate.

Table A.6 shows the number of hazardous sites in the UK. It reports on all sites that submit consignee returns to relevant Environment Agencies in the UK.

Table A.6: Number of hazardous waste treatment sites in the UK, 2019

	1.IED permitted treatment sites (Installation permits)	2.Pollution Prevention & Control permitted sites	3.End-of-Life Vehicles	4.Other hazardous waste treatment sites (Including WEEE)	Total authorised sites (1+2+3+4)	5. Exempt sites	Total authorised and exempt sites (1+2+3+4+5)
England	208	-	1,684	169	2,061	1,199	3,260
Scotland	-	48	208	25	281	68	349
Wales	-	38	114	20	172	110	282
Northern Ireland	-	12	105	11	128	56	184
United Kingdom	208	98	2,111	225	2,642	1,433	4,075

Note(s):

- 1) Scotland's Pollution Prevention and Control permitted sites and End-of-life vehicle hazardous sites include 2 and 44 inactive sites, respectively. All 68 exempt sites are WEEE Reuse sites.
- 2) IED permitted Hazardous sites are sites permitted as 'installations' under the Industrial Emissions Directive with a 'listed activity' that allows treatment of hazardous waste.

Key risks

Article 35: Hazardous record keeping

Our £15.9m transitional costs to hazardous waste operators in the form of oversight functions, which will be carried out by waste managers at each site, are based on Defra's policy expert judgement. The cost per hazardous waste operator are based on a waste manager's salary for a month. This is because we assume waste managers will need to spend a month's worth work over the first year.

Additional costs to businesses of sourcing additional information relating to the quantity and nature of materials and products to the respective regulators, and potentially amending IT systems to report this information, are currently unknown. However, our policy experts judge these to be minimal given the current practice.

Other non-quantified CEP measures: Article 18 – Ban on mixing hazardous waste; Article 21(1)(c) – Mixing of waste oils

As discussed through the RTA, the impacts of these CEP measures have not been quantified at this stage. This leads to a risk that our overall cost and benefit estimates may be underestimated.

SL(5)647 – The Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations amend the Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”) which made provision in relation to:

- the form and content of the Welsh in Education Strategic Plan (“the Plan”);
- the duration of the Plan;
- submission of the Plan to the Welsh Ministers;
- approval of the Plan;
- arrangements for revision of the Plan;
- consultation on a draft Plan;
- the timing and manner of publication of the Plan;
- revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 (“the 2013 Regulations”).

These Regulations amend three of the timescales in the 2019 Regulations:

- the duration of the 10 year Plan will run from 1 September 2022 to 31 August 2032 instead of 1 September 2021 to 31 August 2031;
- the date on which the first ten year Plan is to be submitted to the Welsh Ministers will be 31 January 2022 instead of 31 January 2021; and
- the date on which the first annual review report must be submitted to the Welsh Ministers will be 31 July 2023 instead of 31 July 2022.

These changes are being made in response to the COVID-19 pandemic to enable local education authorities to prioritise their support for schools. Plans approved under the 2013 Regulations will continue to have effect until a local authority’s first ten year Plan, under the these Regulations, has effect.

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

“These amendments are made in response to the COVID-19 pandemic. The 2019 Regulations 2019 had only come into force four months before the pandemic hit. The 2019 Regulations underwent a 15 week consultation between 30 May and 13 September 2019 and included four regional engagement events attended by approximately 100 stakeholders as well as a youth forum discussion hosted by the Urdd.

Due to the nature of the amendment being proposed, which only affects the timetable for submitting and commencing the next cycle of WESPs and no other provision in the regulations, no additional consultation nor integrated impact assessment has been undertaken. However, the views of local authority Directors of Education, gathered through the Association of Directors of Education Wales (ADEW), were considered as part of the decision making process. Key pressure points for local authorities identified include the time allocation for preparing a draft Plan in consultation with local stakeholders and consulting on a draft Plan at a time when all available education resources were being redirected to work on local COVID-19 responses.”

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

10 November 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. 1194 (W. 271)

EDUCATION, WALES

**The Welsh in Education Strategic
Plans (Wales) (Amendment)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Welsh in Education Strategic Plans (Wales) Regulations 2019 (S.I. 2019/1489 (W. 269)) (“the 2019 Regulations”) so that the requirement on local authorities in Wales to submit their first ten year plan by 31 January 2021 is amended to 31 January 2022. As a result of these Regulations, that first 10 year plan will have effect on 1 September 2022 until 31 August 2032 (instead of 1 September 2021 until 31 August 2031).

These Regulations also amend the requirement to submit the first review report no later than 31 July 2022 so that the first review report is to be submitted no later than 31 July 2023.

These amendments are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales and the resulting pressures on local authorities. As a result it is not considered reasonable or appropriate to require local authorities to prepare their plans in accordance with the 2019 Regulations and to consult on them prior to submission to the Welsh Ministers for approval by 31 January 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, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Language Division, Education Directorate, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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. 1194 (W. 271)

EDUCATION, WALES

**The Welsh in Education Strategic
Plans (Wales) (Amendment)
(Coronavirus) Regulations 2020**

Made 2 November 2020

Laid before Senedd Cymru 4 November 2020

Coming into force 1 December 2020

The Welsh Ministers, in exercise of the powers conferred upon them by sections 87 and 97 of the School Standards and Organisation (Wales) Act 2013⁽¹⁾, make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020.

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

Amendment of the Welsh in Education Strategic Plans (Wales) Regulations 2019

2.—(1) The Welsh in Education Strategic Plans (Wales) Regulations 2019⁽²⁾ are amended as follows.

(2) In regulation 4(1) (duration of ten year plans)—

(a) for “1 September 2021” substitute “1 September 2022”;

(b) for “31 August 2031” substitute “31 August 2032”.

(3) In regulation 5(1) (submission of ten year plans to the Welsh Ministers), for “31 January 2021” substitute “31 January 2022”.

(4) In regulation 7 (annual review report)—

(1) 2013 anaw 1.

(2) S.I. 2019/1489 (W. 269).

- (a) in paragraph (1), for “2022” substitute “2023”;
- (b) in paragraph (2), for “31 July 2022” substitute “31 July 2023”.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

2 November 2020

Explanatory Memorandum to the Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Language Division 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 Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education,
4 November 2020

PART 1

Description

These Regulations amend the Welsh in Education Strategic Plans (Wales) Regulations 2019 (SI. 2019/1489) (“the 2019 Regulations”) which make provision in relation to the:

- Form and content of the Welsh in Education Strategic Plan (“Plan”)
- Duration of the Plan
- Submission of the Plan to Welsh Ministers
- Approval of the Plan
- Review report of the Plan
- Arrangements for Revision of the Plan
- Consultation of a draft Plan
- Timing and manner of publication of the Plan
- Revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013.

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

There is no specific information which the Minister wishes to bring to the attention of the Committee.

Legislative background

These amendment regulations are made under sections 87 and 97 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”).

Section 84 of the 2013 Act requires a local authority to prepare a Welsh in Education Strategic Plan (“the Plan”) and outlines that a Plan should contain:

- a. a local authority's proposals on how it will carry out its education functions to:
 - i. improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area;
 - ii. improve the standards of Welsh medium education and of the teaching of Welsh in its area;
- b. the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
- c. report on the progress made to meet the targets contained in the previous plan or previous revised plan.

Section 84 also sets out with whom a local authority is required to consult in preparing or revising its Plan and provides the Welsh Ministers with a power to prescribe other persons with which the local authority must consult.

Under section 85 of the 2013 Act each local authority is required to submit its Plan to the Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a Plan (imposing its own plan in its place). Subsection (7) places a duty on a local authority to take all reasonable steps to implement its approved Plan.

Section 87 gives Welsh Ministers powers to make regulations which make further provisions on matters such as the form and content of a Plan, its timing and duration, keeping the Plan under review, consultation and submission of the Plan for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

Section 87 also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions.

The Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”) were made under these various powers. The Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 amend the requirements set out in the 2019 Regulations.

The Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 will be made under the Negative procedure.

Purpose and intended effect of the legislation

These amendment regulations make three changes to the timescales in the 2019 Regulations.

1. The duration of a ten year Plan – the duration of the plan will be 1 September 2022 to 31 August 2032 instead of 1 September 2021 to 31 August 2031. (regulation 4)
2. The date in which the first ten year plan is to be submitted for Welsh Ministers consideration – this will be 31 January 2022 instead of 31 January 2021 (regulation 5)
3. The date in which the first annual review report must be submitted to the Welsh Ministers- moving from 31 July 2021 to 31 July 2022 (regulation 7)

These changes are made in response to the COVID-19 pandemic to enable local education authorities to prioritise their support for schools - and wider COVID-19 response strategies for the remainder of 2020/21. This includes, but is not restricted to, school organisation; school health and safety, risk assessments, PPE, FSM arrangements home-to-school transport, blended learning programmes.

Plans approved under the 2013 Regulations will continue to have effect until the local authority's first 10 year Plan, under the proposed 2020 amendment Regulations, has effect.

Risks if Regulations are not made

There is a risk that an opportunity to make a significant and important contribution in the way Welsh-medium education provision is planned for by local authorities is missed if these regulations are not made.

New arrangements in the 2019 Regulations set out a higher expectation on local authorities to plan their Welsh-medium education provision over a longer term (10 years) and on the basis of an overarching target, individually calculated by Welsh Government so that they align with the national targets set out in Cymraeg 2050. The preparation and planning around the new Plan would have required some local authorities to adopt a different approach.

For example, we would have expected these preparations to have begun in April 2020 and to have included stakeholder engagement through the local Welsh in Education Planning Forums as well as analysis and consideration of PLASC data trends and forecasts; school workforce survey trends and forecasts; 21 Century School capital programme progress and future needs and impacts. Local authorities would also have been expected to present their draft Plan to their cabinet in the autumn term in order to proceed to statutory consultation to enable submission of their final Plans for the Welsh Ministers' consideration by January 2021 (in accordance with the requirements of the 2019 Regulations).

The COVID-19 pandemic interrupted this intended timetable of events. If the Welsh in Education Strategic Plans (Wales) (Amendment) (Coronavirus) Regulations 2020 are not made, there is a risk that local authorities will not be able to submit their first ten year plan to the Welsh Ministers by 31 January 2021 as set out in the 2019 regulations. The main aim in introducing the 2019 regulations was to encourage local authorities to plan their Welsh-medium education provision with greater ambition and purpose, bringing it in line with the expectations set out in our national Welsh language strategy, Cymraeg 2050: a million Welsh speakers. The other changes are made as a result of changing the date for submission from 31 January 2021 to 31 January 2022.

Consultation

These amendments are made in response to the COVID-19 pandemic. The 2019 Regulations 2019 had only come into force four months before the pandemic hit. The 2019 Regulations underwent a 15 week consultation between 30 May and 13 September 2019 and included four regional engagement events attended by approximately 100 stakeholders as well as a youth forum discussion hosted by the Urdd.

Due to the nature of the amendment being proposed, which only affects the timetable for submitting and commencing the next cycle of WESPs and no other provision in the regulations, no additional consultation nor integrated impact assessment has been undertaken. However, the views of local authority Directors of Education, gathered through the Association of Directors of Education Wales (ADEW), were considered as part of the decision making process. Key pressure points for local authorities identified include the time allocation for preparing a draft Plan in consultation with local stakeholders and consulting on a draft Plan at a time when all available education resources were being redirected to work on local COVID-19 responses.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

Two options have been considered:

- Option 1: Do nothing – retain the Welsh in Education Strategic Plans (Wales) Regulations 2019, as currently in force.
- Option 2: Introduce the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020.

Risks and Benefits

OPTION 1: Do nothing – retain the Welsh in Education Strategic Plans (Wales) Regulations 2019, as currently in force.

The 2017 Rapid Review of WESPs, followed by the establishment of an independent Advisory Board led to the making of the Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”). They replace the 2013 regulations made under section 84 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Regulations”).

The main aim in introducing the 2019 regulations was to encourage local authorities to plan their Welsh-medium education provision with greater ambition and purpose, bringing it in line with the expectations set out in our national Welsh language strategy, Cymraeg 2050: a million Welsh speakers.

The two most significant changes introduced by the 2019 regulations include – (1) changing the previous 3-year cycle of a WESP to 10 years and (2) replacing the previous requirement to undertake parental demand assessments with a requirement to plan according to targets. These targets have been calculated by Welsh Government to reflect the milestone targets in Cymraeg 2050. Under both options, these statutory arrangements would continue.

However, the 2019 regulations set out a timetable for the preparation of a draft Plan and for submitting a Plan for consideration by Welsh Ministers. The Covid-19 pandemic has had a significant impact on local authorities’ ability to comply with their statutory duty in this regard. Namely,

- The 2019 regulations emphasise the need for local authorities to prepare their Plans in partnership with their local Welsh in education planning forums which include representation from head teachers, Welsh language community stakeholders, regional consortia, further education and universities. Given the urgency on local authorities, School representatives as well as other educational bodies and third sector partners indicated above to respond to Covid-19 pandemic, this vital element of WESP planning has not been possible in the majority of cases, or certainly not to the extent which would satisfy our expectation.

- The 2019 regulations require local draft Plans to be consulted on, prior to submission to Welsh Ministers. Challenges, such as reduced capacity (including time and staffing resource) to resources, conflicting priorities, and uncertainties around the ability to commit to long term proposals in the lead up to local elections could affect the overall standard of Plans submitted for approval.
- Other pressures affecting local authorities' ability to plan with confidence and ambition include slippage in progressing school building/improvement developments as a result of contractor Covid - 19 obligations, which could also affect other school organisation proposals.

OPTION 2: Introduce the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020

Amending the 2019 Regulations in the way described in Part 1, ensures we continue to meet the policy objective of WESPs. This option takes into account the context in which this amendment is introduced. For the reasons outlined in Option 1 above, we believe that in order to implement the 2019 regulations as intended, delaying the introduction of the next cycle of WESPs is necessary. It is our view that this will ultimately lead to better Plans being submitted at a time when resource pressure should have subsided. In addition, submitting and commencing new Plans after the local elections and with a new Government in place will enable local authorities to plan with greater confidence and ambition.

Costs

OPTION 1

This is the no change option and as such there are no additional costs to the costs already estimated in the Regulatory Impact Assessment¹ for the 2019 Regulations.

OPTION 2

As this option proposes to only move the timetable for commencing the new cycle of WESPs by one year, and no other provision in the 2019 regulations, there are no additional costs associated with this option either.

However, the wider impacts of the Covid-19 pandemic on local authorities and schools must be recognised. The Welsh Government has provided more than £260 million for local authorities in Wales in recognition of the additional pressure resulting from the pandemic, and in terms of support for schools, an additional £29 million has been committed to recruit more teachers and teaching assistants from September.

While under this option the submission of the first plan will be delayed by one year, the impact of this has to be balanced against the benefits of providing local authorities with greater flexibility to use their resources to address other

¹ <https://gov.wales/sites/default/files/consultations/2019-05/draft-regulatory-impact-assessment.pdf>

challenges and also the likelihood that the additional time will result in better quality plans.

Conclusion

As noted above, the Welsh Government believes that in order to ensure local authority WESPs demonstrate the ambition and purpose envisaged to respond to the Cymraeg 2050 strategy, as intended in the 2019 regulations, the option of introducing the Welsh in Education Strategic Plans (Amendment) (Coronavirus) (Wales) Regulations 2020 must be taken.

Competition Assessment

The proposed legislation has no effect on business, charities or the voluntary sector and is therefore not expected to have any impact on the level of competition in Wales.

Post implementation review

This amendment does not affect the measures in place to keep the implementation of these regulations under review. The process for developing Plans outlined in the legislation still enables a proportionate level of monitoring. A 10 year plan will be produced and annual review report submitted to the Welsh Government. This will enable local authorities and Welsh Government to quickly identify any difficulties with the legislation, as well as enable the Welsh Government to ascertain the support needed by local authorities.

Agenda Item 5.3

SL(5)648 – The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the principal Regulations”), specifically Part 4 of the principal Regulations relating to dental performers lists, to reflect the change to the employment position of foundation dentists.

The principal Regulations currently require that for the purposes of undertaking foundation training, a foundation dentist must be employed under a contract for services with an approved trainer, which for the purposes of the principal Regulations is a dentist.

From 1 September 2020, foundation dentists (“FDs”) no longer hold a contract of employment with an approved trainer. Their contract of employment will instead be with Velindre University NHS Trust under the direction of the NHS Wales Shared Services Partnership (“NWSSP”) committee who will act as a single lead employer for all foundation dentists in Wales.

These Regulations amend the principal Regulations to align the applicable legislative provisions with the change to policy.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

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

“The 2020 Regulations will not be subject to public consultation. The Statutory Instrument concerns the principle of amending operational procedures which affect a small number of key stakeholders who have participated in the development of the proposal with HEIW from its inception.

Key stakeholder representatives were invited by HEIW to discuss and develop the draft proposal with the finally agreed proposal published inviting colleagues with an interest across Wales to provide their comments.

The British Dental Association (Wales) have noted the introduction of the amending Regulations.”

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

We note there has been no regulatory impact assessment prepared in relation to these Regulations. The Explanatory Memorandum explains that:

“On this occasion, a Regulatory Impact Assessment has not been carried out. The 2020 Regulations support an administrative change and not a change in policy. There are no additional costs associated with the 2020 Regulations with no impact on the private, local government or third sector foreseen.”

However, on its face, the Regulations would appear to support a change in policy by ensuring that the contract of employment for FDs is with a single lead employer, rather than with any other approved trainer. It is also noted that the “*Purpose & intended effect of the legislation*” section of the Explanatory Memorandum states that:

*“The Principal Regulations allow NWSSP to accept FDs onto the Performer Lists subject to a 3 months ‘grace period’ but currently require the FD to have a contract of employment with an approved training practice. The Regulations will make the required amendments to the Principal Regulations to facilitate FDs full inclusion to the Dental Performers List from 1 December 2020 and to align the applicable legislative provisions with the **change to policy**.”* [emphasis added]

The Explanatory Note to the Regulations also states that:

*“These Regulations amend the principal Regulations to align the applicable legislative provisions with the **change to policy**.”* [emphasis added]

Further clarification is therefore sought as to the justification for the absence of a regulatory impact assessment.

Implications arising from exiting the European Union

None.



Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to the second merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

9 November 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

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

2020 No. 1207 (W. 272)

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Performers Lists) (Wales)
(Amendment) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the principal Regulations”), specifically Part 4 of the principal Regulations relating to dental performers lists, to reflect the change to the employment position of foundation dentists.

The principal Regulations currently require that for the purposes of undertaking foundation training, a foundation dentist must be employed under a contract for services with an approved trainer, which for the purposes of the principal Regulations is a dentist.

From 1 September 2020, foundation dentists no longer hold a contract of employment with an approved trainer. Their contract of employment will instead be with Velindre University NHS Trust under the direction of the NHS Wales Shared Services Partnership committee who will act as a single lead employer for all foundation dentists in Wales.

These Regulations amend the principal Regulations to align the applicable legislative provisions with the change to policy.

Regulation 2 amends regulation 28 (interpretation) of the principal Regulations. It amends the definitions of “approved trainer” and “foundation training” to reflect the move to Velindre University NHS Trust under the direction of the NHS Wales Shared Services Partnership committee as single lead employer for foundation dentists. Definitions of “HEIW”, “NWSSP committee” and “Velindre University NHS Trust” are also inserted into regulation 28 of the principal Regulations.

Regulation 3 amends regulation 30 of the principal Regulations so that it requires foundation dentists, as part of the undertakings the foundation dentist is required to give in regulation 30(2), not to perform any primary dental services except when acting in accordance with their contract of employment with Velindre University NHS Trust.

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. 1207 (W. 272)

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Performers Lists) (Wales)
(Amendment) Regulations 2020

Made 3 November 2020

Laid before Senedd Cymru 5 November 2020

Coming into force 1 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 63 and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020.

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

(3) In these Regulations, “the principal Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004(2).

Amendment of regulation 28 of the principal Regulations

2.—(1) Regulation 28 (interpretation) of the principal Regulations is amended as follows.

-
- (1) 2006 c. 42. See section 206(1) for the definitions of “prescribed” and “regulations”.
- (2) S.I. 2004/1020 (W. 117). Part 4 of the principal Regulations was inserted by regulation 11 of the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (S.I. 2006/945 (W. 94)) and amended by S.I. 2016/101 (W. 49). There are other amending instruments but none are relevant to these Regulations.

