

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

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

Minister's Declaration

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

Vaughan Gething
Minister for Health and Social Services
7 April 2020

1. Description

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

- 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, and;
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the National Assembly for Wales. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the National Assembly for Wales.

European Convention on Human Rights.

Article 8 – right to respect for private and family life; Article 11 - freedom of assembly and association; and Article 1 of the First Protocol – protection of property.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. The necessity of the situation that has given rise to these Regulations is the basis relied upon to justify the interference with these rights as a proportionate means of achieving the legitimate aim of protecting the citizens of Wales

3. Legislative background

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

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

These Regulations amend the principal Regulations to make it clear that all businesses under restrictions can continue to provide services online or by telephone or post, and can open premises at the request of the Welsh Ministers or a local authority.

These Regulations requires the person responsible for work being carried out to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises (unless the persons are members of the same household or are a carer and the person being cared for). This applies to all places of work unless already subject to restrictions under the principal regulations or required to close under those regulations.

The principal Regulations are amended so that the duty to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons in a place of worship, crematorium or community centre which is imposed on the person responsible for those premises does not require the person to take those measures in respect of persons from the same household or carers and persons they are caring for.

A new requirement is inserted into the principal regulations imposing a duty on a person responsible for a cemetery to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons from different households attending a burial at the cemetery.

The Regulations insert a new provision into the principal regulations for any person to whom the duty to take all reasonable steps to ensure the 2 meter distance requirement is maintained to have regard to guidance about that requirement issued by the Welsh Ministers. The Welsh Ministers are under a duty to publish that guidance and may revise it from time to time. The new provision also allows that guidance to incorporate guidance, codes of practice or other documents published by other bodies if the Welsh Ministers choose to do so. The Guidance is available at <https://gov.wales/taking-all-reasonable-measures-maintain-physical-distancing-workplace>

These Regulations amend the principal Regulations so that attending a funeral is to be regarded as a reasonable excuse to leave a home if the person is responsible for arranging the funeral or is invited (but note that there will be limits on the number of persons who may attend a funeral). This replaces the previous list of persons who would be regarded as having a reasonable excuse to leave home to attend a funeral (that is members of the deceased's household or close family, or a friend if no member of the household or family is attending). Note that a carer of a person attending a funeral may still attend with the person they care for.

The Welsh Ministers are required to keep the need for the restrictions under review every 21 days, the first review will take place by 16 April. As soon as the Welsh Ministers consider that the restrictions are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction. Closure of the businesses, therefore, lasts until a direction is given by the Welsh Ministers.

These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 11 March 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK assess the risks to public health stemming from coronavirus to be high. The number of transmissions and admissions to hospital in Wales has been increasing and an urgent response is essential.

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

The restrictions form part of the UK response to coronavirus. Restrictions have also been put in place by regulations made by the Secretary of State in relation to businesses, public spaces and the movement of individuals in England.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

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.