

SL(5)649 – The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020

Background and Purpose

These Regulations impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus, following the expiry of the Health Protection (Coronavirus Restrictions) (No 3) (Wales) (Regulations) 2020 which expired on 8 November.

These Regulations come into force on 9 November 2020 and will expire on 19 February 2021 unless they are revoked before then. The Regulations must be reviewed by 19 November, at least once between 20 November and 3 December, at least once between 4 December and 17 December and at least once every 21 days after that.

There are 9 Parts to the Regulations. These Regulations make provision in the following key areas:

- a) prohibiting gatherings in a private dwelling, other than with members of the same household or extended household, without reasonable excuse;
- b) allowing up to two households to agree to form an extended household (this will not be limited to circumstances where one household has only one adult member);
- c) prohibiting gatherings in public places without reasonable excuse, but
 - a. allowing up to four people from any household, or any number of members of the same household, to gather outdoors or in regulated premises;
 - b. allowing for an extended household to gather outdoors;
 - c. allowing gatherings of up to 15 indoors or 30 outdoors to take part in an activity organised by a responsible body;
- d) permitting travel within and across Wales but prohibiting travel out of and into Wales without reasonable excuse;
- e) introducing requirements for people to self-isolate in the event of having tested positive for coronavirus or being notified to do so by a contact tracer;
- f) placing obligations on persons responsible for premises open to the public, or for work being carried out at any premises, to take all reasonable measures to minimise the risk of exposure to, or spread of, coronavirus – including requiring employers to enable or allow employees to self-isolate when the employee is required to do so by a contact tracer;
- g) requiring face coverings to be worn on public transport and in public areas of indoor premises, subject to certain exemptions and exceptions.



In summary:

Part 2 imposes limits on gathering with other people. However, a person may be in a gathering if they have a reasonable excuse, either when it is reasonably necessary and there is no reasonably practicable alternative or in specified circumstances as outlined in the regulations. Within private dwellings (including gardens), people may only gather with members of their household and extended household. An extended household may be formed by all of the adults in a maximum of two households agreeing. Outside of private dwellings, people may gather outdoors in groups of up to four (children under 11 are not counted), or with members of their own household and extended household (regardless of the number). In accommodation in a hotel or other holiday accommodation, people can only gather with members of their own household. In other indoor places, people can gather with either the members of their own household or in groups of up to four (children under 11 are not counted). Part 2 also prohibits organising events mainly held indoors for more than 15 people or outdoors for more than 30 people, subject to exceptions. Certain unlicensed music events are also prohibited.

Part 3 prohibits people from entering or leaving Wales, subject to exceptions. The Regulations provide examples of purposes for which it may be reasonably necessary for a person to enter or leave Wales, and provide specific circumstances in which travelling is permitted. Travel within Wales is allowed.

Part 4 imposes new requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive, and people who have had "close contact" with someone who has tested positive, and who have been notified by a contact tracer are required not to leave the place they are living until the end of the last day of their isolation. The period of isolation is generally 10 days for those who have tested positive and 14 days for those who have had close contact but the start of those periods varies depending on the circumstances (for example; whether the person has reported symptoms or not). Adults with responsibility for a child required to isolate, are required to take all reasonable measures to ensure the child self-isolates. The regulations enable contact tracers to share information insofar as necessary for the operation and enforcement of the self-isolation system.

Part 5 and Schedule 1 relate to business and services whose premises must be closed to the public. Those required to close to members of the public include concert halls, adult entertainment venues, theatres and night clubs. Part 5 also contains provision prohibiting alcohol from being sold, on premises which are licenced to sell it, after 10.00 p.m. and require the premises to be closed by no later than 10.20 p.m.

Part 6 and Schedule 2 include provision imposing requirements on "regulated premises" (premises which is open to the public or where work is carried out) to take reasonable measures for the purpose of minimising risk of exposure to coronavirus, and the spread of



the virus. The Regulations also set out requirements to wear face coverings on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 7 and Schedule 3 relates to the enforcement of the restrictions and requirements, including who can take enforcement action, the issue of compliance notices, powers of removal and dispersal of gatherings, powers to stop events, powers to direct people who breach self-isolation to return home and enforcement of the requirement to wear face coverings. It provides for a power to enter premises, for police to undertake road checks and for the use of reasonable force in certain circumstances.

Part 8 makes provision about offences and penalties. This includes offences in respect of which a fixed penalty notice may be issued as an alternative to bringing court proceedings.

Part 9 makes a consequential amendment and contains defined terms, including the definition of an "organised" activity for the purposes of these Regulations.

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 dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

There are no points identified for reporting under Standing Order 21.2 in respect of this instrument.

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 or public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new national restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. 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 reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 3 November the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported."

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.

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



We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

"While the impact of the firebreak on the reproduction rate of COVID-19 will not be fully known for some weeks, the purpose of making the [No. 3] Regulations was to provide conditions which would see a reduction in the reproduction rate. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government's [Technical Advisory Cell](#) and available on the gov.wales website."

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that restrictions and requirements should be imposed on a pan-Wales basis.

In particular, evidence which showed that areas of Wales with the highest prevalence of Covid-19 should be subject to easing of restrictions and requirements upon the expiry of the No.3 Regulations. The number of cases per 100,000 population for Merthyr Tydfil and Rhondda Cynon Taf were the highest in Wales on 9 November, as published by [Public Health Wales](#).

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required in relation to the fourth merits point only as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

11 November 2020