- (2) In regulation 28(2)—
- (a) in the definition of “approved trainer”—
 - (i) for “a postgraduate dental dean or a director of postgraduate dental education” substitute “HEIW”, and
 - (ii) for “him or her” substitute “the dentist”;
 - (b) omit the definition of “postgraduate dental dean or director of postgraduate dental education”;
 - (c) in the definition of “foundation training”—
 - (i) after “service by” insert “Velindre University NHS Trust under the direction of the NWSSP committee, and during that period the dentist must attend the practice of”,
 - (ii) after “trainer” insert “who has agreed with HEIW to supervise the provision by the dentist of”,
 - (iii) omit “to provide”, and
 - (iv) after “treatment and” insert “for the dentist”;
 - (d) after the definition of “Health Committee” insert—

““HEIW” means Health Education and Improvement Wales, the Special Health Authority established by article 2 of the Health Education and Improvement Wales (Establishment and Constitution) Order 2017⁽¹⁾, which must exercise its functions in relation to the planning, commissioning, delivery and quality assurance of education and training for persons engaged in the provision of health services in Wales and which, for the purposes of this Part, is responsible for the arrangement and provision of a suitable learning environment for dentists performing primary dental services to enable dentists to meet the requirements and standards of the General Dental Council and Welsh Government;

“NWSSP committee” means NHS Wales Shared Services Partnership, established by the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012⁽²⁾, which is responsible for exercising functions of Velindre University NHS Trust in relation to shared services, policy and strategy, and the management and provision of shared services to the health service in Wales;”;

(1) S.I. 2017/913 (W. 224).

(2) S.I. 2012/1261 (W. 156).

- (e) in the definition of “scheme”, omit “and”;
- (f) after the definition of “scheme” insert—
““Velindre University NHS Trust” means the NHS trust⁽¹⁾ established by article 2 of the Velindre National Health Service Trust (Establishment) Order 1993⁽²⁾”.

(3) In regulation 28(3)—

- (a) in sub-paragraph (a), after “employment” insert “with Velindre University NHS Trust under the direction of NWSSP”;
- (b) in the words after sub-paragraph (c)(v)—
 - (i) for “a postgraduate dental dean or director of postgraduate dental education” substitute “HEIW”, and
 - (ii) for “he or she” substitute “the dentist”.

Amendment of regulation 30 of the principal Regulations

3.—(1) Regulation 30 of the principal Regulations is amended as follows.

(2) In regulation 30(2)(b)(i), after “acting” insert “in accordance with the terms of the contract of employment for service with Velindre University NHS Trust and”.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers
3 November 2020

(1) See section 18 of the National Health Service (Wales) Act 2006 (c. 42).

(2) S.I. 1993/2838, amended by S.I. 2018/887 (W. 176); there are other amending instruments but none are relevant to these Regulations.

Explanatory Memorandum to accompany the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Primary Care Division of the Directorate of Primary Care and Health Science 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 National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Vaughan Gething
Minister for Health and Social Services
5 November 2020

1. Description

The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020 (“the Regulations”) amend Part 4 of the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the Principal Regulations”) in relation to Dental Performers Lists.

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

None.

3. Legislative background

The Regulations will be made pursuant to the Welsh Ministers’ powers under sections 63 and 203(9) and (10) of the National Health Service (Wales) Act 2006. Section 63(3) includes that Regulations under section 63(1) may include provision as to eligibility for inclusion into a list. Section 18 of the Legislation (Wales) Act 2019 provides that the power to make subordinate legislation includes the power to amend it.

The Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The purpose of the Regulations is to align the legislation with the policy position with regard to new arrangements managed by Health Education and Improvement Wales (HEIW) which commenced on 1 September 2020, whereby Foundation Dentists (FDs – (trainees)) no longer hold a contract of employment with an individual dentist (the trainer) in a training practice.

From 1 September 2020, all FDs have moved to a single lead employer (SLE), operated and administered by the NHS Wales Shared Services Partnership (NWSSP), who already administer the GP specialty employment contract in Wales. As well as releasing time for the training practices and trainees, this arrangement also has additional benefits in terms of centralisation and consistency with regard to human resources, including employment conditions and performance management.

The purpose of the Dental Performers List established by the Principal Regulations is to ensure that dentists are suitable to undertake primary dental services and to protect patients from any performers who are not suitable, or whose efficiency to perform those services may be impaired.

The Principal Regulations allow NWSSP to accept FDs onto the Performer Lists subject to a 3 months ‘grace period’ but currently require the FD to have a contract of employment with an approved training practice. The Regulations will make the required amendments to the Principal Regulations to facilitate

FDs full inclusion on to the Dental Performers List from 1 December 2020 and to align the applicable legislative provisions with the change to policy. The relevant definitions applicable to Part 4 in regulation 28 of the Principal Regulations are amended by the Regulations to reflect the move to Velindre University NHS Trust under the direction of the NWSSP committee as single lead employer for foundation dentists. The Regulations also insert new definitions of HEIW, NWSSP committee and Velindre University NHS Trust into regulation 28 of the Principal Regulations.

5. Consultation

The 2020 Regulations will not be subject to public consultation. The Statutory Instrument concerns the principle of amending operational procedures which affect a small number of key stakeholders who have participated in the development of the proposal with HEIW from its inception.

Key stakeholder representatives were invited by HEIW to discuss and develop the draft proposal with the finally agreed proposal published inviting colleagues with an interest across Wales to provide their comments.

The British Dental Association (Wales) have noted the introduction of the amending Regulations.

6. Regulatory Impact Assessment (RIA)

On this occasion, a Regulatory Impact Assessment has not been carried out. The 2020 Regulations support an administrative change and not a change in policy. There are no additional costs associated with the 2020 Regulations with no impact on the private, local government or third sector foreseen.

SL(5)651 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the principal Regulations”) to remove Denmark from the list of exempt countries and territories in those Regulations and to make transitional provisions.

These Regulations came into force at 4:00am on 6 November 2020. It is noted that further legislative provisions in relation to travel from Denmark have since come into force at 4:00am on 7 November 2020 via the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following 5 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

Human Rights

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, which relates to both these Regulations and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020:

“The amendments contained in both sets of 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."

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

Consultation

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph 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 the No 18 [...] Regulations."

In a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 6 November 2020, it is also explained that:

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

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

Equality Impact Assessment

We note there is no equality impact assessment for these Regulations, neither is there for the principal Regulations, and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations or the principal Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

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

Breach of the 21-day rule and coming into force before laid

We note:

- That the Regulations came into force before being laid before the Senedd; and
- 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).

An explanation has been provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 6 November 2020. In particular, we note the following in the letter:



“Overnight it became necessary to make the above Regulations, and in accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and has come into force before it could be laid. [...]

These Regulations further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Denmark from the list of exempt countries and territories. The Regulations make this change due to the identified changes in risk to public health posed by arrivals from this country.”

We also note the Government’s explanation contained in the Explanatory Memorandum that it became necessary to “urgently remove Denmark from the list of exempt countries” because of “emerging health risks being reported from mink farms in Denmark, and the need to act before further international travel from Denmark arrived in the UK.”

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

Illustrative document

We note and welcome the publication of an [illustrative document](#) by the Welsh Government, which sets out the various amendments made to the principal Regulations in order to assist the reader in understanding the principal Regulations.

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required in relation to the third merits point as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

11 November 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. 1223 (W. 277)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 18)
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)) to remove Denmark from the list of exempt countries and territories in those Regulations and to make transitional provision.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, 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. 1223 (W. 277)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 18)
Regulations 2020**

Made *5 November 2020*

Coming *into*
force *at 4.00 a.m. on 6 November 2020*

Laid *before* *Senedd*
Cymru *at 3.00 p.m. on 6 November 2020*

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

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 6 November 2020.

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

-
- (1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.
- (2) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (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. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I.

Removal of Denmark 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 “Denmark”.

Transitional provision

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

- (a) arrives in Wales at or after 4.00 a.m. on 6 November 2020, and
- (b) was last in Denmark—
 - (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 6 November 2020.

(2) P is, by virtue of having been in Denmark, 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.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers
5 November 2020

2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263) and S.I. 2020/1191 (W. 269).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) 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. 18) Regulations 2020 and Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

6 November 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”.

Both sets of Regulations further amend the International Travel Regulations. The “No 18 Regulations” take account of emerging risk arising in Denmark, and the “No 19 Regulations” 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 sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the No 18 Regulations came into force before they were laid. The Llywydd has also been informed that the No 19 Regulations will also come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in both sets of 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.

Illustrative document of amendments

An illustrative document showing amendments made to the International Travel Regulations has been published on the GOV.wales website:

<https://gov.wales/health-protection-coronavirus-international-travel-wales-regulations-2020-amended>

<https://llyw.cymru/rheoliadau-diogelu-iechyd-coronafeirws-teithio-rhyngwladol-cymru-2020-fel-yu-diwygiwyd>

It will be updated to include the amendments being made by both sets of Regulations.

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 late last night when the No 18 Regulations were made to urgently remove Denmark from the list of exempt countries and territories with effect from 04:00am today, Friday 6 November 2020. This was necessary because of emerging health risks being reported from mink farms in Denmark, and the need to act before further international travel from Denmark arrived in the UK.

Additionally advice which has been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Germany and Sweden 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 those countries also.

The revised requirements will come into effect for any travellers entering the Common Travel Area from Germany and Sweden on or after 4.00 am on Saturday 7 November 2020.

None of the amendments to the International Travel Regulations made by the latest amending 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 the No 18 and No 19 Regulations.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to the No 18 and No 19 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: RE-379-20

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

6 November 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020

Overnight it became necessary to make the above Regulations, and in accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and has come into force before it could be laid. I will lay the instrument and an Explanatory Memorandum later today.

These Regulations further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Denmark from the list of exempt countries and territories. The Regulations make this change due to the identified changes in risk to public health posed by arrivals from this country.

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
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.



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

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

DATE **6 November 2020**

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

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these 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.

Yesterday I received a letter from Grant Schapps Secretary of State for Transport informing me that Health authorities in Denmark had reported widespread outbreaks of SARS-CoV-2 in mink farms, with subsequent spread of a mink-variant virus to the local community. At least seven unique mutations have been identified in the virus in mink. One of these virus variants, with four changes in the spike protein, has been found on five mink farms and in 12 people in the surrounding community.

The four CMOs met last night to discuss this development, as a result of which it was decided that action should be taken to remove Denmark from the list of exempt countries and territories with effect from 04:00am today, Friday 6 November. Regulations giving effect to that change came into force at 04:00am this morning. Travellers arriving into Wales from Denmark after this time will be required to follow the isolation and other requirements set out in the Regulations.

This removal is in addition to the removal of Germany and Sweden from the list of exempt countries and territories, which will come into force at 04:00am on Saturday 7 November as set out in the Written Statement published yesterday.

Agenda Item 5.5

SL(5)652 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the principal Regulations”) to remove Germany and Sweden from the list of exempt countries and territories in the principal Regulations and to make transitional provisions. These Regulations also make a technical amendment to the Welsh language text of the principal Regulations to give effect to the provisions of the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020.

These Regulations came into force at 4.00 am on 7 November 2020.

Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul these Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following 5 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

Human Rights

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the Government’s explanation contained in the Explanatory Memorandum that advice “*received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Germany and Sweden has increased*”.



In the Explanatory Memorandum, which relates to both these Regulations and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020, the Welsh Government states:

"The amendments contained in both sets of 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."

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.

Consultation

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph 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 the [...] No 19 Regulations."

In a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 6 November 2020, it is also explained that:

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

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.

Equality Impact Assessment

We note there is no equality impact assessment for these Regulations, neither is there for the principal Regulations, and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations or the principal Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

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.

Breach of the 21-day rule

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 6 November 2020.



In particular, we note the following in the letter:

“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.”

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

Illustrative document

We note and welcome the publication of an [illustrative document](#) by the Welsh Government, which sets out the various amendments made to the principal Regulations in order to assist the reader in understanding the principal Regulations.

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required in relation to the third merits point as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

11 November 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. 1232 (W. 278)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 19)
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 Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 (S.I. 2020/942);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277).

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 Germany and Sweden from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision relating to these countries’ 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.

Part 3 of these Regulations makes a technical amendment to the Welsh language text of Part 1 of Schedule 2 to the International Travel Regulations to give effect to the provisions of the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020. That Order makes provision for the establishment of the Foreign, Commonwealth and Development Office following the merger of the Department for International Development and the Foreign and Commonwealth Office.

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. 1232 (W. 278)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 19)
Regulations 2020**

Made at 2.10 p.m. on 6 November 2020

*Laid before Senedd
Cymru at 3.00 p.m. on 6 November 2020*

*Coming into force at 4.00 a.m. on 7 November
2020*

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

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 7 November 2020.

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

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

PART 2

Removal of countries from the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

Removal of countries 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—

“Germany”

“Sweden”.

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 7 November 2020, and
- (b) was last in Germany or Sweden—
 - (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 7 November 2020.

(2) P is, by virtue of having been in Germany or Sweden, 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.

(1) 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), S.I. 2020/1042 (W. 231), S.I. 2020/942, S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269) and S.I. 2020/1223 (W. 277).

PART 3

Amendments to the Welsh language text of Part 1 of Schedule 2 to the International Travel Regulations

Amendments to Part 1 of Schedule 2 (persons not required to comply with regulations 4, 5, 7 or 8)

4. In Part 1 of Schedule 2 to the International Travel Regulations (persons not required to comply with regulations 4, 5, 7 or 8), in the Welsh language text, in paragraph 1(2)(a) and (b), for “Swyddfa Dramor a Chymanwlad” substitute “Swyddfa Dramor, y Gymanwlad a Datblygu”.

Vaughan Gething

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

At 2.10 p.m. on 6 November 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) 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. 18) Regulations 2020 and Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

6 November 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”.

Both sets of Regulations further amend the International Travel Regulations. The “No 18 Regulations” take account of emerging risk arising in Denmark, and the “No 19 Regulations” 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 sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the No 18 Regulations came into force before they were laid. The Llywydd has also been informed that the No 19 Regulations will also come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in both sets of 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.

Illustrative document of amendments

An illustrative document showing amendments made to the International Travel Regulations has been published on the GOV.wales website:

<https://gov.wales/health-protection-coronavirus-international-travel-wales-regulations-2020-amended>

<https://llyw.cymru/rheoliadau-diogelu-iechyd-coronafeirws-teithio-rhyngwladol-cymru-2020-fel-yu-diwygiwyd>

It will be updated to include the amendments being made by both sets of Regulations.

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 late last night when the No 18 Regulations were made to urgently remove Denmark from the list of exempt countries and territories with effect from 04:00am today, Friday 6 November 2020. This was necessary because of emerging health risks being reported from mink farms in Denmark, and the need to act before further international travel from Denmark arrived in the UK.

Additionally advice which has been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Germany and Sweden 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 those countries also.

The revised requirements will come into effect for any travellers entering the Common Travel Area from Germany and Sweden on or after 4.00 am on Saturday 7 November 2020.

None of the amendments to the International Travel Regulations made by the latest amending 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 the No 18 and No 19 Regulations.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to the No 18 and No 19 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/3770/20

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

6 November 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) 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, you will note this also includes the Regulations made overnight and about which I wrote to you earlier today.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Germany and Sweden 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 these countries.

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

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



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE **5 November 2020**
BY **Vaughan Gething Minister for Health and Social Services**

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these 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 Germany and Sweden will be removed from the list of exempt countries and territories, so travellers from those countries will need to isolate on arrival in Wales.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 7 November.

SL(5)649 – The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020

Background and Purpose

These Regulations impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus, following the expiry of the Health Protection (Coronavirus Restrictions) (No 3) (Wales) (Regulations) 2020 which expired on 8 November.

These Regulations come into force on 9 November 2020 and will expire on 19 February 2021 unless they are revoked before then. The Regulations must be reviewed by 19 November, at least once between 20 November and 3 December, at least once between 4 December and 17 December and at least once every 21 days after that.

There are 9 Parts to the Regulations. These Regulations make provision in the following key areas:

- a) prohibiting gatherings in a private dwelling, other than with members of the same household or extended household, without reasonable excuse;
- b) allowing up to two households to agree to form an extended household (this will not be limited to circumstances where one household has only one adult member);
- c) prohibiting gatherings in public places without reasonable excuse, but
 - a. allowing up to four people from any household, or any number of members of the same household, to gather outdoors or in regulated premises;
 - b. allowing for an extended household to gather outdoors;
 - c. allowing gatherings of up to 15 indoors or 30 outdoors to take part in an activity organised by a responsible body;
- d) permitting travel within and across Wales but prohibiting travel out of and into Wales without reasonable excuse;
- e) introducing requirements for people to self-isolate in the event of having tested positive for coronavirus or being notified to do so by a contact tracer;
- f) placing obligations on persons responsible for premises open to the public, or for work being carried out at any premises, to take all reasonable measures to minimise the risk of exposure to, or spread of, coronavirus – including requiring employers to enable or allow employees to self-isolate when the employee is required to do so by a contact tracer;
- g) requiring face coverings to be worn on public transport and in public areas of indoor premises, subject to certain exemptions and exceptions.



In summary:

Part 2 imposes limits on gathering with other people. However, a person may be in a gathering if they have a reasonable excuse, either when it is reasonably necessary and there is no reasonably practicable alternative or in specified circumstances as outlined in the regulations. Within private dwellings (including gardens), people may only gather with members of their household and extended household. An extended household may be formed by all of the adults in a maximum of two households agreeing. Outside of private dwellings, people may gather outdoors in groups of up to four (children under 11 are not counted), or with members of their own household and extended household (regardless of the number). In accommodation in a hotel or other holiday accommodation, people can only gather with members of their own household. In other indoor places, people can gather with either the members of their own household or in groups of up to four (children under 11 are not counted). Part 2 also prohibits organising events mainly held indoors for more than 15 people or outdoors for more than 30 people, subject to exceptions. Certain unlicensed music events are also prohibited.

Part 3 prohibits people from entering or leaving Wales, subject to exceptions. The Regulations provide examples of purposes for which it may be reasonably necessary for a person to enter or leave Wales, and provide specific circumstances in which travelling is permitted. Travel within Wales is allowed.

Part 4 imposes new requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive, and people who have had "close contact" with someone who has tested positive, and who have been notified by a contact tracer are required not to leave the place they are living until the end of the last day of their isolation. The period of isolation is generally 10 days for those who have tested positive and 14 days for those who have had close contact but the start of those periods varies depending on the circumstances (for example; whether the person has reported symptoms or not). Adults with responsibility for a child required to isolate, are required to take all reasonable measures to ensure the child self-isolates. The regulations enable contact tracers to share information insofar as necessary for the operation and enforcement of the self-isolation system.

Part 5 and Schedule 1 relate to business and services whose premises must be closed to the public. Those required to close to members of the public include concert halls, adult entertainment venues, theatres and night clubs. Part 5 also contains provision prohibiting alcohol from being sold, on premises which are licenced to sell it, after 10.00 p.m. and require the premises to be closed by no later than 10.20 p.m.

Part 6 and Schedule 2 include provision imposing requirements on "regulated premises" (premises which is open to the public or where work is carried out) to take reasonable measures for the purpose of minimising risk of exposure to coronavirus, and the spread of



the virus. The Regulations also set out requirements to wear face coverings on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 7 and Schedule 3 relates to the enforcement of the restrictions and requirements, including who can take enforcement action, the issue of compliance notices, powers of removal and dispersal of gatherings, powers to stop events, powers to direct people who breach self-isolation to return home and enforcement of the requirement to wear face coverings. It provides for a power to enter premises, for police to undertake road checks and for the use of reasonable force in certain circumstances.

Part 8 makes provision about offences and penalties. This includes offences in respect of which a fixed penalty notice may be issued as an alternative to bringing court proceedings.

Part 9 makes a consequential amendment and contains defined terms, including the definition of an “organised” activity for the purposes of these Regulations.

Procedure

Made Affirmative.

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

Technical Scrutiny

There are no points 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 or public policy likely to be of interest to the Senedd

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

“Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.”



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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new national restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

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

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

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

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 3 November the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported."

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.

