

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (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 and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020.

Mark Drakeford
First Minister

3 December 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the principal Regulations”) and also make technical amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (“the Functions of Local Authorities Regulations”).

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. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

The amendments contained in these Regulations continue to engage under the principal Regulations and the Functions of Local Authorities Regulations 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act.

Regulations made under sections 45B and 45C of the 1984 Act are subject to different Senedd procedure. However, in accordance with section 40 of the Legislation (Wales) Act 2019, these regulations are subject to the made affirmative procedure as set out in sections 45Q and 45R of the 1984 Act.

The Explanatory Memoranda to the principal Regulations and the Functions of Local Authorities Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

These Regulations make amendments to the principal Regulations and the Functions of Local Authorities Regulations as set out below.

Amendments to the principal Regulations

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 put in place restrictions and requirements on a pan-Wales basis following the “firebreak” that operated in Wales between 23 October and 8 November.

These Regulations make amendments to those Regulations to:

- require bars, cafes, canteens, restaurants and pubs to be closed to customers between 6.00 p.m. and 6.00 a.m.;
- prevent any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses;
- require indoor premises of entertainment venues and visitor attractions to close;
- prohibit travel into Wales from, or out of Wales to, areas which are subject to the highest levels of restrictions in England and Scotland, and also Northern Ireland.

The Technical Advisory Cell has noted there is increasing scientific and observational evidence highlighting the association between hospitality settings and disease transmission. There is also a concern about the effect socialising more generally has on the spread of the virus, with going out to hospitality often being the catalyst for other risky (and often illegal) behaviour such as meeting with others in people’s homes before and after going out, not wearing face coverings (including on public transport) and not following social distancing practices. Pubs, bars, restaurants and cafes will be required to close by 6 p.m. and not allowed to serve alcohol for consumption on the premises. After 6 p.m. they would only be allowed to provide takeaway services.

The limited scope for opening is intended not to encourage socialising but one benefit is that it provides an opportunity for people to meet with others to mitigate the detrimental effect on mental health that can arise from loneliness and isolation. This is likely to be of particular importance to people who are not part of an extended household who would otherwise, due to the wider restrictions, not be able to meet indoors with any others.

The hospitality sector has already introduced mitigations to minimise the risk of spreading coronavirus on their premises in line with Welsh Government requirements. These include requirements for customers to order, be served and consume their food and drink when seated only (not at any bar in the premises). These requirements will remain in place.

Hotels and other travel accommodation will be not be able to serve non-residents food after 6 p.m. or to serve alcohol. Residents will however be able to be served food in the dining areas until 10 p.m. Room service will still be available and can include alcohol but will cease at 10 p.m. in line with wider off-sales of alcohol restrictions.

The existing restriction for premises with an off-sales licence for alcohol to cease the sale of alcohol by 10 p.m. is not amended by these Regulations.

As with all indoor activities, there is a higher risk of transmission in entertainment settings such as cinemas, bingo halls, bowling alleys, indoor play centres and areas, casinos, skating rinks, amusement arcades and adult gaming centres, theatres and concert halls. This is due to the potential for a high number of people to be in close proximity to each other, often for long periods of time. In addition, there are often risks posed by shared surfaces.

Due to these heightened risks, from 6 p.m. on Friday 4 December indoor visitor attractions and entertainment venues will be required to close.

Outdoor attractions may remain open. Where a venue has both an indoor and outdoor element, access to the indoor areas of that venue must be prevented.

The principal Regulations are also amended so as to prohibit persons living in Wales from leaving Wales and entering a restricted UK area¹, and persons living in a restricted UK area from entering Wales without reasonable excuse. This is due to the risks posed by people moving between areas where incidence of the disease is high, with a greater likelihood of risks from transmission. Travel within Wales continues to be allowed but is not encouraged.

In addition, these Regulations also make consequential, minor or technical amendments, including revoking spent provisions – for example, the provisions at regulation 18A relating to persons who had arrived in Wales from Denmark applied from 7 November to 21 November only. The Regulations also amend various enforcement provisions (including for example, clarifying that the power of an enforcement officer to enter a private dwelling may only be exercised by a police constable) and provide that it is an offence to fail, without reasonable excuse, to take measures specified in a premises improvement notice issued under Schedule 3 to the principal Regulations.

Amendments to the Functions of Local Authorities Regulations

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 were made on 17 September 2020 and came into force the next day². They include a ‘sunset provision’ within them, such that those Regulations will expire at the end of 8 January 2021. The principal Regulations, to which those Regulations relate, will expire at the end of 19 February 2021. Therefore the first amendment being made in these Regulations is to align expiry dates between the two sets of Regulations, so that both will expire at the end of 19 February 2021.

¹ This is a Tier 3 area in England (see Part 2 of Schedule 4 to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374), a Level 3 or 4 area in Scotland (see Schedule 6 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (S.S.I. 2020/344 as amended) or Northern Ireland

² Revoking the previously made Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

Regulation 6 of the Functions of Local Authorities Regulations gives local authorities the power to issue directions (“events directions”) requiring an event to stop or not be held, or imposing restrictions or requirements on the holding of the event. They can do this only if certain conditions are met and having had regard to whether people will be gathered illegally at the event. Two minor amendments are being made to this regulation –

- to amend regulation 6(2) which currently contains a cross reference to regulations 14 and 14A of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 that should be a reference to regulation 6 of the principal Regulations. (Regulations 14 and 14A of the No. 2 Regulations are regarded as having been re-enacted with modifications as regulation 6 of the No. 4 Regulations). Section 35 of the Legislation (Wales) Act 2019 requires a reference to a revoked provision which has been re-enacted to be read as including a reference to the re-enacted provision. However by updating this cross reference through an amendment, it will make it easier for the reader to understand how the legislation works.
- to require local authorities, in deciding whether to issue an event direction, to also have regard to whether more than 15 people are in attendance (if it is indoors) or 30 people are in attendance (if it is outdoors).

Regulation 46 of the principal Regulations permits local authorities to bring prosecutions under those Regulations themselves, but this is not currently provided for under the Functions of Local Authority Regulations. An amendment is therefore made to regulation 20 to now provide for this, so as to ensure there is consistency in prosecution powers for local authorities.

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.

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 1 December the Welsh Government’s intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment 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 integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.