

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) 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) (Wales) (Amendment) (No. 5) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

1 June 2020

1. Description

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

- impose restrictions on the movement of individuals including setting out circumstances in which they may leave and remain away from the place where they live, 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 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 Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

European Convention on Human Rights

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

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) are engaged by the principal Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The

tempered easing of the restrictions made by these amending Regulations, is a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, giving people more opportunity to leave their homes and to meet friends and family, albeit subject to restrictions, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence.

3. Legislative background

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

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

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

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

4. Purpose and intended effect of the legislation

The principal Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The principal Regulations are now being amended, as follows:

- a. People in Wales will no longer be required not to leave or remain away from their home, as this level of restriction is no longer considered necessary or proportionate to reduce the spread of the coronavirus. Instead, the following provisions are made: –
 - i. Individuals may not leave the area local to where they are living or be indoors with any other person, other than a member of their household or their carer, unless they have a reasonable excuse.

- ii. The non-exhaustive list of what constitutes a reasonable excuse has been updated. Activities such as collecting an order that has been made online ('click and collect') which can be undertaken locally no longer need to be set out. The remaining matters reflect those activities which should only be undertaken if they cannot be achieved locally.
- b. Allowing weddings and civil partnership ceremonies to be conducted in places of worship, where one of the parties to the wedding or civil partnership is terminally ill. The prohibition on gatherings to allow attendance at weddings and civil partnerships where one party is terminally ill has also been relaxed, and it is a reasonable excuse to leave the locality to attend them.
- c. Allowing two households to meet outside. It is recognised that detrimental well-being impacts from the restrictions on movement and gatherings, in particular for mental health, can occur. Evidence indicates a lower risk of transmission of the virus outdoors, which can be supported by maintaining the 2m physical distancing requirements. As such the initial restrictions on meeting others outdoors is no longer considered to be a proportionate response. The Government has updated guidance to support maintaining the physical distancing requirements.
- d. Other gatherings outside can continue to occur, if it is essential for work, to attend a burial or funeral, or for limited other purposes (see new regulation 8B).

The amending Regulations also make necessary consequential and savings provisions in light of the changes set out above.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 26 March 2020 and will therefore expire on 26 September 2020.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

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

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these 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. The First Minister announced the proposed changes to be brought in by these amending Regulations during his Press Conference on 29 May, which were subsequently widely reported.

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.