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



We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

"While the impact of the firebreak on the reproduction rate of COVID-19 will not be fully known for some weeks, the purpose of making the [No. 3] Regulations was to provide conditions which would see a reduction in the reproduction rate. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government's [Technical Advisory Cell](#) and available on the gov.wales website."

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that restrictions and requirements should be imposed on a pan-Wales basis.

In particular, evidence which showed that areas of Wales with the highest prevalence of Covid-19 should be subject to easing of restrictions and requirements upon the expiry of the No.3 Regulations. The number of cases per 100,000 population for Merthyr Tydfil and Rhondda Cynon Taf were the highest in Wales on 9 November, as published by [Public Health Wales](#).

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required in relation to the fourth merits point only as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

11 November 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. 1219 (W. 276)

PUBLIC HEALTH, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

There are 9 Parts to the Regulations.

Part 1 provides that these Regulations come into force on **9 November 2020** and must be reviewed by 19 November, at least once in the period from 20 November to 3 December, at least once in the period from 4 December to 17 December, and at least every 21 days after that. It also provides that unless the Regulations are revoked or amended before then, they expire on 19 February 2021.

Part 2 imposes limits on meeting other people (referred to as participating in gatherings) and on events. Regulation 4 limits gatherings in people's homes (including their gardens) to those who form part

of an extended household (or “bubble”) only. Regulation 5 provides that an extended household may be formed by all of the adults in a maximum of 2 households agreeing to be treated as 1 household for the purpose of meeting in people’s homes or for meeting outdoors (other than in regulated premises). Regulation 6 contains a restriction on meeting away from people’s homes. In that case, gatherings are limited to 4 people, not including children under 11. However, this does not apply to holiday or travel accommodation where the gathering is limited to people who are members of the same household. The limitations in regulations 4 and 6 both apply subject to certain listed exceptions, and subject to situations where it may be reasonably necessary to gather and there is no reasonably practicable alternative. More than 4 people may gather if they are all part of the same household, or if they meet outdoors (other than in regulated premises) if they are all part of the same extended household. Exceptions include certain “organised” activities involving up to 15 people meeting indoors and 30 people outdoors. All reasonable measures must be taken to minimise the risk of the spread of coronavirus during organised activities and they must not take place in people’s homes. Regulations 7 and 8 make further provision about events that encourage people to gather illegally.

Part 3 relates to travel. Regulation 9 prohibits people from entering or leaving Wales. This is again subject to certain listed exceptions, and subject to situations where it may be reasonably necessary to travel and there is no reasonably practicable alternative. There is no prohibition on travel within Wales.

Part 4 imposes requirements on people who have tested positive for coronavirus and their close contacts. Regulations 11 and 12 provide that adults and children who have tested positive for coronavirus must not leave the place they are living until the end of the last day of their isolation (except in the circumstances provided for by regulation 15). The last day of their isolation is calculated in accordance with regulations 11 and 12. Regulations 13 and 14 provide that people who have had “close contact” with someone who has tested positive for coronavirus must not leave the place they are living until the end of the last day of their isolation (except in the circumstances provided for by regulation 15). The last day of their isolation is calculated in accordance with regulations 13 and 14. Regulation 16 relates to obligations of adults in respect of children required to isolate, regulation 17 enables notices given under this Part by contact tracers to be withdrawn and regulation 18 makes provision about the use of information held by contact tracers.

Part 5 relates to business and services whose premises are ordinarily open to the public. Regulation 19 provides that the premises of businesses and services listed in Schedule 1 must be closed to the public (though this does not prevent certain activities from taking place on the premises). Regulation 20 imposes restrictions on businesses whose premises are licensed for the sale of alcohol. These prohibit alcohol from being sold after 10.00 p.m. and require the premises to be closed by no later than 10.20 p.m.

Part 6 makes provision for the purpose of minimising risk of exposure to coronavirus in places where people come together. Regulation 21 applies to “regulated premises” (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken, for example to limit close face-to-face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that stopping an activity, closing part of a premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures. Specific measures also apply to hospitality settings. Regulations 22 and 23 provide that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions. Regulation 24 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 7 relates to the enforcement of the restrictions and requirements. Regulation 25 makes provision about those who can take enforcement action, regulation 26 makes further provision (in Schedules 3 and 4) about enforcing the need to take preventative measures under regulation 21, regulation 27 relates to compliance notices, and regulation 28 to powers of removal and dispersal. Regulation 29 makes provision about enforcing the prohibition of certain events. Regulation 30 relates specifically to enforcing the requirement to wear a face covering and regulation 31 to children. Regulation 32 contains a power to enter premises, regulation 33 is about police road checks and regulation 34 makes additional provision about enforcement including allowing reasonable force to be used in certain circumstances.

Part 8 makes provision about offences and penalties. Regulation 35 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. It also provides that holding a larger gathering in a private home is an

offence, as is providing false or misleading information to a contact tracer. Those offences are punishable by an unlimited fine. Regulation 36 relates to offences by bodies corporate. Regulation 37 allows for offences to be punished by way of fixed penalty notices, regulations 38 to 42 relate to the amount of the penalty and regulations 43 and 44 make further provision about administration of the penalties. Regulation 45 relates to self-incrimination and regulation 46 relates to prosecutions of offences under the Regulations.

Part 9 contains defined terms (regulation 47) and a consequential amendment (regulation 48).

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. 1219 (W. 276)

PUBLIC HEALTH, WALES

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

Made *at 1.14 p.m. on 5 November 2020*

Laid *before* *Senedd*
Cymru *at 4.45 p.m. on 5 November 2020*

Coming into force *9 November 2020*

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

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

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft

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

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

PART 1

Introduction, review and expiry

Title, application and coming into force

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

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 9 November 2020.

Review

2. The Welsh Ministers must review the need for the restrictions and requirements imposed by these Regulations, and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) by 19 November 2020;
- (b) at least once in the period from 20 November 2020 to 3 December 2020;
- (c) at least once in the period from 4 December 2020 to 17 December 2020;
- (d) at least once in the period of 21 days beginning with 18 December 2020;
- (e) at least once in each subsequent period of 21 days.

Expiry

3.—(1) These Regulations expire at the end of the day on 19 February 2021.

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

PART 2

Restrictions on gatherings and events

Restriction on gatherings in private dwellings

4.—(1) No person may, without a reasonable excuse, participate in a gathering in a private dwelling with any other person apart from members of their household or extended household.

(2) For the purposes of paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in paragraph (4) applies.

(3) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this sub-paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving educational services.

(4) The circumstances referred to in paragraph (2)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) participating in a gathering of no more than 4 people where all the persons in the gathering—
 - (i) live in the same premises, and
 - (ii) share toilet, washing, dining or cooking facilities with each other.

(1) 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

(5) This regulation does not apply to a person who is homeless.

Extended households

5.—(1) 2 households may agree to be treated as an extended household for the purposes of regulation 4 or 6(2)(b).

(2) To agree to be treated as an extended household, all of the adults of the 2 households must agree.

(3) A household may only agree to be treated as being in 1 extended household.

(4) A household ceases to be treated as being in an extended household if any adults in the household ceases to agree to be treated as being in the extended household.

(5) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

Restriction on gatherings in public places

6.—(1) No person may, without a reasonable excuse, participate in a gathering which—

- (a) takes place anywhere other than—
 - (i) in a private dwelling, or
 - (ii) in holiday or travel accommodation, and
- (b) consists of more than 4 people, not including—
 - (i) any children under the age of 11, or
 - (ii) the carer of a person who is participating in the gathering.

(2) But a person may participate in such a gathering which—

- (a) takes place indoors or in any part of regulated premises that is outdoors, if all the persons participating in the gathering are members of the same household, or
- (b) takes place outdoors other than in regulated premises, if all the persons participating in the gathering are—
 - (i) members of the same household, or
 - (ii) members of the same extended household.

(3) No person may, without a reasonable excuse, participate in a gathering which takes place in holiday or travel accommodation unless all the persons participating in the gathering are members of the same household.

(4) For the purposes of paragraphs (1) and (3), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in paragraph (6) applies.

(5) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this sub-paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing or receiving educational services.

(6) The circumstances referred to in paragraph (4)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) attending a solemnisation of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,

- (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (e) participating in a gathering of no more than 15 people, not including persons under the age of 11, at regulated premises to—
 - (i) celebrate a solemnisation of a marriage or formation of a civil partnership that takes place on or after 22 August 2020;
 - (ii) celebrate the life of a deceased person whose funeral is held on or after 22 August 2020;
- (f) attending a place of worship;
- (g) an elite athlete and is training or competing;
- (h) providing coaching or other support to an elite athlete, or providing support at a sporting event at which only elite athletes are competing;
- (i) participating in or facilitating an indoor organised activity at which—
 - (i) no more than 15 people are in attendance, not including persons under the age of 11 or persons working, or providing voluntary services, at the event, and
 - (ii) no alcohol is consumed;
- (j) participating in or facilitating an outdoor organised activity at which—
 - (i) no more than 30 people are in attendance, not including persons under the age of 11 or persons working, or providing voluntary services, at the event, and
 - (ii) no alcohol is consumed;
- (k) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).

(7) This regulation does not apply to a person who is homeless.

Prohibition on organising events

7.—(1) No person may, without a reasonable excuse, be involved in organising—

- (a) an event held wholly or mainly indoors at which more than 15 people are in attendance, or
- (b) an event held wholly or mainly outdoors at which more than 30 people are in attendance,

not including persons under the age of 11 or persons working, or providing voluntary services, at the event.

(2) For the purposes of paragraph (1)—

- (a) a person is not involved in organising an event if the person's only involvement is attending it;
- (b) a reasonable excuse includes where the person has taken all reasonable measures to ensure that no more than 15 or 30 people are in attendance, as the case may be;
- (c) the following are not to be treated as events—
 - (i) the showing of a film;
 - (ii) a market;
 - (iii) a religious service;
 - (iv) a sporting event at which only elite athletes are competing.

Prohibition on organising certain unlicensed music events

8.—(1) No person may be involved in organising a relevant unlicensed music event.

(2) For the purposes of this regulation “relevant unlicensed music event” means an event—

- (a) at which more than 30 people are in attendance,
- (b) at which music is played or performed for the purpose, or for purposes which include the purpose, of entertainment, and
- (c) where the playing or performance of the music is—
 - (i) a licensable activity (within the meaning of the Licensing Act 2003⁽¹⁾), and
 - (ii) not carried on under and in accordance with an authorisation (within the meaning given by section 136(5) of that Act).

(3) For the purposes of this regulation, a person is not involved in organising a relevant unlicensed music event if the person's only involvement is attending it.

(1) 2003 c. 17.

PART 3

Restrictions on travel

Restriction on travel to and from Wales

9.—(1) No person living outside Wales may enter or remain in Wales without a reasonable excuse.

(2) No person living in Wales may leave Wales without a reasonable excuse.

(3) For the purposes of paragraphs (1) and (2), a person has a reasonable excuse if—

- (a) the person leaves or enters Wales for a purpose that is reasonably necessary and there is no reasonably practicable alternative;
- (b) one of the circumstances in paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to enter or leave Wales include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or participating in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this sub-paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing educational services;
- (j) obtaining—

- (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
- (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (k) obtaining money from or depositing money with any business or service listed in paragraph 3 or 4 of Part 1 of Schedule 2;
- (l) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).

(5) The circumstances referred to in paragraph (3)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) attending a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (e) an elite athlete and is training and competing;
- (f) providing coaching or other support to an elite athlete, or providing support at a sporting event at which only elite athletes are competing;
- (g) travelling on public transport on a journey which begins and ends in Wales;
- (h) travelling to participate in a gathering with the person's extended household in accordance with regulation 4 or 6(2)(b).

PART 4

Requirement to isolate etc.

CHAPTER 1

Requirement to isolate etc. where person tests positive for coronavirus or has close contact with such person

Interpretation of Part

10.—(1) In this Part, “close contact” means contact that a contact tracer considers may lead to a risk of infection or contamination with coronavirus, including—

- (a) having face-to-face contact with a person at a distance of less than 1 metre;
- (b) spending more than 15 minutes within 2 metres of a person;
- (c) travelling in a car or other small vehicle with a person or in close proximity to a person on an aeroplane or in the same carriage of a train.

(2) In regulations 11 and 13, references to an “adult” (“A”) include references to a child aged 16 or 17.

(3) For the purposes of this Part, a person has responsibility for a child if the person has—

- (a) custody or charge of the child for the time being, or
- (b) parental responsibility for the child.

(4) For the purposes of these Regulations, notification by means of the NHS Covid 19 smartphone app developed and operated by the Secretary of State is not a notification.

Requirement to isolate: adult with coronavirus

11.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that A has tested positive for coronavirus on or after 9 November 2020.

(2) A may not leave or be outside the place where A is living before the end of the last day of A’s isolation unless regulation 15 applies.

(3) If requested by a contact tracer, A must notify the contact tracer—

- (a) of the name of each person living at the place A is living, and
- (b) of the address of that place.

(4) The last day of A’s isolation is the last day of the period of 10 days beginning with the day of the test which led to the notification referred to in paragraph (1) being given.

(5) But where A reports to a contact tracer the day on which symptoms first developed, the last day of A’s isolation is the last day of the period of 10 days

beginning with the day which A reports as being the day on which the symptoms first developed.

Requirement to isolate: child with coronavirus

12.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that a child (“C”) for whom A is a responsible adult has tested positive for coronavirus on or after 9 November 2020.

(2) C may not leave or be outside the place where C is living before the end of the last day of C’s isolation unless regulation 15 applies.

(3) If requested by a contact tracer, A must notify the contact tracer—

- (a) of the name of each person living at the place where C is living, and
- (b) of the address of that place.

(4) The last day of C’s isolation is the last day of the period of 10 days beginning with the date of the test which led to the notification referred to in paragraph (1) being given.

(5) But in a case where A reports to a contact tracer the day on which C’s symptoms first developed, the last day of C’s isolation is the last day of the period of 10 days beginning with the day which A reports as being the day on which C’s symptoms first developed.

Requirement to isolate after close contact: adult

13.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that A has had close contact on or after 9 November 2020 with a person who has tested positive for coronavirus (“P”).

(2) A may not leave or be outside the place where A is living before the end of the last day of A’s isolation unless regulation 15 applies.

(3) A must notify a contact tracer, if requested, of the address of the place where A is living.

(4) The last day of A’s isolation is the last day of the period of 14 days beginning with the day which a contact tracer records as being the last day on which A had close contact with P before A received the notification referred to in paragraph (1).

(5) But where A is living in the same place as P, the last day of A’s isolation is—

- (a) where P, or, where P is a child, a responsible adult (“R”) on P’s behalf, reports to a contact tracer the day on which P’s symptoms first developed, the last day of the period of 14 days beginning with the day on which P, or R, reports as being the day on which P’s symptoms first developed;

- (b) where no symptoms are reported, the last day of the period 14 days beginning with the day of the test which led to the notification being given to P, or R, that P had tested positive for coronavirus.

Requirement to isolate after close contact: child

14.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that a child (“C”) for whom A is responsible has had close contact on or after 9 November 2020 with a person who has tested positive for coronavirus (“P”).

(2) C may not leave or be outside the place where C is living before the end of the last day of C’s isolation unless regulation 15 applies.

(3) A must notify a contact tracer, if requested, of the address of the place where C is living.

(4) The last day of C’s isolation is the last day of the period of 14 days beginning with the day which a contact tracer records as being the last day on which C had close contact with P before A received the notification referred to in paragraph (1).

(5) But where C is living in the same place as P, the last day of C’s isolation is—

- (a) where P, or, where P is a child, a responsible adult (“R”) on P’s behalf, reports to a contact tracer the day on which P’s symptoms first developed, the last day of the period of 14 days beginning with the day on which P, or R, reports as being the day on which P’s symptoms first developed, or
- (b) where no symptoms are reported, the last day of the period 14 days beginning with the day of the test which led to the notification being given to P, or R, that P had tested positive for coronavirus.

Isolation requirements: exceptions

15.—(1) Paragraph (2) applies where a person is required to not leave or be outside of the place where the person is living by virtue of regulation 11(2), 12(2), 13(2) or 14(2).

(2) The person may leave and be outside the place where the person is living for as long as is necessary—

- (a) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;
- (b) to access veterinary services where—
 - (i) they are urgently required, or
 - (ii) it is not possible for another person at the place that the person is living to access those services;

- (c) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings, where it is not possible or practicable to do so without leaving the place where the person is living;
 - (d) to avoid illness, injury or other risk of harm;
 - (e) for compassionate reasons, including to attend the funeral of—
 - (i) a family member;
 - (ii) a close friend;
 - (f) to obtain basic necessities (including for other persons at the place where the person is living or any pets at that place) where it is not possible or practicable—
 - (i) for another person at the place where the person is living to obtain them, or
 - (ii) to obtain them by delivery to that place from a third party;
 - (g) to access public services (including social services or victims' services) where—
 - (i) access to the service is critical to the person's well-being, and
 - (ii) the service cannot be provided if the person remains at the place where the person is living;
 - (h) to move to a different place to live where it becomes impracticable to remain at the place where the person is living.
- (3) Regulations 11(2), 12(2), 13(2) and 14(2) do not apply to a person who is homeless.
- (4) Regulation 11(2) does not apply to a person who—
- (a) has tested positive for coronavirus in the course of a research study (the "prior test"), and
 - (b) tests positive for coronavirus in the course of the same study within the period of 90 days beginning with the date of the prior test.

Requirement on persons with responsibility for children

16. Where a requirement is imposed under regulation 12(2) or 14(2) on a child, a person with responsibility for the child must take all reasonable measures to ensure that the child complies with the requirement.

Withdrawing a notice which requires isolation

17.—(1) This regulation applies where a contact tracer—

- (a) has given a notification under regulation 11(1), 12(1), 13(1) or 14(1) (“the original notification”), but
 - (b) subsequently notifies the recipient of the original notification that it is withdrawn.
- (2) The original notification is treated as if it had not been given.

CHAPTER 2

Information

Power to use and disclose information

18.—(1) A contact tracer may disclose only such relevant information to a person (“the information holder”) as is necessary for the information holder to have—

- (a) for the purposes of—
 - (i) carrying out a function under these Regulations,
 - (ii) preventing danger to the health of the public as a result of the spread of infection or contamination with coronavirus, or
 - (iii) monitoring the spread of infection or contamination with coronavirus, or
- (b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(2) Relevant information is—

- (a) where a person is required to isolate in accordance with regulation 11(2), 12(2), 13(2) or 14(2)—
 - (i) the person’s contact information and date of birth;
 - (ii) the date the person received a notification under regulation 11(1), 12(1), 13(1) or 14(1), or, where the person is a child, the adult with responsibility for the child;
 - (iii) the particular period in respect of which the person is required to not leave or be outside of the place where the person is living calculated in accordance with regulation 11, 12, 13 or 14;
 - (iv) details of any fixed penalty notices issued, or proceedings brought, in relation to an offence of contravening regulation 11, 12, 13 or 14 alleged to have been committed by the person;
- (b) confirmation a person did not receive a positive coronavirus test (including the person’s name, contact information and date of birth).

(3) The information holder may use relevant information disclosed under paragraph (1) only to the extent that it is necessary—

- (a) for the purposes of—
 - (i) carrying out a function under these Regulations,
 - (ii) preventing danger to the health of the public as a result of the spread of infection or contamination with coronavirus, or
 - (iii) monitoring the spread of infection or contamination with coronavirus, or
- (b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(4) Subject to paragraph (6), the information holder may disclose only such relevant information to another person (the “recipient”) as is necessary for the recipient to have—

- (a) for the purposes of—
 - (i) carrying out a function of the recipient under these Regulations,
 - (ii) preventing danger to the health of the public as a result of the spread of infection or contamination with coronavirus, or
 - (iii) monitoring the spread of infection or contamination with coronavirus, or
- (b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(5) Subject to paragraph (7), disclosure which is authorised by this regulation does not breach—

- (a) an obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(6) This regulation does not limit the circumstances in which information may otherwise lawfully be disclosed under any other enactment or rule of law.

(7) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(8) For the purposes of this regulation, “data protection legislation” and “personal data” have the same meanings as in section 3 of the Data Protection Act 2018⁽¹⁾.

(1) 2018 c. 12.

