



Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

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25 November 2020

Dear Chair

Please accept my apologies for such a delayed response to your letter of 4 September.

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020, which amended the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (at the time, the principal Regulations), stipulated that collecting contact information from people for the purpose of informing those who may have been exposed to coronavirus was a “reasonable measure” that may need to be taken, depending on the circumstances, under regulation 12, of the then principal Regulations.

The committee will be aware that since these regulations were made, new restrictions have come into force. The most recent of are [here](#).

We last updated the Welsh Government’s guidance *Keeping records of staff, customers, and visitors: test, trace, protect* on 26 October. This states:

Regulation 21 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 requires reasonable measures to be taken to minimise the risk of exposure to coronavirus on premises open to the public and on any premises where work takes place, as well as to minimise the spread of coronavirus by those who have been on the premises.

Regulation 21 provides information about what those reasonable measures, depending on the circumstances, may be. It should be read in conjunction with this guidance and with the principal guidance issued by the Welsh Ministers under regulation 24 (of those Regulations).

One reasonable measure is:

Collecting contact information from each person at the premises or and retaining it for 21 days for the purpose of providing it to any of the following, upon their request

(i) the Welsh Ministers,

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

(ii) a contact tracer;

Another reasonable measure is:

(a) taking reasonable measures to ensure that such contact information is correct.

'Contact information', in relation to a person at the premises, means the person's name and information sufficient to enable the person to be contacted, to inform them that they may have been exposed to coronavirus at the premises (including a telephone number and the date and time at which the person was at the premises).

Whether this measure is one that is "reasonable" and is, therefore, one that must be taken depends on the extent to which people who don't know each other may interact on the premises and whether there is a risk of close interaction.

One of the two stated purposes of Regulation 17 is to reduce the risk of any person who has been on someone's premises spreading the virus.

I note the committee's observation that "while it may be reasonable in the large majority of cases for the businesses listed above to collect and retain customer information, we are not convinced that this amounts to a blanket legal obligation on all such businesses. Each case must be decided on its facts to determine what is reasonable, in accordance with the regulations".

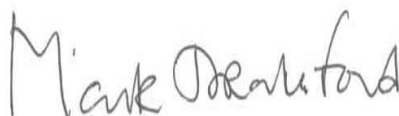
I understand why the committee would suggest this, but our view is that some settings are inherently of higher risk, based on factors such as the extent to which people who don't live together are likely to interact on the premises and the duration and proximity of such contact. For that reason we remain satisfied that the collection of contact details is a necessary control for any such setting. In that context, that the listed settings are settings which have been required to close during the firebreak lockdown and previously, and so requiring the collection of contact details represents a much smaller restriction on these settings' ability to operate than has been in place at other stages of the outbreak.

I also note the committee has previously, in other instances, asked us to provide more precision and certainty as to what it considers to be reasonable under legislation, so I hope that on reflection you will accept that it is more helpful to give this clear message to these types of settings, rather than to require individual settings to make their own assessments.

The latter approach would then require individual enforcement officers to make their own judgements as well, which would risk inconsistent decision making.

Collecting names and information sufficient to enable the person to be contacted, supports Test, Trace, Protect in contact tracing those people that may have been exposed to coronavirus at the premises. If assessed as a contact, the NHS Wales Test, Trace, Protect service will then notify them to self-isolate, which minimises the risks of exposure to others and will interrupt the chain of transmission of coronavirus.

Best wishes



MARK DRAKEFORD