

SL(5)607 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.8) (Caerphilly) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 (“the Principal Regulations”) to introduce restrictions in respect of a ‘local health protection area’ and apply those restrictions to the area of Caerphilly County Borough Council. These amendments:

These Regulations amend the principal regulations to introduce restrictions in respect of a ‘local health protection area’, and apply those restrictions to the area of Caerphilly County Borough Council. The effect of this is to:

- provide that no household within the area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibiting persons living in the area from leaving or remaining away from the area without reasonable excuse;
- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of the area entering the area without reasonable excuse;
- require people present in the area to wear a face covering (subject to certain exemptions and exceptions) if they are in open premises; and
- require the restrictions and requirements introduced by these amendments for the area of Caerphilly Borough Council to be reviewed on or before 24 September, and at least once every seven days thereafter.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.



Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

These Regulations, at regulation 2(6)(b)(iii), refer to regulations 18(6) and 18(6ZA)(a) in the English language version but the Welsh language version only provides reference to the paragraphs within that regulation; '(6) neu (6ZA)(a)'. This regulation amends regulation 20(3)(a) of the principal Regulations. The inconsistency results in the Welsh language version of the amended regulation not being as clear as the English language version.

Merits Scrutiny

The following 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 of public policy likely to be of interest to the Senedd

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The explanatory memorandum states that,

"The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services informed Members of the Senedd, in a written statement issued in the afternoon of 7 September, of the intention to impose the restrictions achieved in the Regulations made today. These proposed changes were subsequently widely reported by the media."

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee notes that these Regulations introduce a tightening of covid-19 related restrictions to the area of Caerphilly County Borough Council. As such, these Regulations fall within the territory of human rights considerations again for individual rights under the Human Rights Act 1998/European Charter of Fundamental Rights and against the necessary 'proportionality' test.

Additionally, the Committee notes the further consideration and explanation by the Welsh Government of human rights in the Explanatory Memorandum and are content to see specifically, the built in review period of the restrictions imposed by these Regulations by the Government in the timescales as set out from the EM below:

"These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion);



Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus in Caerphilly County Borough and is proportionate to that aim. The requirements not to leave or enter the area are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. The requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter."

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is required for the technical report point but is not needed for the two merits points.

Legal Advisers

Legislation, Justice and Constitution Committee

16 September 2020