PART 5

Restrictions on certain businesses and services

Closure of premises used by certain businesses and services

19.—(1) A person responsible for carrying on a business or providing a service which is listed in Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business or service, and
- (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast) or to rehearse for such a broadcast;
- (d) the use of premises for the provision of services or information (including the sale, hire or delivery of goods or services)—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this regulation to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this regulation is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

Restrictions on licensed premises

20.—(1) A person responsible for premises authorised for the sale or supply of alcohol may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(2) Where the premises are authorised for the sale or supply of alcohol for consumption on the premises, the person responsible for the premises—

- (a) must close the premises (to customers) at or before 10.20 p.m. each day, and
- (b) may not open the premises before 6.00 a.m. each day.

(3) Despite paragraph (2), a cinema may close later than 10.20 p.m. only for the purpose of concluding the showing of a film which begins before 10.00 p.m.

(4) Paragraph (2) does not apply to—

- (a) premises located in—
 - (i) a sea port;
 - (ii) an airport;
 - (iii) an educational establishment;
- (b) workplace canteens.

(5) In its application to the premises of holiday or travel accommodation, paragraph (2) applies only to those parts of the premises in which alcohol is sold or supplied for consumption on the premises.

(6) Paragraphs (1) and (2) do not allow the premises to be open, or alcohol to be sold or supplied, in contravention of an authorisation granted or given in respect of the premises.

(7) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, paragraphs (2) to (4) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

PART 6

Minimising risk of exposure to coronavirus

Requirement to take preventative measures on regulated premises to minimise risk

21.—(1) For the purposes of paragraph (2)—

- (a) “regulated premises” means—
 - (i) premises of businesses or services listed in Part 1 of Schedule 2;
 - (ii) a vehicle used to provide a public transport service;
 - (iii) other premises where work is being carried out;
- (b) the “responsible person” means—

- (i) in relation to regulated premises referred to in sub-paragraph (a)(i) or (ii), the person responsible for the premises,
- (ii) in relation to regulated premises of the kind referred to in sub-paragraph (a)(iii), the person responsible for the work being carried out on the premises.

(2) For the purposes of minimising the risk of exposure to coronavirus at regulated premises, or the spread of coronavirus by those who have been at regulated premises, the responsible person must—

- (a) take all reasonable measures to ensure—
 - (i) that a distance of 2 metres is maintained between any persons on the premises (except between members of the same household or a carer and the person assisted by the carer);
 - (ii) where persons are required to wait to enter the premises, that a distance of 2 metres is maintained between them (except between members of the same household or a carer and the person assisted by the carer),
- (b) take any other reasonable measures for that purpose, for example measures which limit close face-to-face interaction and maintain hygiene such as—
 - (i) changing the layout of premises including the location of furniture and workstations;
 - (ii) controlling use of entrances, passageways, stairs and lifts;
 - (iii) controlling use of shared facilities such as toilets and kitchens;
 - (iv) otherwise controlling the use of, or access to, any other part of the premises;
 - (v) installing barriers or screens;
 - (vi) providing or requiring use of personal protective equipment, and
- (c) provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.

(3) Measures that may be taken under paragraph (2) also include—

- (a) not carrying out certain activities;
- (b) closing a part of the premises;
- (c) allowing and enabling a person who ordinarily works at the premises to isolate for a specified period due to testing positive for coronavirus or having had close contact with somebody who has tested positive, where that person—

- (i) has been asked to do so by the Welsh Ministers;
 - (ii) has been required to do so by a notification given by a contact tracer;
- (d) collecting contact information from each person at the premises and retaining it for 21 days for the purpose of providing it to any of the following, upon their request—
- (i) the Welsh Ministers;
 - (ii) a contact tracer;
- (e) taking reasonable measures to ensure that such contact information is correct.

(4) Where paragraph (2) applies to a person responsible for premises authorised for the sale or supply of alcohol for consumption on the premises, the sale or supply of food or drink for consumption on the premises must be carried out in accordance with the reasonable measures specified in paragraph (5) (subject to paragraphs (6) and (7)).

(5) The reasonable measures are that—

- (a) there must be a person controlling entry to the premises and allocating a limited time period during which customers may stay in the premises;
- (b) customers must be seated in the premises anywhere other than at a bar—
 - (i) when ordering food or drink,
 - (ii) when being served with food or drink, and
 - (iii) when consuming food or drink.

(6) But where food is provided at the premises on a buffet basis, customers may select food from the buffet and return to where they are seated provided a distance of 2 metres is maintained between any persons at the buffet (except between members of the same household or a carer and the person assisted by the carer).

(7) Sub-paragraphs (a) and (b) of paragraph (5) do not apply to—

- (a) workplace canteens, or
- (b) premises in an educational establishment.

(8) For the purposes of paragraph (4)—

- (a) food or drink sold in holiday or travel accommodation as part of room service is not to be treated as being sold for consumption on the premises;
- (b) food or drink sold for consumption in an area adjacent to the premises where seating is made available for customers is to be treated as being sold for consumption on the premises.

(9) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, paragraphs (4) to (7) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

Requirement to wear face covering on public transport

22.—(1) A person (“P”) who is travelling as a passenger on a vehicle used to provide a public transport service must wear a face covering.

(2) But this is not required—

- (a) where an exemption applies under paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) on a vehicle providing a school transport service;
- (c) on a ferry where—
 - (i) the part of the ferry which is open to passengers is entirely outdoors, or
 - (ii) a distance of at least 2 metres can be maintained between persons on the part of the ferry which is open to passengers;
- (d) on a cruise ship;
- (e) where P is allocated a cabin, berth or other similar accommodation on the vehicle, at any time when P is in that accommodation—
 - (i) alone, or
 - (ii) only with members of P’s household or a member of the household’s carer;
- (f) where—
 - (i) P is permitted, or ordinarily required, to board and to stay in a vehicle when using the public transport service,
 - (ii) the vehicle is not itself used for the provision of a public transport service, and
 - (iii) P stays in that vehicle;
- (g) on an aircraft which neither took off from, nor is to land at, a place in Wales;
- (h) on a vessel which does not dock at a port in Wales.

(4) The circumstances in which P has a reasonable excuse to not wear a face covering include—

- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010⁽¹⁾);
- (b) where P has to remove the face covering to communicate with a person who has difficulty communicating (in relation to speech, language or otherwise);
- (c) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
- (d) where P is travelling to avoid injury, or to escape a risk of harm, and does not have a face covering;
- (e) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, if this is allowed on the vehicle and is reasonably necessary (for example due to the length of the journey);
- (f) where P is asked to remove the face covering by—
 - (i) an enforcement officer, or
 - (ii) the operator of the public transport service, an employee of the operator or a person authorised by the operator.

(5) An operator of a public transport service to which paragraph (1) applies must provide information to passengers about the requirement to wear face coverings on their vehicles.

(6) For the purposes of this regulation a “school transport service” means any transport service provided solely for the purpose of—

- (a) carrying a person to and from the school or other place at which the person receives education or training, or
- (b) otherwise facilitating a person’s attendance at a school or other place at which the person receives education or training.

Requirement to wear face covering in certain indoor public places

23.—(1) A person (“P”) must wear a face covering in indoor public areas of premises to which the public have or are permitted access, whether on payment or otherwise.

(2) But this is not required—

(1) 2010 c. 15.

- (a) where P is a child under the age of 11;
 - (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (3).
- (3) The circumstances in which P has a reasonable excuse to not wear a face covering include—
- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010);
 - (b) where P is undertaking an activity and wearing a face covering during that activity may reasonably be considered to be a risk to P's health;
 - (c) where P has to remove the face covering to communicate with a person who has difficulty communicating (in relation to speech, language or otherwise);
 - (d) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
 - (e) where P is at the premises to avoid injury, or to escape a risk of harm, and does not have a face covering;
 - (f) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, where reasonably necessary;
 - (g) where P is asked to remove the face covering by an enforcement officer;
 - (h) where P is seated in premises where food or drink is sold, or otherwise provided, for consumption on the premises.

Guidance on minimising exposure

24.—(1) A person required to take reasonable measures under regulation 21(2) must have regard to guidance issued by the Welsh Ministers about those measures.

(2) An operator of a public transport service to which regulation 22 applies must have regard to guidance issued by the Welsh Ministers about—

- (a) the requirement to wear a face covering in accordance with paragraphs (1) to (4) of regulation 22 and the enforcement of that requirement under regulation 30;
 - (b) providing information to passengers in accordance with paragraph (5) of regulation 22.
- (3) The Welsh Ministers—
- (a) may revise guidance issued under paragraph (1) or (2), and

- (b) must publish the guidance (and any revisions).

(4) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).

(5) Guidance issued by the Welsh Ministers under paragraph (1) or (2) of regulation 20 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020⁽¹⁾ is to be treated as if it were guidance issued under paragraph (1) or (2) of this regulation, as the case may be.

PART 7

Enforcement

Enforcement officers

25.—(1) For the purposes of regulation 26 and Schedule 3, an “enforcement officer” means a person designated by a local authority for the purposes of these Regulations.

(2) For the purposes of regulations 22, 23, 27 to 35, and 37, an “enforcement officer” means—

- (a) a constable,
- (b) a police community support officer,
- (c) a person designated by—
 - (i) the Welsh Ministers, or
 - (ii) a local authority,for the purposes of these Regulations (but see paragraph (3)), or
- (d) a person designated by the Welsh Ministers or a local authority under—
 - (i) regulation 10(11)(c) of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽²⁾ as a relevant person (within the meaning given by that regulation),
 - (ii) regulation 17(1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽³⁾ for the purposes of those Regulations, or
 - (iii) regulation 21(2) of the Health Protection (Coronavirus Restrictions) (No. 3)

(1) S.I. 2020/1149 (W. 261).

(2) S.I. 2020/353 (W. 80).

(3) S.I. 2020/725 (W. 162). Amended by S.I. 2020/985 (W. 222).

(Wales) Regulations 2020 for the purposes of those Regulations,

(but see paragraph (3)).

(3) A person designated by a local authority may exercise an enforcement officer's functions only in relation to a contravention (or alleged contravention) of a requirement in regulation 19(1), 20(1) or (2), or 21(2), or Schedule 3.

Enforcement of requirement to take preventative measures

26. Schedules 3 and 4 make provision for and in connection with conferring functions on enforcement officers for the purpose of enforcing regulation 21(2).

Compliance notices

27.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person is contravening a requirement in regulation 19(1) or 22(5).

(2) A compliance notice may specify measures that the person to whom it is given must take as soon as is reasonably practicable so as to prevent that person from continuing to contravene the requirement.

Powers of removal and dispersal

28.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person is contravening regulation 4(1), the officer may—

- (a) direct the gathering to disperse;
- (b) direct any person not living at the dwelling at which the suspected contravention is occurring to leave the dwelling;
- (c) remove any such person from the dwelling.

(2) Where an enforcement officer has reasonable grounds for suspecting that people are gathered together in contravention of regulation 6(1) or (3), the officer may—

- (a) direct the gathering to disperse;
- (b) direct any person in the gathering to return to the place where they are living;
- (c) remove any person in the gathering to the place where they are living.

(3) Where an enforcement officer has reasonable grounds for suspecting that a person ("P") is contravening regulation 9, the officer may direct P—

- (a) in the case of an alleged contravention of regulation 9(1), to leave Wales, or

- (b) in the case of an alleged contravention of regulation 9(2), not to leave Wales or to return to Wales.

(4) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is away from the place where they are living in contravention of regulation 11(2), 12(2), 13(2) or 14(2), the officer may—

- (a) direct P to return to the place where P is living;
- (b) remove P to that place.

(5) When exercising a power in paragraphs (1) to (3), an enforcement officer may direct a person to follow such instructions as the officer considers necessary.

Powers relating to prohibited events

29.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is involved in organising an event in contravention of regulation 7(1) or 8(1), the officer may—

- (a) direct P to follow such instructions as the officer considers necessary in order to stop the event;
- (b) remove P from the location of the event;
- (c) direct any person to leave the event (or where the person is a child accompanied by an individual with responsibility for the child, direct the individual to remove the child from the event);
- (d) remove any person from the event.

(2) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is involved in organising an event which the officer considers is likely to contravene regulation 7(1) or 8(1) if the event were to take place, the officer may—

- (a) direct P to follow such instructions as the officer considers necessary in order to stop the event from taking place;
- (b) remove P from the proposed location of the event.

Enforcement of face covering requirements

30.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is contravening (or is about to contravene) regulation 22(1), the officer may—

- (a) direct P not to board the vehicle providing the public transport service in question;
- (b) remove P from the vehicle.

(2) Where—

- (a) the operator of a public transport service,
- (b) an employee of the operator, or
- (c) a person authorised by the operator,

has reasonable grounds to suspect that a person (“P”) is about to contravene regulation 22(1), the operator, employee or authorised person may direct P not to board the vehicle providing the public transport service in question.

(3) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening (or is about to contravene) regulation 23(1), the officer may—

- (a) direct P not to enter the premises;
- (b) remove P from the premises.

Enforcement: children

31.—(1) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening regulation 4(1), and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) if P does not live at the dwelling at which the alleged contravention is occurring, the officer may direct I to remove P from the dwelling, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(2) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is in a gathering in contravention of regulation 6(1) or (3) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(3) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening regulation 9 and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I—
 - (i) in the case of an alleged contravention of regulation 9(1), to take P to a place outside Wales,
 - (ii) in the case of an alleged contravention of regulation 9(2), to prevent P from leaving Wales or to return P to Wales, and

- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(4) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is away from the place they are living in contravention of regulation 12(2) or 14(2) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(5) Where an enforcement officer has reasonable grounds to suspect that a child is failing to comply with the requirement in regulation 22(1) or 23(1), the officer may direct any individual (“I”) who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with the requirement.

(6) For the purposes of paragraphs (1) to (4), I has responsibility for a child if I—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child.

Power of entry

32.—(1) An enforcement officer may enter premises, if the officer—

- (a) has reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been or is about to be contravened.

(2) An enforcement officer entering premises in accordance with paragraph (1) may take such other persons, equipment and materials onto the premises as appears to the officer to be appropriate.

(3) An enforcement officer entering premises in accordance with paragraph (1)—

- (a) if asked by a person on the premises, must show evidence of the officer’s identity and outline the purpose for which the power is exercised;
- (b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the officer found them.

Power of police to conduct road checks

33.—(1) For the purposes of this regulation, a “road check” means the exercise in a locality of the power conferred by section 163 of the Road Traffic Act 1988⁽¹⁾ in such a way as to stop, during the period for which the exercise of that power in that locality continues, all vehicles or vehicles selected by any criterion.

(2) A constable may conduct a road check for the purpose of ascertaining whether a vehicle is carrying a person who has committed, or a person who the constable reasonably believes intends to commit, an offence under these Regulations.

(3) A road check must be authorised by a constable of the rank of superintendent or above.

(4) But a road check may be authorised by a constable below that rank if the constable considers it necessary as a matter of urgency.

(5) A constable may authorise a road check if the constable has reasonable grounds to believe that persons are, or are about to be, in the locality in which vehicles would be stopped are committing, or intend to commit, an offence under these Regulations.

(6) An authorisation must be in writing and must specify—

- (a) the locality in which vehicles are to be stopped;
- (b) the period, not exceeding 7 days, during which the road check may take place;
- (c) whether the road check is to be conducted—
 - (i) continuously throughout the period, or
 - (ii) at particular times during the period (in which case the authorisation must specify those times);
- (d) the name of the constable giving the authorisation.

(7) Where a road check is authorised under paragraph (4)—

- (a) the period specified in paragraph (6)(b) may not exceed 2 days;
- (b) the constable giving the authorisation must, as soon as is reasonably practicable after giving it, inform a constable of the rank of superintendent or above that it has been given.

(8) A constable of the rank of superintendent or above may give authorisation in writing for a road check to continue for a further period, not exceeding 7

(1) 1988 c. 52, as amended by the Road Traffic Act 1991 (c. 40) and the Traffic Management Act 2004 (c. 18).

days, beyond the period for which the road check was initially authorised.

(9) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped is entitled to obtain a written statement of the purpose of the road check by applying in writing—

- (a) to the police force responsible for the locality where the road check is conducted, and
- (b) no later than the end of the period of 12 months from the day on which the vehicle was stopped.

Enforcement: supplemental provision

34.—(1) An enforcement officer may take other action to facilitate the exercise of a power conferred on the officer by this Part, including requiring any person to give any information or answer any question the officer considers to be relevant to the exercise of the power.

(2) An enforcement officer may use reasonable force in the exercise of a power under—

- (a) regulation 28(1)(c), (2)(c) or (4)(b),
- (b) regulation 29(1)(b) or (d) or (2)(b),
- (c) regulation 30(1)(b) or (3)(b), or
- (d) regulation 32(1).

(3) An enforcement officer may only exercise a power under this Part if the officer considers that it is necessary and proportionate to do so.

(4) In this Part references to a requirement include references to a restriction.

PART 8

Offences and penalties

Offences and penalties

35.—(1) A person who—

- (a) contravenes a requirement in regulation 4(1), 6(1) or (3), 7(1), 9(1) or (2), 11(2), 12(2), 13(2), 14(2), 16, 22(1) or 23(1), or
- (b) without reasonable excuse, contravenes a requirement in regulation 8(1), 11(3), 12(3), 13(3), 14(3), 19(1), 20(1) or (2), or 22(5),

commits an offence.

(2) It is an offence for a person (“P”) to give false or misleading information to a contact tracer—

- (a) under regulation 11(3), 12(3), 13(3) or 14(3), or
- (b) about—

- (i) P's contact information, or
- (ii) persons with whom P may have had close contact,

where P knows the information is false or misleading, or P is reckless as to whether the information is false or misleading.

- (3) A person who participates in a gathering—
 - (a) which takes place in a private dwelling,
 - (b) which consists of more than 15 people, and
 - (c) at which people are gathered in contravention of regulation 4(1),

commits an offence.

(4) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

- (5) A person who—
 - (a) without reasonable excuse, contravenes paragraph 3(1) of Schedule 3,
 - (b) contravenes paragraph 3(2) of that Schedule, or
 - (c) without reasonable excuse, removes, obscures or damages a notice or sign required to be displayed under paragraph 7(2)(a) of that Schedule,

commits an offence.

- (6) A person who, without reasonable excuse—
 - (a) contravenes a direction given—
 - (i) by an enforcement officer under Part 7, or
 - (ii) by the operator of a public transport service, an employee of the operator, or a person authorised by the operator, under regulation 30(2), or
 - (b) fails to comply with a compliance notice given by an enforcement officer under regulation 27(1),

commits an offence.

(7) An offence under these Regulations is punishable on summary conviction by a fine.

(8) Section 24 of the Police and Criminal Evidence Act 1984(1) applies in relation to an offence under this regulation as if the reasons in subsection (5) included—

- (a) to maintain public health;
- (b) to maintain public order.

(1) 1984 c. 60. Section 24 was substituted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).

(9) In this regulation, “close contact” has the same meaning as in Part 4.

Offences committed by bodies corporate etc.

36.—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(2) In paragraph (1), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(3) Proceedings for an offence under these Regulations alleged to have been committed by a partnership may be brought in the name of the partnership instead of in the name of any of the partners.

(4) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated body other than a partnership may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.

(5) Section 33 of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates’ Courts Act 1980⁽²⁾ apply in proceedings for an offence brought against a partnership or an unincorporated association other than a partnership as they apply in relation to a body corporate.

(6) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(7) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under these Regulations is to be paid out of the funds of the association.

Fixed penalty notices

37.—(1) An enforcement officer may issue a fixed penalty notice to anyone that the officer reasonably believes—

(1) 1925 c. 86.
(2) 1980 c. 43.

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) a local authority, or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,

as the notice may specify.

(3) The Welsh Ministers may designate themselves under paragraph (2)(b).

(4) A person designated by the Welsh Ministers for the purposes of receiving payment under—

- (a) regulation 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
- (b) regulation 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, or
- (c) regulation 31 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020,

is to be treated as if designated for the purposes of receiving payment under this regulation.

(5) Where a local authority is specified in the notice it must be the authority (or as the case may be, any of the authorities) in whose area the offence is alleged to have been committed.

(6) Where a person is issued with a notice under this regulation in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

Amount of fixed penalty: general

38.—(1) Unless regulation 39, 40, 41 or 42 applies, the amount of a fixed penalty is £60.

(2) But a fixed penalty notice may specify that, if £30 is paid before the end of the period of 14 days following the date of the notice, that is the amount of the fixed penalty.

