

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

**Vaughan Gething**  
**Minister for Health and Social Services**  
17 July 2020

## **1. Description**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”) by allowing the re-opening of funfairs, playgrounds and outdoor gyms. They also amend the principal Regulations to make it clear that it is a reasonable excuse for faith communities to gather in places of worship, hence the proposed wider wording. There is no numerical limit on gathering at places of worship but those responsible for places of worship are also required to take reasonable measures to minimise the risk of spread of coronavirus (social distancing, limiting face to face interaction, improved hygiene etc.).

## **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 the principal Regulations as more particularly amended in line with 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.

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 amend the principle Regulations:

- to clarify that it is a reasonable excuse to gather in a place of worship;
- to allow for the re-opening of playgrounds and outdoor gyms; and
- to allow the re-opening of funfairs.

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.

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 lifting of the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations 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, including the need to lift any restrictions which are no longer considered proportionate to that 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 these 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.

<https://gov.wales/21-day-reviews-measures-manage-covid-19-18-june-review-equality-impact-assessment>

<https://gov.wales/assessment-additional-measures-proposed-manage-covid-19-wales-6-july-equality-impact-assessment>

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.