

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (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. 2) (Wales) Regulations 2020.

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

10 July 2020

## **1. Description**

These Regulations revoke the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the original Regulations”) and all the Regulations which have amended the original Regulations.

These Regulations make fresh provision about the restrictions and requirements necessary 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. In particular, the Welsh Ministers consider it important to relax the restrictions originally contained in the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 as soon as it is considered no longer necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions as now set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by 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

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. The continued easing of the restrictions made under the original Regulations by these Regulations, is a proportionate response. 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 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, 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”.

These Regulations make provision in three key areas:

- a) requiring certain business and premises to close;
- b) requiring steps to be taken, by businesses and in premises allowed to open, to minimise the risk of exposure to coronavirus;
- c) restricting gatherings.

The Regulations also provide for the enforcement of these requirements and restrictions.

Although these Regulations revoke the original Regulations they also reinstate (with some easing – see below) requirements for the closure of businesses selling food or drink, holiday accommodation, and other businesses, to protect against the risks to public health arising from coronavirus. They also continue the duty on local

authorities, National Park authorities, National Resources Wales and The National Trust to close footpaths or access land to prevent large numbers of people congregating or being in close proximity to each other, and to publish a list of closures on their websites.

Originally businesses selling food or drink could only open for that purpose if the food and drink was to be consumed off the premises. This remains the case in these Regulations, but in addition businesses may now also sell food for consumption on any part of their premises which is outdoors.

By also changing the list of business which must close, the effect is that hair salons and barbers, and self-contained accommodation may now reopen. Places of worship may also open subject to taking reasonable measures to minimise the risk of exposure to coronavirus for those on the premises. Outdoor cinemas may open (but indoor cinemas must remain closed).

Concerns remain that for certain types of business and/or premises there are increased risks of the virus being transmitted. This is particularly the case where it could be difficult to ensure physical distancing of visitors, premises which have poor ventilation or cramped tight spaces which are difficult to navigate, and/or an underlying environment which is damp and noisy, and those with lots of surface areas that are frequently touched. These business and premises must therefore remain closed for the time being.

Where businesses or premises can open, or where people are working, Part 3 of the Regulations sets out reasonable measures which must be taken to minimise exposure to coronavirus.

These Regulations continue the requirements established in the original Regulations that all reasonable measures must be taken to ensure that a distance of 2 metres is maintained between persons on the premises and where persons are required to wait to enter the premises, that a distance of 2 metres is maintained. Additionally, the Regulations now also require a range of other reasonable measures intended to minimise exposure to the virus, for example measures which limit close face to face interaction and maintain hygiene.

The Welsh Ministers may issue guidance on taking measures to minimise the risk of exposure to coronavirus to which persons responsible for taking reasonable measures under the Regulations must have regard.

Part 4 of the Regulations cover gatherings with other persons – either in a work or social context. As in the original Regulations, an individual must continue to work from home where it is practicable for them to do so. A person must continue to only gather indoors with someone other than a member of their household or their carer, or the person they care for, if they have a reasonable excuse for doing so (examples of which are set out in the Regulations). The same rule applies to gathering outdoors except that gathering with members of one other household is also allowed. These regulations also continue the concept of ‘extended households’ which have been permitted in Wales from 6 July 2020. In effect people in two households may agree to become part of a single household and enjoy the same legal freedoms a

household has – they will be able to meet indoors and have physical contact. Where two households have made that agreement under the original regulations they will be treated as being a single household under these Regulations (meaning that they cannot establish a different extended household). The two households may not necessarily both reside in Wales but in that situation they will be treated as single household as far as these Regulations are concerned and if one of the households sought to form an extended household with a third household outside of Wales that would not be permitted under these Regulations, even if it were to be permitted under the law applicable in the other territory where the third household resided.

These Regulations now also provide that individuals, including members of a household (extended or otherwise) may also gather with other individuals if they are participating in an organised outdoor activity, providing that no more than 30 individuals in total are involved in that activity. The intended effect of this provision is that people may join together outside to take part in an activity, for example sport or perhaps a tour of an outdoor attraction, where there is an organiser of the event who has undertaken appropriate risk assessments and during the activity takes all reasonable measures to minimise the risk of exposure to coronavirus for the participants.

The enforcement regime (including fine levels) established in the original Regulations has been continued in these Regulations. However enforcement officers (previously referred to as ‘relevant persons’) may now issue ‘compliance notices’. Such notices could, for example, set out the types of reasonable measures which a business etc. should adopt in order to minimise the risk of exposure to coronavirus and therefore be compliant with the requirement in Regulation 12.

These Regulations also make necessary savings provisions in light of the revocation of the original Regulations and their subsequent amendments.

These new Regulations expire on 9 January 2021. As the ongoing threat of coronavirus continues, it is considered necessary and proportionate to put these regulations in place for 6 months. In particular this provides workers and the general public with reassurance that premises open to them will be required to continue to take reasonable measures to minimise their risk of exposure to coronavirus.

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 these 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 Regulations. Individuals and businesses were informed about the restrictions in the original 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, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to those original Regulations. The First Minister and other Ministers have signalled through numerous press conferences and statements since 19 June the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed that the changes would be made in his press conference of 10 July.

## **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 equalities impact assessment has been prepared and will be published. In summary, these Regulations should have a positive impact on equality given the closure of many of the sectors under assessment has disproportionately affected disadvantaged groups. Mitigations put in place have also considered the additional risks associated with some groups, such as BAME or vulnerable people, and risk assessments should take these factors into account. Reopening plans should also account for specific needs of different client groups, such as accessibility and availability of facilities.