(3) And if the person to whom a fixed penalty notice is issued has already received a relevant fixed penalty notice—

- (a) paragraphs (1) and (2) do not apply, and
- (b) the amount specified as the fixed penalty is—
 - (i) in the case of the second relevant fixed penalty notice received, £120;
 - (ii) in the case of the third relevant fixed penalty notice received, £240;
 - (iii) in the case of the fourth relevant fixed penalty notice received, £480;
 - (iv) in the case of the fifth relevant fixed penalty notice received, £960;
 - (v) in the case of the sixth and any subsequent relevant fixed penalty notice received, £1,920.

(4) In paragraph (3), “relevant fixed penalty notice” means—

- (a) a fixed penalty notice where the amount of fixed penalty is determined under this regulation;
- (b) a fixed penalty notice under—
 - (i) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
 - (ii) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020,
 - (iii) the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, and
 - (iv) the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020⁽¹⁾.

(5) In calculating the number of fixed penalty notices issued to a person, no account is to be taken of a notice issued to the person in respect of an alleged offence of contravening—

- (a) regulation 14B(1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, or
- (b) regulation 9 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.

Amount of fixed penalty: participating in a large gathering at a private dwelling

39. Where a fixed penalty notice issued in respect of an alleged offence under regulation 35(3), the amount of the fixed penalty is £60.

⁽¹⁾ S.I. 2020/1011 (W. 225).

Amount of fixed penalty: organising an event

40.—(1) Where a fixed penalty notice is issued in respect of an alleged offence of contravening regulation 7(1), the amount of the fixed penalty is £200.

(2) But if the person to whom a fixed penalty notice is issued in respect of an alleged offence of contravening regulation 7(1) has already received a fixed penalty notice in respect of such an alleged offence—

- (a) paragraph (1) does not apply, and
- (b) the amount of the fixed penalty is—
 - (i) in the case of the second such fixed penalty notice received, £400;
 - (ii) in the case of the third such fixed penalty notice received, £800;
 - (iii) in the case of the fourth such fixed penalty notice received, £1,600;
 - (iv) in the case of the fifth such fixed penalty notice received, £3,200;
 - (v) in the case of the sixth and any subsequent such fixed penalty notice received, £6,400.

Amount of fixed penalty: organising an unlicensed music event

41. Where a fixed penalty notice is issued in respect of an alleged offence of contravening regulation 8(1), the amount of the fixed penalty is £10,000.

Amount of fixed penalty: business-related offences

42.—(1) This regulation applies to a fixed penalty notice issued in respect of an alleged offence of contravening—

- (a) regulation 19(1),
- (b) regulation 20(1) or (2), or
- (c) paragraph 3(1) of Schedule 3,

(referred to in this regulation as an “alleged business offence”).

(2) Where a fixed penalty notice is issued in respect of an alleged business offence, the amount of the fixed penalty is £1,000.

(3) But if the person to whom a fixed penalty notice is issued in respect of an alleged business offence has already received a fixed penalty notice in respect of such an alleged offence—

- (a) paragraph (2) does not apply, and
- (b) the amount of the fixed penalty is—

- (i) in the case of the second such fixed penalty notice received, £2,000;
- (ii) in the case of the third such fixed penalty notice received, £4,000;
- (iii) in the case of the fourth and any subsequent such fixed penalty notice received, £10,000.

Fixed penalties: form and procedure

43.—(1) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which (because of regulation 37(6)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty determined under regulation 38, 39, 40, 41 or 42 (as the case may be);
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment.

(2) Whatever other method may be specified under paragraph (1)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (1)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(3) Where a letter is sent as mentioned in paragraph (2), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(4) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of the person with responsibility for the financial affairs of—
 - (i) the local authority, or
 - (ii) the person designated under regulation 37(2)(b),
specified in the fixed penalty notice to which the proceedings relate, and
- (b) which states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

Fixed penalty notices: prohibition of double jeopardy

44.—(1) Where the same, or largely the same, act or omission by a person may give rise to a reasonable

belief that the person has committed more than one offence under these Regulations, a fixed penalty may be issued to the person only in respect of one of the alleged offences.

(2) But a fixed penalty notice may be issued in respect of both—

- (a) an alleged offence of contravening regulation 4(1), and
- (b) an offence under regulation 35(3),

where the same, or largely the same, act by a person gives rise to a reasonable belief that the person has committed both offences.

Self-incrimination

45.—(1) Relevant information may be used in evidence against the person to whom the information relates in criminal proceedings.

(2) Where the information is used in proceedings other than for an offence under these Regulations or section 5 of the Perjury Act 1911(1) (false statements made otherwise than on oath)—

- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
- (b) no question relating to the information may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if, in the proceedings—

- (a) evidence relating to the information is adduced by or on behalf of the person who provided it, or
- (b) a question relating to the information is asked by or on behalf of that person.

(4) In this regulation, “relevant information” means—

- (a) information which is relevant information for the purposes of regulation 18;
- (b) information, or the answer to a question, given in response to a requirement imposed under regulation 34(1);
- (c) anything contained in a document or electronic records produced in response to a requirement imposed under paragraph 8(1) of Schedule 3.

(1) 1911 c. 6. Section 5 was amended by section 1(2) of the Criminal Justice Act 1948 (c. 58).

Prosecutions

46.—(1) No proceedings for an offence under these Regulations may be brought other than by—

- (a) the Director of Public Prosecutions,
- (b) any person designated by the Welsh Ministers, or
- (c) in relation to proceedings for an offence—
 - (i) of contravening a requirement in regulation 19(1) or 20(1) or (2), or Schedule 3, or
 - (ii) under regulation 35(4) or (6),
a local authority.

(2) A person designated by the Welsh Ministers under—

- (a) regulation 14 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
- (b) regulation 22 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, or
- (c) regulation 32 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020,

is to be treated as if designated under this regulation.

PART 9

General

Interpretation

47.—(1) In these Regulations—

- (a) “carer” means a person who provides care for the person assisted where—
 - (i) the carer is entitled to an assessment under section 24 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾,
 - (ii) the care is part of the provision of community care services under Part 4 of the Social Services and Well-being (Wales) Act 2014, or
 - (iii) the care is provided by a care provider registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽²⁾;
- (b) “child” means a person who is aged under 18;

(1) 2014 anaw 4.

(2) 2016 anaw 2.

- (c) “contact information”, in relation to a person, means the person’s name and information sufficient to enable the person to be contacted, (including a telephone number, and, in relation to a person at regulated premises, the date and time at which the person was at the premises);
- (d) “contact tracer” means—
 - (i) a person employed or engaged for the purposes of the health service (within the meaning of section 206 of the National Health Service (Wales) Act 2006(1) or section 108 of the National Health Service (Scotland) Act 1978(2));
 - (ii) a person employed or engaged by a local authority, designated for the purposes of Part 4 by a Local Health Board, Public Health Wales National Health Service Trust(3) or a local authority.
- (e) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (f) “elite athlete” means an individual designated as such for the purposes of these Regulations by the Sports Council for Wales;
- (g) “face covering” means a covering of any type which covers a person’s nose and mouth;
- (h) “holiday or travel accommodation” means accommodation in premises of a kind listed in paragraphs 8 to 11 of Part 1 of Schedule 2;
- (i) “local authority” means the council of a county or county borough in Wales;
- (j) “parental responsibility” has the same meaning as in the Children Act 1989(4);
- (k) a “person responsible for carrying on a business” includes the owner, proprietor, and manager of that business;
- (l) “premises” includes any building or structure and any land;
- (m) “public transport service” means a service provided for the carriage of passengers by road, railway, tramway, air or water;
- (n) “regulated premises” has the meaning given by regulation 21(1);
- (o) “vehicle” includes an aircraft, a cable car, a train, a tram and a vessel;

(1) 2006 c. 42.

(2) 1978 c. 29.

(3) Established by S.I. 2009/2058 (W. 177).

(4) 1989 c. 41. See Part 1 of the Act, to which there have been various amendments, including by the Human Fertilisation and Embryology Act 2008 (c. 22) and S.I. 2019/1458.

- (p) “vulnerable person” includes—
- (i) any person aged 70 or older;
 - (ii) any person under 70 who has an underlying health condition;
 - (iii) any person who is pregnant;
 - (iv) any child;
 - (v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

(2) In these Regulations, references to a “private dwelling”—

- (a) include a houseboat and any garden, yard, passage, stair, outhouse or other appurtenance of the dwelling;
- (b) do not include the following—
 - (i) holiday or travel accommodation;
 - (ii) accommodation in a care home service, secure accommodation service or residential family centre service, within the meaning given to those terms by Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016;
 - (iii) criminal justice accommodation.

(3) For the purposes of these Regulations—

- (a) there is a gathering when two or more people are in the same place in order to do something together;
- (b) an event is an occasion—
 - (i) which is planned or scheduled for a particular purpose, and
 - (ii) at which any number of people are in the same place for that purpose, whether or not they are participating in a gathering.

(4) For the purposes of these Regulations—

- (a) premises are indoors if they are enclosed or substantially enclosed within the meaning given by regulation 2 of the Smoke-free Premises etc. (Wales) Regulations 2007⁽²⁾;
- (b) premises are authorised for the sale or supply of alcohol where the premises have been granted or given an authorisation under the Licensing Act 2003, and “authorisation” has the meaning given by section 136(5) of that Act.

(1) Section 60 was amended by section 65 of the Protection of Freedoms Act 2012 (c. 9).

(2) S.I. 2007/787 (W. 68).

(5) For the purposes of these Regulations, an activity is “organised” if—

- (a) it is organised by—
 - (i) a business,
 - (ii) a public body or a charitable, benevolent, educational or philanthropic institution,
 - (iii) a club or political organisation, or
 - (iv) the national governing body of a sport or other activity, and
- (b) the person organising it has—
 - (i) carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999⁽¹⁾, whether or not the person is subject to those Regulations, and
 - (ii) complied with the requirements of regulations 21(2) and 24(1).

(6) For the purposes of paragraph (5)(b)—

- (a) regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies as if the activity were an undertaking conducted by the person organising it;
- (b) regulation 21(2) of these Regulations applies as if—
 - (i) the place where the activity takes place were regulated premises for the purposes of that regulation, and
 - (ii) the person organising the activity were the responsible person in relation to those regulated premises.

Consequential amendment

48. In regulation 19(10) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, after subparagraph (c) insert—

“(d) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.”

Mark Drakeford

First Minister, one of the Welsh Ministers

At 1.14 p.m. on 5 November 2020

(1) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

SCHEDULE 1 Regulation 19(1)

**Businesses or services whose premises
must be closed**

1. Concert halls.

2. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982(1)).

3. Theatres.

4. Venues authorised to be used for the supply of alcohol by a premises licence or club premises certificate (within the meaning given by the Licensing Act 2003) where live or recorded music is provided for members of the public or members of the venue to dance.

SCHEDULE 2 Regulation 21(1)

Regulated premises

PART 1

**Businesses or services whose premises are
regulated premises**

1. Any business selling goods or services for sale or hire in a shop.

2. Shopping centres and shopping arcades.

3. Banks, building societies, credit unions, short term loan providers, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.

4. Post offices.

5. Bars (including bars in members' clubs).

6. Cafes, canteens and restaurants (including workplace canteens and dining rooms in members' clubs).

7. Public houses.

8. Camping sites.

(1) 1982 c. 30. Paragraph 2A of Schedule 3 was inserted by section 27(3) of the Policing and Crime Act 2009 (c. 26).

9. Holiday sites.
10. Hotels and bed and breakfast accommodation.
11. Other holiday accommodation (including holiday apartments, hostels and boarding houses).
12. Auction houses.
13. Bingo halls.
14. Bowling alleys, amusement arcades and indoor play areas.
15. Car dealerships.
16. Car repair and MOT services.
17. Casinos.
18. Cinemas.
19. Community centres.
20. Crematoriums.
21. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
22. Establishments providing tanning services, massage services, body piercings, tattooing, electrolysis or acupuncture.
23. Estate or letting agents, developer sales offices and show homes.
24. Funeral directors.
25. Funfairs, amusement parks and theme parks.
26. Garden centres and plant nurseries.
27. Hair salons and barbers.
28. Laundrettes and dry cleaners.
29. Leisure centres and leisure facilities including indoor fitness studios, gyms and spas.
30. Libraries.
31. Livestock markets or auctions.
32. Markets.
33. Museums, galleries and archive services.
34. Nail and beauty salons.
35. Petrol stations.
36. Pharmacies (including non-dispensing pharmacies) and chemists.
37. Places of worship.

38. Skating rinks.

39. Sports courts, skate parks, bowling greens, golf courses and enclosed sports grounds or pitches (whether outdoors or indoors).

40. Storage and distribution facilities, including delivery drop off points.

41. Swimming pools.

42. Taxi or vehicle hire businesses.

43. Venues for events or conferences (including venues for weddings).

44. Veterinary surgeons.

45. Visitor attractions and holiday, leisure activity or events businesses.

PART 2

Interpretation

46.—(1) For the purposes of this Schedule, a “holiday site” means any land in Wales on which a mobile home or caravan is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), in respect of which the relevant planning permission or the site licence for the land—

- (a) is expressed to be granted for holiday use only, or
- (b) requires that there are times of the year when no mobile home or caravan may be stationed on the site for human habitation.

(2) For the purpose of determining whether or not a site is a holiday site, any provision of the relevant planning permission or of the site licence which permits the stationing of a mobile home on the land for human habitation all year round is to be ignored if the mobile home is authorised to be occupied by—

- (a) the person who is the owner of the site, or
- (b) a person employed by that person but who does not occupy the mobile home under an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013⁽¹⁾ applies.

(1) 2013 anaw 6, as amended by the Housing (Wales) Act 2014 (anaw 7).

SCHEDULE 3

Regulation 26

**Enforcement of requirement to take
preventative measures on regulated
premises****Premises improvement notice**

1.—(1) An enforcement officer may issue a notice (a “premises improvement notice”) to a responsible person if the officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 21(2), and
- (b) the measures specified in the notice are necessary and proportionate in order to ensure that the person complies with those obligations.

(2) A premises improvement notice must—

- (a) specify the premises to which it relates;
- (b) specify the measures it requires to be taken in order to ensure that the person complies with the obligations imposed by regulation 21(2);
- (c) specify a time limit within which the measures must be taken (which must not be less than 48 hours beginning with the time the notice is issued);
- (d) give details of the right of appeal conferred by paragraph 5.

(3) In this Schedule, “responsible person” has the meaning given by regulation 21(1).

Premises closure notice

2.—(1) If either condition 1 or condition 2 is satisfied, an enforcement officer may issue a notice (a “premises closure notice”) to a responsible person requiring the premises, or part of the premises, to be closed.

(2) Condition 1 is—

- (a) a premises improvement notice has been issued to the person,
- (b) the enforcement officer considers that the person has failed to take the measures specified in the premises improvement notice within the specified time limit, and
- (c) the officer considers that the closure of the premises, or part of the premises, is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(3) Condition 2 is that the enforcement officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 21(2), and
- (b) the closure of the premises, or part of the premises, (without a premises improvement notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(4) A premises closure notice must—

- (a) contain a description of the premises to be closed,
- (b) where a premises improvement notice has been issued, set out the measures that the enforcement officer considers—
 - (i) have not been taken, and
 - (ii) must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 21(2),
- (c) where a premises improvement notice has not been issued, set out the reasons why the enforcement officer considers that the person is not complying with the obligations imposed by regulation 21(2),
- (d) in either case, set out the reasons why the enforcement officer considers that closure of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus,
- (e) specify the period for which the notice has effect, and
- (f) give details of the right of appeal conferred by paragraph 5.

(5) The period specified under sub-paragraph (4)(e) may not be more than 336 hours (14 days) beginning with the time the notice is issued.

(6) A premises closure notice has effect from the time at which it is issued or from a later time specified in the notice.

(7) A premises closure notice may not be issued in relation to premises which form part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services.

Effect of premises closure notice

3.—(1) As soon as is reasonably practicable after a premises closure notice takes effect, the person to whom it is issued must ensure that—

- (a) the premises to which the notice relates are closed, and
- (b) no business is carried on or service is provided on, or from, the premises.

(2) No person may enter, or be on, premises closed under sub-paragraph (1) without a reasonable excuse.

(3) For the purposes of sub-paragraph (2), the circumstances in which a person has a reasonable excuse include where—

- (a) the person lives on the premises;
- (b) the person is carrying out essential maintenance or repairs;
- (c) the person is doing things necessary to ensure that regulation 21(2) can be complied with when the premises are allowed to be open;
- (d) the person is an enforcement officer or a person assisting an enforcement officer;
- (e) it is necessary for the person to be on the premises to avoid injury or illness or escape a risk of harm.

Termination of premises improvement or closure notice

4.—(1) An enforcement officer may issue a notice terminating a premises improvement notice or a premises closure notice if satisfied that—

- (a) the measures specified in the premises improvement notice (if one was issued) have been taken, or
- (b) other measures have been taken to ensure that regulation 21(2) can be complied with at the premises in question.

(2) A premises improvement notice or premises closure notice ceases to have effect at the time notice of the termination is issued.

Appeals

5.—(1) A person to whom a premises improvement notice or premises closure notice is issued may appeal to a magistrates' court against the notice.

(2) An appeal must be made—

- (a) by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980, and
- (b) within 7 days after the day the notice is issued.

(3) But a magistrates' court may allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2)(b) if satisfied that there is a good reason for the failure to appeal before the expiry of

that period (and for any delay in applying for permission to appeal out of time).

(4) A magistrates' court may suspend the effect of a premises improvement notice or premises closure notice pending the determination of an appeal.

(5) On an appeal against a premises improvement notice or premises closure notice, a magistrates' court may—

- (a) confirm the decision to issue the notice;
- (b) direct that the notice is to cease to have effect;
- (c) modify the notice;
- (d) make such other order as the court considers appropriate.

(6) If the magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to pay compensation for loss suffered as the result of the issue of the notice.

(7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.

(8) On an appeal to the Crown Court, the Court may—

- (a) confirm, vary or reverse the decision of the magistrates court;
- (b) remit the case to the magistrates' court to dispose of in accordance with directions given by the Crown Court.

Issuing premises improvement and closure notices and terminations

6.—(1) A premises improvement notice, premises closure notice or a termination of either of those types of notice is issued to a person by giving a copy of it in writing to that person.

(2) But where the person responsible for the premises to which the notice or termination relates is not on the premises when it is to be issued, the notice is to be treated as having been issued to that person if—

- (a) a copy of it is given to any other person on the premises who appears to be responsible for any business or service being carried out on the premises, or
- (b) if there is no such person on the premises when the notice is to be issued, a copy of the notice is placed in a conspicuous position on the premises.

Publicising premises improvement and closure notices

7.—(1) This regulation applies where an enforcement officer has issued a premises improvement notice or a premises closure notice.

(2) As soon as reasonably practicable after issuing the notice, the enforcement officer must—

- (a) display a copy of the notice, and a sign in the form set out in Schedule 4, in a prominent place near every entrance to the premises;
- (b) arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

(3) A notice or sign displayed under sub-paragraph (2)(a) must be at least A4 size.

(4) A notice required to be displayed and published under sub-paragraph (2) must continue to be displayed and published, and a sign required to be displayed under that sub-paragraph must continue to be displayed, for as long as the notice has effect.

Production of documents etc.

8.—(1) An enforcement officer may, to facilitate the exercise of a power conferred on the officer by this Schedule, require the production of, inspect and take copies of, any documents or electronic records.

(2) A person may not be required under sub-paragraph (1) to provide a document, record or other information in respect of which a claim for legal professional privilege could be maintained in legal proceedings.

SCHEDULE 4




Regulation 26

Form of sign to accompany premises improvement notice or premises closure notice

Sign to be displayed with premises improvement notice

1.—(1) A sign displayed with a premises improvement notice under paragraph 7(2)(a) of Schedule 3 must be in the form set out below.




(2) The colours used in the sign must be white, black and amber C0 M60 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>		<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>	
<p>ANGEN GWELLA</p>			
<p>IMPROVEMENT NEEDED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>		<p>Together we'll keep Wales safe</p>	
<p><small>CC1. Hawlfraint y Goron 2020. Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government. WG41123</small></p>			

Sign to be displayed with premises closure notice

2.—(1) A sign displayed with a premises closure notice under paragraph 7(2)(a) of Schedule 3 must be in the form set out below.

