

SL(5)534 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) and came into force at 12.01 am on 7 April 2020.

Specifically, these Regulations amend regulations 5, 7 and 8 of the principal Regulations, insert new regulations 6A and 7A into the principal Regulations, and make further minor and consequential amendments to them. The new provisions inserted by these Regulations relate to general restrictions on places of work (regulation 6A) and guidance issued by the Welsh Ministers in maintaining a 2 metre gap between persons (regulation 7A).

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”).

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

The purpose of the principal Regulations, which these Regulations amend, is to:

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

The principal Regulations also revoked the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 (“the Business Closure Regulations”) and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (“the Leisure Businesses Regulations”).

Procedure

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

Technical Scrutiny

The following 2 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.



The third paragraph of the preamble of the English text is unclear. The text *“the Welsh Ministers consider that the person desachieve, which is a public response to that threat”* is unclear, and it appears that text may be missing.

The third paragraph of the preamble of the Welsh version is clear and translates as *“the Welsh Ministers consider that the amendments are proportionate with that which they are seeking to achieve, which is a public response to that threat”*.

A Government response is required to clarify the English text.

2. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

These Regulations, like the principal Regulations, are made in exercise of the powers conferred on the Welsh Ministers by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act. Unlike the Business Closure Regulations and the Leisure Businesses Regulations, the Welsh Ministers have not relied on the enabling power contained in section 45C(4)(d) of the 1984 Act. Section 45C(4)(d) of the 1984 Act enables the Welsh Ministers to include in regulations a “special restriction or requirement”. For these purposes, a special restriction or requirement is “a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2)” of the 1984 Act. Those restrictions and requirements include the closure of premises (section 45I(2)(a) of the 1984 Act).

Regulations 2 and 4 of these Regulations respectively amend regulations 5 and 7 of the principal Regulations, which require the closure of holiday accommodation and places of worship, during the emergency period. Regulation 7 of these Regulations also amends various provisions of the principal Regulations concerning the closure of premises. It appears that the Welsh Ministers should rely on the enabling powers under sections 45C(4)(d) of the 1984 Act in order to make regulations 2, 4 and 7 of these Regulations, as it did with the Leisure Businesses Regulations and the Business Closure Regulations.

A Government response is required to explain why the Welsh Government do not consider it necessary to rely on section 45C(4)(d) of the 1984 Act in order to make these Regulations.

Merits Scrutiny

The following 3 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 Assembly.

The Explanatory Memorandum that accompanies these Regulations sets out the Welsh Government’s assessment of the interference with certain articles of the European Convention on Human Rights. The assessment does not appear to be complete:

- It appears that article 9 of the European Convention on Human Rights – freedom of thought, conscience and religion – is engaged in respect of regulations 4 and 6 of these Regulations (which amend regulations 7 and 8 of the principal Regulations). This right is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights in the same manner as with articles 8 and 11 of the European Convention.
- Until the end of the transition period, the European Union Charter of Fundamental Rights will apply in the United Kingdom. There are corresponding protections to those in the European



Convention on Human Rights contained in the EU Charter of Fundamental Rights. Subject to the principle of proportionality, limitations which effect the rights under the Charter may be made if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Although the Explanatory Memorandum does not expressly consider the interference with the rights under article 9 of the European Convention, nor the rights under the EU Charter of Fundamental Rights, the justification given by the Welsh Government in relation to articles 8 and 11 of the European Convention applies equally to the interference with the rights under the article 9 and the EU Charter.

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 Assembly.

In the Explanatory Note, at page 2, at the paragraph beginning with "*Regulation 3 inserts new regulation 6A...*" there is a missing bracket which should be inserted. The fourth line begins with the text "*(when such work is being carried out...*" however a closed bracket should be inserted after the text "*Schedule 1*" (as has been done in the Welsh language text). This is particularly relevant as brackets are used again, later on in the same sentence.

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 Assembly.

Similar provisions to those contained in the principal Regulations are contained in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the English Regulations"). Advice has been provided to Members in respect of the principal Regulations to highlight the material differences between the principal Regulations and the English Regulations. Amendments are not proposed to the English Regulations at this time.

The amendments under these Regulations create a further departure between the approaches adopted in England and Wales and may create inequality for some citizens in Wales, particularly those on the border with England.

A Government response is required to clarify the reasons for differences between the provisions in the principal Regulations that are amended by these Regulations and the English Regulations.

Implications arising from exiting the European Union

None.

Government Response

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

Legal Advisers

Legislation, Justice and Constitution Committee

21 April 2020