(2) The colours used in the sign must be white, black and red C15 M100 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFeIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>	<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>		
<p>CAEWDYD Y FANGRE HON</p>			
<p>PREMISES CLOSED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>	<p>Together we'll keep Wales safe</p>		
<p><small>© Crown Copyright 2020, Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government WG41123</small></p>			

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

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.

Mark Drakeford
First Minister

5 November 2020

1. Description

The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus immediately following the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The implementation of new national restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

3. Legislative background

The Regulations are made under sections 45B, 45C(1) and (3), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

Note that the regulations are made under both sections 45B and 45C of the 1984 Act (due to the provisions relating to travel in and out of Wales having an effect on both domestic and international travel). Regulations under those sections are subject to different Senedd procedure. However, in accordance with section 40 of the Legislation (Wales) Act 2019, these regulations are subject to the made affirmative procedure as set out in sections 45Q and 45R of the 1984 Act.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, put in place a firebreak or circuit break between 23 October and 8 November by means of restrictions and requirements. While the impact of the firebreak on the reproduction rate of COVID-19 will not be fully known for some weeks, the purpose of making the Regulations was to provide conditions which would see a reduction in the reproduction rate. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government’s [Technical Advisory Cell](#) and available on the gov.wales website.

In recognition of this, the Welsh Ministers have decided to put in place new restrictions and requirements on a pan-Wales basis.

The advice of the Chief Medical Officer for Wales is that the public health context supports a gradual rather than total easing of the restrictions and requirements imposed during the firebreak, this includes seeking to strike the right balance between limiting mixing in public and private spaces to decrease transmission and allowing people to meet friends and family, which is important for people’s well-being. These Regulations are intended to prevent direct covid-19 deaths and deaths

related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

These Regulations make provision in the following key areas:

- a) prohibiting gatherings in a private dwelling, other than with members of the same household or extended household, without reasonable excuse;
- b) allowing up to two households to agree to form an extended household (this will not be limited to circumstances where one household has only one adult member);
- c) prohibiting gatherings in public places without reasonable excuse, but
 - a. allowing up to four people from any household, or any number of members of the same household, to gather outdoors or in regulated premises;
 - b. allowing for an extended household to gather outdoors;
 - c. allowing gatherings of up to 15 indoors or 30 outdoors to take part in an activity organised by a responsible body;
- d) permitting travel within and across Wales but prohibiting travel out of and into Wales without reasonable excuse;
- e) introducing requirements for people to self-isolate in the event of having tested positive for coronavirus or being notified to do so by a contact tracer;
- f) placing obligations on persons responsible for premises open to the public, or for work being carried out at any premises, to take all reasonable measures to minimise the risk of exposure to, or spread of, coronavirus – including requiring employers to enable or allow employees to self-isolate when the employee is required to do so by a contact tracer;
- g) requiring face coverings to be worn on public transport and in public areas of indoor premises, subject to certain exemptions and exceptions.

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

Part 1 of the Regulations provides that the new provisions come into force at the beginning of 9 November 2020. As with the earlier Regulations dealing with coronavirus, these new Regulations must be reviewed regularly. They must be reviewed:

- by 19 November,
- at least once in the period from 20 November to 3 December,
- at least once in the period from 4 December to 17 December, and
- at least every 21 days after that.

The Regulations will expire at the end of the day on 19 February 2021 unless they are revoked before then.

Part 2 of the Regulations imposes limits on gathering with other people.

Within private dwellings (including gardens), people may only gather with members of their household and extended household. They provide that an extended household may be formed by all of the adults in a maximum of two households agreeing.

Outside of private dwellings, people may gather outdoors in groups of up to four (not counting children under 11), or with members of their own household and extended household (regardless of the number).

In accommodation in a hotel or other holiday accommodation, people can only gather with members of their own household (so for example, people from different households cannot stay in the same hotel room).

In other indoor places, people can gather with either the members of their own household or in groups of up to four (but not counting any children under 11).

In each case a person may be in a gathering in breach of the restrictions if they have a reasonable excuse. A reasonable excuse means:

- i. any situation where a person is participating in a gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, examples of which include work, obtaining or providing medical assistance, or meeting a legal obligation; or
- ii. where specific listed circumstances apply. These circumstances are more limited for gatherings in a private dwelling than for other gatherings. Examples of the circumstances in which a person may gather outside a private dwelling include attending, by invitation, a wedding ceremony, civil partnership formation or funeral; attending an activity organised by a responsible body involving up to 15 people indoors or 30 people outdoors, provided that the organiser has undertaken a risk assessment and takes reasonable measures to minimise the risk of the spread of coronavirus. For these purposes, people working or providing voluntary services at the event, or children under 11 attending at the event, are not included in the limit of 15 or 30 people.

The Regulations also prohibit the organisation of events where more than 15 people attend (if the event is mainly indoors) or 30 people attend (if it is mainly an outdoor event) and make particular provision prohibiting large scale music events that are unlicensed.

Part 3 prohibits persons living in Wales from leaving Wales, and persons living outside from entering Wales without reasonable excuse. Again reasonable excuse means either—

- i. a situation where entering or leaving Wales is reasonably necessary and there is no practicable alternative (examples of which are set out in the Regulations), or
- ii. in specific circumstances listed in the Regulations.

Travel within Wales is allowed.

Part 4 imposes new requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive, and people who have had “close contact” with someone who has tested positive, and who been notified by a contact tracer are required not to leave the place they are living until the end of the last day of their isolation. The period of isolation is generally 10 days for those who have tested positive and 14 days for those who have had close contact but the start of those periods varies depending on the circumstances (for example; whether the person has reported symptoms or not). Adults with responsibility for a child required to isolate, are required to take all reasonable measures to ensure the child self-isolates. The regulations enable contact tracers to share information insofar as necessary for the operation and enforcement of the self-isolation system.

Part 5 and Schedule 1 relate to business and services whose premises are required to close to the public. Schedule 1 sets out a limited number of business which must remain closed including theatres, concert halls, night clubs and adult entertainment venues. Part 5 also contains provision prohibiting alcohol from being sold, on premises which are licenced to sell it, after 10.00 p.m. and require the premises to be closed by no later than 10.20 p.m.

Part 6 and Schedule 2 include provision imposing requirements on those responsible for premises—

- i. open to the public and listed in Schedule 2,
 - ii. public transport vehicles, and
 - iii. premises where work is being carried out
- (collectively referred to as “regulated premises”) to take reasonable measures for the purpose of minimising risk of exposure to coronavirus, and the spread of the virus.

This includes a requirement on those responsible for regulated premises to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises and other measures for example to limiting close face to face interaction, maintaining hygiene and to providing information to those entering or working at premises about how to minimise risk of exposure to coronavirus.

The Regulations also specify that allowing employees to self-isolate when they have been required to do so by a contact tracer is a reasonable measure. And the collection of contact details from customers and taking reasonable measures to ensure those details are correct are also specified as reasonable measures.

Further reasonable measures are specified in relation to premises licensed to sell or supply alcohol—

- i. A person must be present to control entry to licensed premises and to allocate a specific time period that customer may stay at the premises

- (guidance will be issued about the recommended time period in certain settings). This is to ensure that all customers have a booking and that people do not stay in the same place for long periods.
- ii. Customers in licensed premises must order, be served, and must consume any food or drink while seated at a table.

The Regulations also set out requirements to wear face coverings on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 7 and Schedule 3 relates to the enforcement of the restrictions and requirements, including who can take enforcement action, the issue of compliance notices, powers of removal and dispersal of gatherings, powers to stop events, powers to direct people who breach self-isolation to return home and enforcement of the requirement to wear face coverings. It provides for a power to enter premises, for police to undertake road checks and for the use of reasonable force in certain circumstances.

Schedule 3 sets out a regime for enforcing the requirement to take all reasonable measures in regulated premises. Local authority enforcement officers may inspect regulated premises and issue improvement notices setting out measures that premises must take. If those measures are not taken, or if an enforcement officer considers there to be an urgent public health risk, a closure notice may be issued and the premises must close. Breach of a closure notice is an offence.

Part 8 makes provision about offences and penalties. This includes offences in respect of which a fixed penalty notice may be issued as an alternative to bringing court proceedings.

Part 9 contains defined terms and a consequential amendment.

5. Consultation

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

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 3 November the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

A summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.



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

5 November 2020

Dear Elin

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

I have today made the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 9 November 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 2 December 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 17 November 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

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **New national Covid measures for Wales**

DATE **02 November 2020**

BY **Mark Drakeford MS, First Minister**

As Wales enters the second week of the firebreak, Ministers have met through the weekend to discuss the new national measures, which will be put in place from 9 November.

We are continuing to finalise the details of these measures and I will make a further statement to the Senedd tomorrow.

The unexpected announcement by the Prime Minister over the weekend that England will start a month-long lockdown on Thursday has meant that we have needed to make adjustments to some of our plans, but the firebreak in Wales will end as planned on 9 November.

The Welsh Government has considered the impact the English lockdown will have on the next steps in Wales. It will have an impact on people who live in Wales but work in England; on companies operating in both Wales and England and on businesses trading along the border.

When the firebreak ends, there will be a new set of national measures, which will replace the previous local restrictions. We will once again take a cautious approach and will ease restrictions gradually to ensure the firebreak has the maximum possible impact on coronavirus. We will review the situation after a fortnight to see whether we can make further changes to the national measures.

From next Monday, two households will be able to join together to form an exclusive extended household – bubble. To help keep everyone as safe as possible at home, only people from your own household or extended household can meet in your private home.

Beyond November 9, there will be new arrangements for meeting indoors in other settings, such as pubs, bars, cafes and restaurants. As all these places will be closed in England, we are having to think further about how the hospitality sector in Wales, in particular, can operate in these new circumstances. These considerations will continue throughout today.

Up to 15 people will be able to take part in an organised indoors activity and up to 30 in organised outdoors activities, providing all social distancing, hand hygiene and other covid safety measures are followed.

Schools will reopen in full from next Monday.

Working from home will become even more important.

All business premises, which have been shut since October 23, will be able to reopen on November 9.

Local authority services will resume, reflecting local circumstances and places of worship will also be able to reopen.

There will be no travel restrictions inside Wales but during the month-long lockdown in England, travel will not be permitted outside Wales without a reasonable excuse.

I want to thank everyone for all their support during they firebreak so far. Together we are keeping Wales safe.

SL(5)653 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations removed Denmark from the list of exempt countries and territories with effect from 4.00 a.m. on 6 November 2020. From that time, persons entering Wales who have been in Denmark in the 14 days previously have been required to isolate.

These Regulations extend the isolation requirement to all members of the household of any person entering Wales who has been in Denmark in the 14 days before, the result being that both the returning traveller and any members of their household will now be required to isolate for 14 days.

These Regulations make further provision that:

- No person arriving into Wales who has been in Denmark in the previous 14 days can be exempted from the requirements to provide passenger information or isolate.
- A more limited list of permitted reasons to temporarily leave isolation will apply in relation to travellers returning from Denmark and any members of their household.

Procedure

Made Affirmative.

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

Technical Scrutiny

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

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

In regulations 3(3), 3(4), 4(3) and 4(4) the quotation marks that denote the wording to be inserted are not in the correct place – in each instance the opening quotation marks should precede "or". Although the reader may be able to infer what is to be substituted, the provision as drafted does not express this clearly.



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

Regulation 4(3) amends regulation 28(1) of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the No.4 Regulations”). However, regulation 28(1) relates to gatherings in private dwellings, and subparagraphs (a) to (c) provide enforcement officers with specific powers to disperse such gatherings.

As regulation 28(1) does not provide enforcement officers with the power to direct a person to return to the place where they are living, it seems illogical that the amendment is inserted into that paragraph – the effect would be that an enforcement officer who has reasonable grounds to suspect that a person is contravening regulation 18A(3) would be unable to direct that person to return to the place where they are required (by virtue of regulation 18A(3)) to be.

It appears that regulation 4(3) should in fact amend regulation 28(4) of the No.4 Regulations, as that paragraph relates to persons subject to self-isolation requirements. The powers conveyed on enforcement officers by virtue of paragraph (4) correspond with what we assume is the intended effect of regulation 4(3) in that they allow enforcement officers to direct a person to return to the place where they are living (or remove a person to that place).

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

Regulation 4(5) amends regulation 29(1)(b) of the No.4 Regulations. However, “16” does not occur anywhere in subparagraph (b), so it is impossible to insert the amendment ‘after “16”’ as provided by the provision. Furthermore, it does not appear that the insertion has any relevance to regulation 29 (which deals with powers relating to prohibited events).

Considering what we assume to be the intended effect of the amendment, it appears that regulation 4(5) should amend regulation 35(1)(a) of the No.4 Regulations. If the amendment were inserted there it would make it an offence to contravene the requirement in regulation 18A(3). This would mirror the amendment made to regulation 29(1)(b) of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 by regulation 3(5) of these Regulations.

4. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

- (a) Section 45P(2) of the Public Health (Control of Disease) Act 1984 is cited as one of the enabling powers in the English, but the Welsh only refers to section 45P;
- (b) There is a footnote referring to the Public Health (Control of Disease) Act 1984 at page 3 in the Welsh but there is no corresponding footnote in the English;



- (c) In paragraph (4)(a)(ii) of the text inserted by regulation 2(7), the English reads: 'to avoid serious illness, serious injury or other risk of serious harm;' and is translated as 'i osgoi salwch neu anaf neu i ddianc rhag risg o niwed difrifol;'. We believe the translation should read 'i osgoi salwch difrifol, anaf difrifol neu risg arall o niwed difrifol;';
- (d) The misplaced quotation marks at regulations 3(3) and 3(4) respectively (raised in the first technical reporting point) have resulted in the Welsh not including the word 'neu' in both instances.

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 to these Regulations provides that:

"The amendments contained these [sic] Regulations do not change the engagement under the International Travel Regulations or the No. 3 and No. 4 Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights"

We agree that the engagement of individual rights under the legislation listed above is not varied by these Regulations. However, these Regulations prescribe a more limited set of circumstances in which persons may temporarily leave isolation than are applicable to persons required to isolate other than by reason of having arrived in Wales from Denmark.

Can the Welsh Government provide an explanation as to the reasoning for this increased interference with individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights?

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph 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."

Implications arising from exiting the European Union

None.



Welsh Government response

A Welsh Government response is required in relation to the technical reporting points and the first merits reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

10 November 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

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

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

2020 No. 1237 (W. 279)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Restrictions) (Amendment)
(Wales) 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 Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (together the “No. 3 and No. 4 Restriction Regulations”).

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

There are 3 Parts to the Regulations.

Part 1 provides that these Regulations come into force at 4.00 a.m. on 7 November 2020.

Part 2 of the Regulations inserts provisions relating to Denmark into the International Travel Regulations as new regulation 12A. This provides that when a person has been in Denmark in the last 14 days and arrives in Wales on or after 4.00 a.m. on 7 November 2020, the categories of exempt persons as detailed at Schedule 2 to the International Travel Regulations do not apply, and sets out more limited circumstances in which a person may temporarily leave isolation. The isolation requirements also apply to any members of a household in which the person is isolating.

Part 3 of the Regulations inserts new provisions relating to persons who have recently been in Denmark into the No. 3 and No. 4 Restriction Regulations. These provisions will provide that where a person is in Wales at 4.00 a.m. on 7 November 2020 having arrived within the period of 14 days ending immediately before that time and been in Denmark during that period, that person and any member of that person's household will need to isolate for a period of 14 days beginning with the day on which the person arrived in Wales.

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. 1237 (W. 279)

PUBLIC HEALTH, WALES

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

Made at 3.33 a.m. on 7 November 2020

Coming into force at 4.00 a.m. on 7 November 2020

Laid before Senedd Cymru 9 November 2020

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

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

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.

PART 1

General

Title, coming into force and interpretation

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

(2) These Regulations come into force at 4.00 a.m. on 7 November 2020.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);
- (b) the “No. 3 Regulations” means the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020(2);
- (c) the “No. 4 Regulations” means the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020(3).

PART 2

Amendment to Part 3 of the International Travel Regulations

Insertion of new provisions relating to Denmark

2. In Part 3 of the International Travel Regulations (requirement to isolate etc.), after regulation 12, insert—

“Special rules applicable to persons travelling from Denmark

12A.—(1) This regulation applies where an isolation requirement (within the meaning given by regulation 10(2)) is imposed on a person (“P”) because P—

- (a) has arrived in Wales from Denmark, or

(1) 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), S.I. 2020/1042 (W. 231), S.I. 2020/942, S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277) and S.I. 2020/1232 (W. 278).

(2) S.I. 2020/1149 (W. 261).

(3) S.I. 2020/1219 (W. 276).

(b) has, within the period of 14 days ending with the day of P's arrival in Wales, been in Denmark.

(2) The isolation requirement imposed on P is also imposed on all members of P's household.

(3) Despite regulation 9(2), regulations 7 and 8 apply to P.

(4) A member of P's household is not exempt from the isolation requirement by virtue of regulation 9(2).

(5) Accordingly neither P nor any member of P's household is to be treated as a person described in any paragraph of Schedule 2.

(6) For the purposes of regulation 10, a member of P's household is to be treated as if that person were P.

(7) Regulation 10 applies to P (and a member of P's household by virtue of paragraph (6)) as if, for paragraph (4) of that regulation, there were substituted—

“(4) P may leave and be outside of the premises—

(a) for as long as is necessary—

(i) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;

(ii) to avoid serious illness, serious injury or other risk of serious harm;

(b) if required to do so by a constable.””

PART 3

Amendment of the No. 3 and No. 4 Regulations

Amendment of the No. 3 Regulations relating to persons who have recently been in Denmark

3.—(1) The No. 3 Regulations are amended as follows.

(2) After regulation 9 insert—

“Restrictions relating to persons who have recently been in Denmark

9A.—(1) This regulation applies where a person (“P”)—

(a) is in Wales at 4.00 a.m. on 7 November 2020,

(b) has arrived in Wales within the period of 14 days ending immediately before 4.00 a.m. on 7 November 2020, and

(c) has been in Denmark within that period.

(2) Regulations 3 to 7 do not apply to P or to any person living in the same household with P.

(3) P, and any person living in the same household with P, may not leave the place where they are living until the end of the period of 14 days beginning with the day on which P arrived in Wales.

(4) But P, or a person living in the same household with P, may leave the place where they are living—

(a) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;

(b) if required to do so by a constable;

(c) to avoid serious illness, serious injury or other risk of serious harm.”

(3) In regulation 24(1), after “3(1)” insert or “9A(3)”.

(4) In regulation 26(1), after “3(1)” insert or “9A(3)”.

(5) In regulation 29(1)(b), after “5(1)” insert “, 9A(3)”.

Amendment of the No. 4 Regulations relating to persons who have recently been in Denmark

4.—(1) The No. 4 Regulations are amended as follows.

(2) After regulation 18 insert—

“CHAPTER 3

Special provision relating to persons who have recently been in Denmark

Restrictions relating to persons who have recently been in Denmark

18A.—(1) This regulation applies where a person (“P”)—

(a) is in Wales at 4.00 a.m. on 7 November 2020,

(b) has arrived in Wales within the period of 14 days ending immediately before 4.00 a.m. on 7 November 2020, and

(c) has been in Denmark within that period.

(2) Regulations 4, 6 and 9 do not apply to P or to any person living in the same household with P.

(3) P, and any person living in the same household with P, may not leave the place where they are living until the end of the period of 14 days beginning with the day on which P arrived in Wales.

(4) But P, or a person living in the same household with P, may leave the place where they are living—

- (a) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;
- (b) if required to do so by a constable;
- (c) to avoid serious illness, serious injury or other risk of serious harm.”

(3) In regulation 28(1), after “4(1)” insert or “18A(3)”.

(4) In regulation 31(1), after “4(1)” insert or “18A(3)”.

(5) In regulation 29(1)(b), after “16” insert “, 18A(3)”.

Vaughan Gething

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

At 3.33 a.m. on 7 November 2020

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

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

Minister's Declaration

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

Vaughan Gething
Minister for Health and Social Services

9 November 2020

1. Description

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”), the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the No. 3 and No. 4 Regulations”).

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

The amendments contained these Regulations do not change the engagement under the International Travel Regulations or the No. 3 and No. 4 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.

Coming into force

In accordance with section 4(1) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force before they were laid, owing to the urgent need to respond to identified changes in the risk to public health posed by arrivals from Denmark.

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, 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act.

The Explanatory Memoranda to the International Travel Regulations and the No. 3 and No. 4 Regulations provide 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 – of most relevance to these Regulations when the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations were made to urgently remove Denmark from the list of exempt countries and territories with effect from 4.00 a.m. on 6 November 2020. From that time, persons entering Wales who have been in Denmark in the 14 days previously have been required to isolate.

That amendment was necessary because of emerging health risks being reported from Denmark that a new strain of covid virus has been shown to be transmitted from mink to people, and the need to act before further international travel from Denmark arrived in the UK. The amendments that have now been made by these Regulations extend that isolation requirement to all members of the household of any person entering Wales from 4.00 a.m. on 7 November who has been in Denmark in the 14 days before: so that both the returning traveller and any members of their household will now be required to isolate for 14 days. The amendments also disapply all sectoral exemptions in Schedule 2, so that no person arriving into Wales who has been in Denmark in the previous 14 days can be exempted from the requirements to provide passenger information or isolate. A more limited list than is usual of reasons for temporarily leaving isolation will also apply, as part of the response to the threat to public health.

This change coincides with the UK Government's implementation of immigration powers, which mean all non-British national or resident travellers who've been in or transited through Denmark in the last 14 days will be denied entry into the UK.

To effectively respond to the emerging situation, amendments have also been made to the No. 3 and No. 4 Regulations, which will require a person who entered Wales before 4am on 7 November having been in Denmark in the previous 14 days to isolate for 14 days from their date of arrival into Wales. This requirement will also extend to any members of that person's household.

To effectively support the implementation of these new requirements, Public Health Wales is now urgently contacting all residents in Wales who have been in Denmark in the past 14 days to explain the new isolation requirements.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Ein cyf/Our ref MA/VG/3672/20

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

7 November 2020

Dear Elin,

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

Overnight I made the Health Protection (Coronavirus, International Travel and Restrictions) (Amendments) (Wales) Regulations 2020 under sections 45B, 45C(1) and (3), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. In accordance with section 4(1) of the Statutory Instruments Act 1946 I am notifying you that these Regulations came into force at 4.00am this morning, before they could be laid, owing to the urgent need to respond to identified changes in risk to public health posed by arrivals from Denmark. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on Monday 9 November.

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 4 December 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. The Regulations will be scheduled for debate in Plenary on 17 November 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,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

Agenda Item 6.1

SL(5)636 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020

Background and Purpose

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Information Regulations”) place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“operators”) to provide passengers with certain public health information.

These Regulations amend the Information Regulations to—

- require operators to provide the information at an additional stage, namely 24 to 48 hours before an international passenger service is scheduled to depart, and
- update the information which is to be provided before a booking is made and check-in is completed, and during the journey to the port in Wales.

Regulation 2(3) amends the regulation 3 of the Information Regulations to specify the updated information to be provided before a booking is made and before check-in is completed.

Regulation 2(4) inserts a new regulation 3A into the Information Regulations requiring operators to provide the information 24 to 48 hours before an international passenger service is scheduled to depart.

Regulation 2(5), (6) and (7) makes consequential amendments, with regulation 2(7) amending regulation 6 of the Information Regulations (Offences), so that a person who contravenes a requirement in regulation 3A(2) commits an offence and is liable on summary conviction to a fine.

Regulation 2(8) substitutes the Schedule to the Information Regulations.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.



Technical Scrutiny

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

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2(3) substitutes new text for regulation 3(2) of the Information Regulations and at new regulation 3(2)(d) requires an operator to request that the relevant information is passed on to any person on whose behalf a booking is being made, or check-in being carried out. It is unclear whether that request should be in writing or if it can be made orally.

This is in contrast to new regulation 3A(5), which is inserted by regulation 2(4). It states when another person makes a booking on an international passenger service on behalf of another passenger, the regulation is complied with if that person is provided with the relevant information between 24 and 48 hours prior to scheduled departure, along with a written request that they provide that information to the passenger.

Merits Scrutiny

The following 2 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 issue 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 paragraph 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.”

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

We note that a Regulatory Impact Assessment has not been carried out. In particular, we note the following paragraphs in the Explanatory Memorandum:

“Further to the Welsh Ministers’ regulatory impact assessment code for subordinate legislation, these Regulations form part of the response to the ongoing COVID-19 pandemic and need to be put in place urgently. As such, an RIA has not been prepared.

“However, an initial assessment indicates that the impact of the Amending Regulations on operators is low.”



Implications arising from exiting the European Union

None

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to the technical reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 2 November 2020 and reports to the Senedd in line with the reporting points above.



Government Response: The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020

Technical Scrutiny

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

The Committee has noted that new regulation 3(2)(d) requires an operator to request that the relevant information is passed on to any person on whose behalf a booking is being made, or check-in being carried out and highlighted that and consider it is unclear whether that request should be in writing or if it can be made orally. It is noted that this is in contrast to new regulation 3A(5), which is inserted by regulation 2(4). New regulation 3A(5) states when another person makes a booking on an international passenger service on behalf of another passenger, the regulation is complied with if that person is provided with the relevant information between 24 and 48 hours prior to scheduled departure, along with a written request that they provide that information to the passenger.

Regulation 3(2)(d) does not specify that the request has to be in writing, it is therefore at the discretion of the operator how the request is made. Where a request is required to be made in writing, this is specified in the relevant provision, as in new regulation 3A(5).

Although the request to pass on the information at booking and check-in is not required to be made in writing pursuant new regulation 3(2)(d), operators are able to make the request in writing should they wish to do so.

We will consider if new regulation 3(2)(d) should be amended so that the request made at booking and check-in is also required to be made in writing.

Agenda Item 6.2

SL(5)638 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the Principal Regulations”). The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984.

These Regulations:

- impose restrictions on persons travelling to areas of Wales not designated as local health protection areas from parts of England, Scotland and Northern Ireland which have high prevalence of coronavirus, and corresponding restrictions on people travelling from Wales to such areas. The areas of high prevalence are those designated as follows by the relevant authority in that part of the UK:
 - England – all Tier 2 “high” and Tier 3 “very high” areas
 - Scotland – protected areas subject to additional temporary measures
 - Northern Ireland – currently the entire territory.
- provide that it is a reasonable excuse to enter or leave a local health protection area to participate in or facilitate organised activities for the development or well-being of children, and modifies the reasonable excuses for gathering and for entering or leaving a local health protection area so that they are consistent.
- make minor and consequential amendments to ensure consistency and updating the full title of “Menai (Bangor)” as one of the electoral divisions in the county of Gwynedd, listed in paragraph 1 of Schedule 4A to the Principal Regulations.

The Regulations come into force at 6.00 p.m. on 16 October 2020. The restrictions and requirements introduced by these amendments in relation to travel must be reviewed on or before 23 October 2020, and at least once every seven days thereafter.

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

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

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 2(4)(a) of these Regulations make amendments to regulation 14(2) of the Principal Regulations and to “sub-paragraph (b)”. Regulation 2(4)(a) of the Welsh version of these Regulations does not refer to sub-paragraph (b), but instead refers to “ym mharagraff (2)” (which translates as “in paragraph 2”). The Welsh text should read as “yn is-baragraff (b)” (in sub-paragraph (b)) in order to ensure clarity and consistency with the English version.

Merits Scrutiny

The following 4 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 paragraphs in the Explanatory Memorandum:

“The Government considers that the restrictions imposed by the amendments made by these Regulations to the principal Regulations, are proportionate. The amendments 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.”

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 welcome the evidence provided by the Welsh Government in the Explanatory Memorandum explaining why the Principal Regulations have been amended to restrict travel from other areas, and for the purposes of allowing persons to leave a local health protection area should they have a reasonable excuse for doing so. We believe that providing this evidence will aid transparency, and assist the Senedd’s scrutiny of coronavirus restrictions. We note in particular the following paragraph from the Explanatory Memorandum which refers to the report “SARS-Cov-2 Genomic Insights”.

“Evidence from public health professionals suggests coronavirus is moving from east to west across the UK and across Wales. As a general rule, it is concentrating in urban areas and then spreading to more sparsely populated areas as a result of people



travelling. The paper SARS-Cov-2 Genomic Insights (October 2020) demonstrates the spread of infection geographically and supports the case for travel restrictions as a means of controlling spread. To prevent further spread in areas where there is still a relatively low prevalence of the virus, there is an urgent need to limit non-essential travel across the UK. The amendments will achieve this goal.

<https://gov.wales/sites/default/files/publications/2020-10/sars-cov-2-genomic-insights-october-2020.pdf>

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 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, representative groups along with individuals and businesses have been informed about the relaxation of the restrictions through wide scale and ongoing public information broadcasts across the UK, including by myself. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations.”

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.

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

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and merit reporting point 4 only.

Committee Consideration

The Committee considered the instrument at its meeting on 2 November 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee noted that the instrument has been revoked by The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.



Government Response: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 19) Regulations 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 22 October 2020.

Technical scrutiny point:

Error in reference in Welsh text

2. The draft Report notes that the Welsh text of regulation 2(4)(a) should refer to “is-baragraff (b)”. The Government agrees, but no action will be taken given that the Regulations were revoked at 6.00 p.m. on 23 October 2020.

Merits scrutiny points:

Point 4: details of arrangements to publish reports of equality impact assessments

3. No equality impact assessment was published in relation to the Regulations. This is because the travel restrictions imposed by the Regulations were an urgent response to the worsening picture of coronavirus incidence and transmission within Wales and the health advice recommending further measures to be taken at speed to control movement of people.
4. While no equality impact assessment was published on the decision to allow children to travel freely across the boundaries of local health protection areas for specified purposes, equality impacts were considered in the decision. The amendment made by the Regulations aims to enable children to participate in a range of activities aimed to bolster their physical and mental health and well-being. The equality considerations led to the amendment covering more than simply sports activities, recognising the health and wellbeing benefits of other activities and that not all children are able to participate in sports.
5. An impact assessment covering these areas has not been carried out subsequently as the Regulations were superseded by the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 at 6.00 p.m. on 23 October. An Integrated Impact Assessment has been prepared as part of those Regulations which will be published on the Welsh Government website.

SL(5)641 – The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 and its amending regulations which include measures put in place for local lockdowns in Wales. (A complete list of the regulations revoked are listed in regulation 34.)

These Regulations impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus. This is in response to the worsening trend and prevalence of Covid-19 and the risk to public health based on scientific evidence provided by the Welsh Government's Technical Advisory Cell.

These Regulations came into force at 6pm on Friday 23rd October 2020 and expire at the end of the day on 8th November 2020 (a total of 17 days). According to Government guidance, *"following the end of this period, a new set of national rules will be introduced, covering how people can meet and how the public sector and businesses operate."*

These Regulations make provision in 4 key areas:

- a. limiting movement and travel by requiring people to stay at home unless they have a reasonable excuse;
- b. limits gatherings with other people;
- c. closure of certain types of businesses and premises; and
- d. obligations placed on persons responsible for premises open to the public, or for work being carried out at any premises.

In summary:

Part 2 imposes limits on movement and travel. Regulation 3 requires people living in Wales to stay at home, unless they have a reasonable excuse not to. The Regulations make specific provision for attendance at an event to commemorate Remembrance Sunday to be a reasonable excuse to gather with others, subject to certain conditions. In addition, in the limited circumstances where people can leave home, there is a restriction in regulation 4 on people gathering with anyone who is not part of their household. The overall effect of these provisions is to restrict movement of people within Wales. Regulation 5 provides that people who live outside Wales need a reasonable excuse to travel into Wales. Regulations 6 and 7 limit the circumstances in which a pupil or student has a reasonable excuse to attend the premises of a school or further education institution. Regulation 9 makes further provision making it an offence (punished by a higher penalty) for organising large scale music events that encourage people to gather illegally.



Part 3 relates to business and services whose premises are ordinarily open to the public, requiring many to close. Part 1 of Schedule 1 lists those businesses and services whose premises must be closed to the public. Part 2 of Schedule 1 lists businesses and premises whose premises must be closed but to which access may be allowed on a limited basis. These are categorised as premises selling food and drink (which are listed in Chapter 1); premises offering hotel or holiday accommodation (which are listed in Chapter 2) and others (which are listed in Chapter 3). Regulation 16 provides that where more than one type of business or service is provided at the same premises, e.g. at a large supermarket, those types of business that are prohibited may not continue for the period that these regulations remain in force.

Part 4 makes provisions for the purpose of minimising risk of exposure to coronavirus. Regulation 17 applies to “regulated premises” (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken, for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that not carrying out an activity, closing part of a premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures. Regulations 18 and 19 provide that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions. Regulation 20 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 5 relates to the enforcement of the restrictions and requirements. This part lists who may take enforcement action and includes wide powers of entry, powers to remove and disperse persons and powers to use reasonable force in certain circumstances.

Part 6 makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 30 relates to offences by bodies corporate. Regulation 31 allows for offences to be punished by way of fixed penalty notices and regulation 32 relates to prosecutions of offences under the regulations.

Part 7 contains defined terms and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 (S.I. 2020/725 (W. 162)) as they were amended. Regulation 33 also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. This allows a person who lives alone or only with children to agree to form an extended household with another household, which means that members of both households can interact with each other as if they were members of one household.



Procedure

Made Affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

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

"Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new national restrictions for a limited period of 17 days under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which



remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

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

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

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

In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my press conference on 19 October the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported."

Whilst the Committee acknowledges that these Regulations have been made in response to a public health emergency the Committee note the widespread reporting in the media of dissatisfaction at the short notice given by the Government in relation to the introduction of these Regulations. For example the BBC reported that the Federation of Small Businesses in Wales were disappointed at the short notice given for these changes and restrictions placed on businesses. The Committee would like the Government to provide further detail on who it consulted and when, prior to making these Regulations.

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

Regulation 16 places restrictions on mixed businesses. Under the regulations, mixed businesses are those that run both permitted and prohibited businesses on the same premises. The Committee notes the widespread criticism of this particular policy, the confusion that it has caused amongst stakeholders and the Senedd petition that has been signed by a record 66,000 citizens (as of 26th October 2020). Given clarity is essential when making legislation the Government is asked to provide an update as to whether it intends to amend this particular provision or whether further guidance is to be given to businesses and members of the public in relation to this provision.

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

The regulations make provision for the government to provide guidance on the legislative changes that it makes for this 17-day period. The Government is asked to provide further



details of when such guidance was published to provide stakeholders the opportunity to comply with these legislative changes.

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

The Committee note that relevant impact assessments were published for these regulations on 26th October 2020 and can be found here - <https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school-html>

Further to our meeting on 2 November, we include the following merits reports in addition to those above.

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

We would welcome clarification from the Welsh Government about the following (and in respect of points (a) and (b) it would be helpful to see practical examples):

- (a) where, and how, do the Regulations prohibit a supermarket from selling non-essential items;
- (b) the meaning of “business” in regulations 11, 15 and 16, including:
 - (i) the meaning of a business “forming part of a larger business” and “forming part of a larger undertaking”,
 - (ii) the extent to which a “supermarket” is captured by regulations 15 and 16 and Part 3 of Schedule 1,
 - (iii) the First Minister’s statement on 19 October 2020, regarding the closure of “all non-food retail”, bearing in mind the list of businesses and services that can stay open under Part 3 of Schedule 1 include building supplies, petrol stations, bicycle shops and launderettes;
- (c) whether the Regulations are being used to any extent to prevent distortion of competition, given that **Welsh Government guidance states:**

“So for example, because there is a prohibition on hairdressers’ shops from opening as this is seen as a non-essential activity, mobile hairdressers are also not permitted to provide their services in clients’ homes or their own homes. This is to avoid gatherings of people being displaced from one setting to another, and to minimise unfair distortion of competition between similar businesses.”



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

We would welcome clarification from the Welsh Government about the following (and in respect of point (a) it would be helpful to see practical examples):

- (a) what are extended households allowed to do under the Regulations. And where do the Regulations allow for extended households to spend time with each other indoor and outdoors as if they lived together. We note the apparent limits of what regulation 33(3) allows extended households to do together under the Regulations, but also the following from Welsh Government guidance:

"The people you choose to join with, in effect, become part of your household, and legally you can treat any member of your extended household as if you lived with them;"

- (b) why does Welsh Government guidance say that there are "no rules specifying that your extended household has to be with someone in your local authority area", when the Regulations say that if you formed an extended household with another person from your local authority area under the previous local county lockdowns, you cannot be part of a different extended household now;
- (c) whether the exclusions in regulation 33(3) regarding extended households should also include regulation 33(3) itself.

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

We would welcome clarification from the Welsh Government about the following:

- (a) how the Regulations apply to cemeteries (and visiting cemeteries), whether at crematoriums or otherwise;
- (b) the reasons for limiting the hours of selling alcohol to the hours of 6am to 10pm;
- (c) whether the conditions for attending a Remembrance Sunday event under regulation 3(3) are cumulative (given there is no "and" after regulation 3(3)(b)).

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to merits reporting points 2, 3, 4, 6, 7 and 8.

Committee Consideration

The Committee considered the instrument at its meeting on 2 November 2020 and reports to the Senedd in line with the reporting points above.



Government Response: The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated (as revised) 02 November 2020: merits scrutiny points 2, 3, 4, 6, 7 and 8.

Merits scrutiny points:

2. The Government undertook wide ranging consultation on the week beginning 19 October including, but not limited to the below:

Economy	CBI, FSB, IoD, Make UK, Industry Wales, Chambers of Commerce and Welsh Retail Consortium, retail representative organisations, food retailers, local authorities. Engagement at a sector level – with aerospace, automotive, digital companies - through Sector Fora and Industry Wales. Trade Unions
Public Health	Consultants in Communicable Disease Control (Public Health Wales), Directors of Public Health (Health Boards) and Directors of Public Protection (Local Authorities)
Schools, FE, WBL and HE	FE Principals and Work Based Learning stakeholders
Social Partnership Council	Meeting held on 22 October
Vulnerable Children and Young People Stakeholder Group	Meeting held on 23 October: attendees included Children’s Commissioner for Wales and representatives from Children in Wales, Care Inspectorate Wales, Health Inspectorate Wales, Public Health Wales, Estyn, third sector organisations supporting children and young people (e.g. NSPCC, Llamau)
Disability Equality Forum	Meeting held on 21 October: attendees included representatives from a number of Disabled People’s Organisations e.g. Disability Wales, Mencap, RNIB, All Wales People First, Learning Disability Wales, Wales Council for Deaf People, Wales Council for the Blind, as well as independent members.
Violence Against Women Domestic Abuse and Sexual Violence	VAWDASV COVID-19 Strategic Group: Meeting held on 20 th October, chaired by National Adviser for VAWDASV and representatives from VAWDASV umbrella bodies, police, and PHW

3. Regulation 16 did not place restrictions on mixed businesses. Its purpose was only to set out the way in which the restrictions in regulations 11 to 13 applied to businesses which comprised of a number of smaller businesses. Due to the way Schedule 1 categorised businesses, it is clear that certain types of business undertakings operate businesses of more than one kind as listed in Schedule 1.

The Welsh Government, business representative groups, Trade Unions and essential retailers worked closely on the implementation of Welsh Government regulations introduced to minimise the sale of non-essential items during the 17 day firebreak. This was to stop the spread of coronavirus and save lives. The Welsh Government revised its guidance (29 October) to provide greater clarity on the steps retailers could take to implement the rules and around how retailers should manage exceptional requests for items not included on the list of things that should be sold. It has also agreed to look at the legislation after the firebreak to take account of the industry's experience and feedback.

We recognise the hard work of retail staff across Wales and the need to ensure their safety throughout this pandemic.

4. Firebreak guidance was first published on the [Welsh Government website](#) on 23 October.

6. Part 2 imposed duties on individuals, and each individual was responsible for their actions. Regulation 3 required persons to stay at home unless they had a reasonable excuse. Obtaining supplies was a reasonable excuse, but only where there was a need to do so. The operation of Part 3 of the Regulations complemented the objectives of Part 2 by requiring certain types of business to close (but also provided exceptions for some types of businesses). As set out above, where a business operated in a number of categories as specified in Schedule 1, it is clear from regulation 16 that it is treated as multiple smaller businesses.

A supermarket is a food retailer, and to the extent it is, it could open its premises under regulation 15. And similarly, if it operates as e.g. a petrol station, newsagent, pharmacy or a hardware store, it was permitted to open its premises to that extent. But to the extent that it was a kind of business that sells goods for sale or hire in a shop which is not listed in Part 3 of Schedule 1, it was required by regulation 11 to be closed.

The Regulations were made as a response to an ongoing public health emergency: the purpose of the restrictions on businesses was to protect public health by limiting opportunity for people to be out of their homes and mixing with others.

7. In relation to point (a), visiting other members of extended households was not listed as an example of a reasonable excuse. However, the Government considers that it would have been objectively reasonable to meet with people who the law considers to be part of your own household (and that it would, therefore, have been permitted under the Regulations).

The Regulations also allowed people in an extended household to gather together when they left their homes for permitted reasons (e.g. to obtain supplies, or to exercise).

The Welsh Government notes point (b). We will ensure wording for future guidance is updated to make it absolutely clear that people can form a 'new' extended household after the firebreak, but that it cannot be changed once it is formed.

In relation to point (c) the Government is content that it was clear from the context of regulation 33 that the references to a 'household' in paragraph (3) were not to extended households.

8. During the firebreak, people could visit a cemetery and local authority burial sites to visit a family member's grave but were required to follow physical distancing practice.

There have been a number of cases of coronavirus linked to pubs and in our discussions with local authorities and public health experts, there was a clear consensus about the need to introduce limits on the sale of alcohol.

Local public health teams report issues with a deterioration of social distancing late at night, linked to alcohol consumption. It can also make effective contact tracing difficult.

The Government confirms that the conditions in regulation 3(3) were cumulative and considers that this is clear from the context; otherwise, it would have been a very broad exception to a strict restriction imposed on the grounds of public health.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020**

DATE **30 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd

The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020

The purpose of the amendments

The 2020 Regulations amend the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/720) to ensure that UK chemicals and genetically modified organisms legislation will continue to operate effectively in conjunction with the Withdrawal Agreement at the end of the transition period.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213409/introduction>

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The UK Chemicals regime covers both devolved and reserved matters, as it has been designed to protect the health and safety of workers (a reserved matter in Wales and Scotland) as well as public health and the environment (which are devolved). Import and export controls are also reserved for chemicals other than fertilisers and pesticides, as is animal testing for scientific purposes.

The 2020 Regulations confer functions on the Welsh Ministers without encumbrance.

The 2020 Regulations confer a Regulation making function on the Secretary of State the exercise of which is subject to the consent of Ministers in the devolved administrations. The function constitutes a function of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006. A future Senedd Bill seeking to remove or modify the function could trigger a requirement to consult the UK Government.

The 2020 Regulations confer technical reporting functions on the Health and Safety Executive that constitute functions of a public authority other than a devolved Welsh Authority for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Senedd's competence to legislate in the future regarding those functions.

Why consent was given

Consent has been given to the UK Government to make these amendments in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure the consistency and coherence of the statute book. The amendments have been considered and there is no divergence in policy. The amendments are to ensure the statute book will continue to operate effectively at the end of the transition period.

The law which is being amended

The 2020 Regulations amend provisions in the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 that in turn amend the following legislation that applies to Wales:

Amendment of Subordinate Legislation

The Plant Protection Products (Fees and Charges) Regulations 2011;
The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013;
The Genetically Modified Organisms (Contained Use) Regulations 2014;
The Control of Major Accident Hazards Regulations 2015.

Amendment of Retained Direct EU Legislation

Regulation (EC) No 1907/2006 concerning the registration, evaluation, authorisation and restriction of Chemicals;
Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures;
Regulation (EU) No 544/2011 on data requirements for active substances;
Regulation (EU) No 545/2011 on data requirements for plant protection products;
Regulation (EU) No 547/2011 on labelling requirements for plant protection products;
Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products;
Regulation (EU) No 649/2012 concerning the export and import of hazardous chemicals;
Regulation (EU) No 283/2013 on data requirements for active substances;

Regulation (EU) 284/2013 on data requirements for plant protection products;
Regulation (EU) No 354/2013 on changes of biocidal products;
Regulation (EU) No 414/2013 specifying a procedure for the authorisation of same biocidal products;
Regulation (EU) No 88/2014 specifying a procedure for the amendment of Annex I to Regulation (EU) No 528/2012;
Regulation (EU) No 1062/2014 on the work programme for the systematic examination of existing active substances contained in biocidal products.

The 2020 Regulations revoke Regulation (EU) No 492/2014 regarding the rules for the renewal of authorisations of biocidal products subject to mutual recognition.

The 2020 Regulations amend Annex II to the EEA Agreement.

The 2020 Regulations make saving, transitional and consequential provision.

UK MINISTERS ACTING IN DEVOLVED AREAS

199 - The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 15 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 November 2020
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	27 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) of, and paragraphs 1 and 7 of Schedule 4 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 and by section 41(1) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020.

Summary

These Regulations are being made to address deficiencies in retained EU law relating to chemicals and genetically modified organisms.

The UK Chemicals regime covers both devolved and reserved matters, as it has been designed to protect public health and the environment (which is devolved in Wales) and also the health and safety of workers (which is a reserved matter in Wales). Import and export controls are also reserved for chemicals other than fertilisers and pesticides, as is animal testing for scientific purposes.

The Regulations amend the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/720) to ensure that UK chemicals and genetically modified organisms legislation will continue to operate effectively in conjunction with the Withdrawal Agreement at the end of the transition period.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 30 October 2020 regarding the effect of these Regulations.

We note that these Regulations confer a Regulation making function on the Secretary of State the exercise of which is subject to the consent of Ministers in the devolved administrations. The function constitutes a function of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006. A future Senedd Bill seeking to remove or modify the function could trigger a requirement to consult the UK Government.

These Regulations confer technical reporting functions on the Health and Safety Executive that constitute functions of a public authority other than a devolved Welsh Authority for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Senedd's competence to legislate in the future regarding those functions.

The Regulations also confer functions on the Welsh Ministers without encumbrance.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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 Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020**

DATE **04 November 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020

Policy Overview of the SI

Tobacco control legislation is a mixture of EU derived legislation: primarily the Tobacco and Related Products Regulations 2016 ('TRPR') and directly applicable EU tertiary legislation. The two main pieces of EU legislation in relation to tobacco and related products are Directive 2014/40/EU (the 'Tobacco Products Directive') and Directive 2003/33/EC (the 'Tobacco Advertising Directive').

UK wide legislation has been made in part to implement the Tobacco Products Directive (TPD) such as the standardised packaging legislation, and devolved legislation imposing requirements relating to restrictions such as the age of sale for tobacco products and e-cigarettes.

The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019, ('the 2019 Regulations') laid for a no deal scenario, amend the TRPR such that they apply for the end of the Implementation Period. The TRPR implemented the TPD. The 2019 Regulations were made to remedy deficiencies in retained EU and domestic legislation relating to tobacco and nicotine inhaling products (e-cigarettes), or failures of that legislation to operate effectively, which would arise from the withdrawal of the UK from the EU, in the event of no deal.

These amendments included two main changes to the requirements under TRPR:

- Allow for the establishment of new notification systems for tobacco products including novel products and herbal products for smoking, and e-cigarettes.
- Allow for the use of Australian picture warnings to replace the EU picture warnings on which the Commission holds the copyright.

The purpose of the amendments

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 amend the 2019 Regulations in order to give effect to the Withdrawal Agreement and amend the amendments made in the 2019 Regulations to the TRPR, for example by removing references to the UK, so that the TPD remains directly applicable in NI ensuring the Protocol is reflected in law. In particular, the new notification system for tobacco products and e-cigarettes will be used for the GB market only, and tobacco products placed on the NI market will be required to use the EU picture warnings. The amendments introduced by the 2020 Instrument will ensure that tobacco control legislation continues to work effectively after the end of the Implementation Period. The Statutory Instrument and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348212532>

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The Welsh Government is of the view that the Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 contain provisions which relate to public health protection and are within devolved competence, and, therefore, Welsh Ministers' consent is required in accordance with the terms of the Intergovernmental Agreement in advance of laying the instrument. The UK Government did not seek the consent of the Welsh Ministers in relation to this SI. The Minister for Mental Health, Wellbeing and the Welsh Language has therefore written to the Minister of State for Health to raise concerns that consent was not sought and to provide consent.

The SI has no impact on the Welsh Ministers' executive competence or the legislative competence of the Senedd. The SI does not involve the transfer of any functions nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK-wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility 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

**201- The Tobacco Products and Nicotine Inhaling Products
(Amendment) (EU Exit) Regulations 2020**

Laid in the UK Parliament: 28 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	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	14/10/20
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	13/10/20

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8 and 8C of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

Summary

The Regulations deal with matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement (“the Protocol”).

These Regulations amend the Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/41) to take account of the inclusion of Directive 2014/40/EU in Annex 2 to the Protocol. The amendments are needed to ensure that the Tobacco and Related Products Regulations 2016 (which implemented the Directive) (S.I. 2016/507) will continue to function after IP completion day, and also to update the transitional provision made to allow certain products that have been placed on the market in the United Kingdom before IP

completion day to continue to be supplied in Great Britain on and after that day.

These Regulations also amend the Electronic Cigarettes (Fees) Regulations 2016 (S.I. 2016/521) and the Tobacco and Related Products (Fees) Regulations 2017 (S.I. 2019/409) so that a single notification and annual reporting fee remains payable if a product is to be supplied in both Great Britain and Northern Ireland.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 4 November 2020 regarding the effect of these Regulations.

These Regulations relate to the protection of health and are within devolved competence, however the UK Government made these Regulations without seeking consent. It is not clear why the UK Government failed to seek consent. The Minister for Mental Health, Wellbeing and the Welsh Language has written to the Minister of State for Health to raise concerns that consent was not sought and to provide consent.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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 Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020**

DATE **04 November 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd.

The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020

The Regulations amend the following legislation:

EU Legislation

- Regulation (EU) No 576/2013 on the non-commercial movement of pet animals;
- Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions
- Regulation (EU) No 2019/294 laying down the list of territories and third countries authorised for imports into the Union of dogs, cats and ferrets and the model animal health certificate for such imports
- Commission Regulation (EC) No 535/2008 of 13 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.

Domestic legislation

The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019

The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019

The Animals (Legislative Functions) (EU Exit) Regulations 2019

The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers have the potential to engage the requirement to consult the UK Government under Schedule 7B to the Government of Wales Act 2006 should a future Senedd Bill seek to remove or modify those functions.

The concurrent functions contained in the Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and, as such, represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the Secretary of State for Wales in relation to a section 109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The Regulations provide for legislative functions that are currently conferred by European Union legislation upon the European Commission and the Council of the European Union to be exercisable instead by appropriate authorities in Great Britain, so that they can be exercised at national level after the end of the transition period. They amend previously made EU Exit statutory instruments in order to reflect the change in legislative position following the Withdrawal Agreement and the Protocol of Ireland / Northern Ireland. They also amend EU legislation made since the EU Exit SIs were made and that must be made operable.

The Regulations and accompanying Explanatory Memorandum, setting out the provenance, purpose and effect of the Regulations is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348214475/contents>

Why consent was given

Consent has been given for the UK Government to make the Regulations in relation to, and on behalf of, Wales for reasons of efficiency and expediency. 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

202- The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 2 November 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend the following EU and domestic legislation in order to reflect the change in legislative position following the Withdrawal Agreement and the Protocol of Ireland/Northern Ireland. They also amend EU legislation made since the EU Exit regulations listed below were made so that they will be operable:

EU legislation

- Regulation (EU) No 576/2013 on the non-commercial movement of pet animals;

- Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions;
- Regulation (EU) No 2019/294 laying down the list of territories and third countries authorised for imports into the Union of dogs, cats and ferrets and the model animal health certificate for such imports; and
- Commission Regulation (EC) No 535/2008 of 13 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.

Domestic legislation

- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019;
- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019;
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) 2019;
- The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019;
- The Animals (Legislative Functions) (EU Exit) Regulations 2019; and
- The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

The Regulations contain provisions relating to seven policy areas: seed, plant and plant propagating material; aquatic animal health; Transmissible Spongiform Encephalopathies and Animal By-Products; livestock; zoonotic diseases; pet travel; and the use of alien and locally absent species in aquaculture. Retained EU law relating to these policy areas will continue to function at the end of the transition period in a similar way to how it did previously. These Regulations remove redundant provisions relating to EU law, enable the UK to stand by commitments it has made in the Withdrawal Agreement, and convert EU procedures to UK procedures, as appropriate.

The Regulations provide for legislative functions that are currently conferred by European Union legislation upon the European Commission and the Council of the European Union to be exercisable instead by appropriate authorities in Great Britain, so that they can be exercised at national level after the end of the transition period.

Statement by Welsh Government

Following a review of the Explanatory Memorandum to the Regulations, Legal Advisers make the following comments in relation to the Welsh Government's statement dated 4 November 2020 regarding the effect of these Regulations:

The Welsh Government's statement does not identify which legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by this instrument. It is noted that the statement provides that:

Functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers have the potential to engage the requirement to consult the UK Government under Schedule 7B to the Government of Wales Act 2006 should a future Senedd Bill seek to remove or modify those functions.

The concurrent functions contained in the Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and, as such, represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the Secretary of State for Wales in relation to a section 109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

Legal Advisers recommend that clarification is sought on which devolved powers are affected; and that further information and updates be requested as to the progress of the negotiations with the Secretary of State for Wales in relation to the section 109 Order referred to above.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

As it is unclear from the Welsh Government's statement dated 4 November 2020 the impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether 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 Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020**

DATE **04 November 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations amend the following legislation:

EU legislation:

- Commission Decision 2002/657/EC of 12 August 2002 implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results;
- Commission Regulation (EU) 2019/1871 of 7 November 2019 on reference points for action for non-allowed pharmacologically active substances present in food of animal origin; and
- Commission Delegated Regulation (EU) 2019/2090 of 19 June 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and Council regarding cases of suspected or established non-compliance with Union rules applicable to the use or residues of pharmacologically active substances authorised in veterinary medicinal products or as feed additives or with Union rules applicable to the use or residues of prohibited or unauthorised pharmacologically active substances.

Secondary legislation:

- The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019;
- The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc.) (EU Exit) Regulations 2019;
- The Veterinary Medicines Regulations 2013 (GB); and
- The Animals and Animal Products (Examination for Residues and Maximum

Residue Limits) (England and Scotland) Regulations 2015.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations do not impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

The purpose of the amendments

The 2020 Regulations amends both domestic and retained direct EU legislation to ensure that the regulatory regimes for veterinary medicines and residues surveillance remain operable and enforceable in the United Kingdom (UK) after the end of the Implementation Period (IP), and that the (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement.

The amendments also introduces light touch regulatory controls on medicines that are approved in Northern Ireland and not Great Britain and that move from Northern Ireland onto the Great Britain market. These controls are necessary to ensure that the UK regulator, has the necessary assurances of safety quality and efficacy for medicines on the UK market for the purposes of ensuring public health, animal health and welfare and consumer safety.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348214345>

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, expediency and due to the technical nature of the amendments. The amendments have been considered fully and there is no divergence in policy. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

203- The Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 2 November 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8 and 8C of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend both domestic and retained direct EU legislation to ensure that the regulatory regimes for veterinary medicines and residues surveillance remain operable and enforceable in the United Kingdom (UK) after the end of the Implementation Period (IP), and that the UK meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement.

The amendments also introduce light touch regulatory controls on medicines that are approved in Northern Ireland and not Great Britain and that move from Northern Ireland onto the Great Britain market. These controls are necessary to ensure that the UK regulator, has the necessary assurances of safety quality and efficacy for medicines on the UK market

for the purposes of ensuring public health, animal health and welfare and consumer safety.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 4 November 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

SeneddLJC@senedd.wales

9 November 2020

Dear Mick

Thank you for your letter following the Legislation, Justice and Consultation Committee's consideration of regulations amending The Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 and the committee's feedback.

We have worked very hard to make easy-to-access and relevant frequently asked questions and guidance available on our website to help the public understand the coronavirus regulations, which are in effect at both a national and a local level.

The FAQs for the main coronavirus regulations are extensive and have been structured in such a way to include a number of scenarios, as you suggest. While it is not possible for these to cover every possible scenario, some examples include: I live alone in an area with local restrictions, can I meet up with another household? I have a [restaurant] booking for more than six people – can it still go ahead? My hairdresser is open, can they now provide other services such as doing my nails?

Similar FAQs and guidance also cover other topics and scenarios, including when and how to self-isolate; testing; support for business; volunteering; education and schools and the wearing of face coverings.

We keep all our FAQs under regular review to make sure they are relevant to the public and these are updated in line with feedback from the public and from other sources, such as common questions from Members of the Senedd, to make sure we are providing the most up to date advice to the people.

The Committee also queried the use of the concept of a "reasonable excuse" in regulations. The concept of a 'reasonable excuse' is a well-recognised legal concept that is used in various contexts across the statute book, including tax and finance legislation (see sections 114, 115, 126 and 149 of the Tax Collection and Management (Wales) Act 2016); asylum and immigration legislation (see section 2 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004) and housing legislation (see section 11(2) of the Renting Homes (Fees etc.) (Wales) Act 2019).

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

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

In relation to Covid-19 related legislation specifically, all four UK nations have imposed key restrictions on citizens and have made it an offence for a person to contravene them unless a 'reasonable excuse' exists. Examples of such restrictions are found in Regulations 5 and 6 of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020; several Regulations in The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020; and Regulations 5 and 6 of The Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020.

Exhaustive lists of circumstances in which general prohibitions do not apply are not possible for a set of rules that apply to so many different circumstances and where there are so many individual variables. What will be reasonable in any particular set of circumstances will always be a judgement that an individual or business needs to make for themselves in all the circumstances of their case. An action can be reasonable in one circumstance and not in another.

We do recognise that this causes challenges for people across Wales in determining what is allowable, which is why we agree with the Committee that providing examples is useful, and we strive to do so where possible. An example of where we have done this is in the guidance on the requirement to wear face coverings in public places. In this guidance, examples of things we consider reasonable excuses for not wearing a face covering are provided throughout. This includes excuses which are listed in the non-exhaustive list in the regulations, but also others which are not such as if:


- You are asked to do so by someone who will otherwise find it difficult to communicate with you;
- You are asked to do so in a bank, building society or post office for identification;
- You are asked to do so by shop staff or relevant employees for identification, for assessing health recommendations (e.g. by a pharmacist), or for age identification purposes including when buying age restricted products such as alcohol

All the FAQs and guidance are available on our main coronavirus pages at www.gov.wales/coronavirus and <https://llyw.cymru/coronafeirws>. This information is supplemented by the work we do through our social media channels to raise awareness and reinforce the core messages about the coronavirus rules and the televised Welsh Government press briefings, which are currently held three times a week.

Ultimately, however, while we agree people should have as much guidance as possible on what is legally permissible, we do consistently ask people to ask themselves not what they are permitted to do, but what is sensible, given the overriding objective to minimise the spread of coronavirus.

Thank you very much for the committee's feedback and for your ongoing scrutiny of the Welsh Government's coronavirus regulations.

Best Wishes



MARK DRAKEFORD

Jane Hutt AS/MS
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/our ref MA/RE/3252/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

12 November 2020

Dear Mick,

Further to my letter of 6 November and your report of 12 November in relation to the Statutory Instrument Consent Memorandum laid in the Senedd on 21 October in respect of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 ("the Regulations").

Whilst the Regulations amend primary legislation and that amendment is within the legislative competence of the Senedd, the amendment is technical in nature and, in line with the First Minister's letter of 4 November, we have decided not to schedule a debate in relation to this Statutory Instrument Consent Memorandum. The statutory instrument is uncontroversial and there is no policy divergence between the Welsh Government and the UK Government.

Yours sincerely,

Jane Hutt AS/MS
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

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

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



Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

12 November 2020

Dear Mick

I am writing in response to your letter of 6 November concerning the scrutiny of regulations arising from the UK's exit from the European Union.

I am content with the revised Protocol attached to your letter, which should come into force immediately and cease to have effect at the end of the Fifth Senedd.

This agreement should be kept under review, and any further amendments to the Protocol should be discussed and agreed when necessary.

Best Wishes

MARK DRAKEFORD

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