

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (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) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020.

Mark Drakeford
First Minister

11 December 2020

1. Description

These Regulations requires the proprietor of a school or a Further Education Institution (FEI) to, subject to the exceptions set out in the Regulations, not permit pupils in Years 7 and above from attending the school premises, or students from attending FEI premises, in Wales from 14 December 2020 until the end to the school/FEI term. These restrictions do not apply to the children of critical workers.

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.

These Regulations include a ‘sunset provision’ which means they will expire at the end of 22 December 2020.

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.

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). 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.

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”. Their purpose is, subject to the exceptions set out in the Regulations themselves, to prevent pupils in Year 7 and above from attending school or FEI premises in Wales from 14 December 2020 until the end of Autumn term.

The advice of the Chief Medical Officer for Wales is that action is needed now if we are to mitigate the ongoing transmission of Covid-19 and to prevent NHS capacity in Wales becoming stressed and potentially overwhelmed. These Regulations are intended to prevent direct covid-19 deaths and deaths related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

The latest published evidence¹ on schools and the potential impact they would have on the R rate if they were closed has been set out by Technical Advisory Group (TAG)

As noted in the TAG paper, by SAGE, though the role of children in transmission is limited, opening or closing schools would be expected to have an impact on community transmission (e.g. by changing the activities of a large number of adults):

¹ https://gov.wales/sites/default/files/publications/2020-10/technical-advisory-group-fire-breaks_2.pdf

‘Mass school closure to prevent community transmission: Moderate impact. (moderate confidence) Closing all schools associated with a reduction in Rt of 0.2-~0.5. Closure of secondary schools may be more effective (reduction in R of ~0.35) as link more households, higher numbers of contacts within schools and transmission to/from younger children may be more limited. Overall, low confidence, as unclear how much schools may contribute to community transmission.’

The Government has also published² TAG’s evidence on children and young people under the age of 18, following the ‘firebreak’ at the end of October.

The evidence from surveillance studies indicates a new finding of evidence of higher levels of infection (symptomatic and asymptomatic) and transmission in school based age groups than previously recognised, especially in 11-17 age groups.

Additional evidence in relation to the impact of interventions can be drawn from the TAG report on non-pharmaceutical interventions³.

As a result of this evidence, the Regulations make provision in two key areas:

- a) to restrict certain categories of students from attending secondary school premises
- b) to restrict students from attending FEI premises

They do this by requiring the proprietor of a school or FEI to restrict access to the premises of the school or the FEI. The Regulations do not prevent the proprietor from permitting the attendance at the premises of:

- learners undertaking exams or assessment; and
- vulnerable learners (as determined by the proprietor).

They also permit the proprietor to allow learners to attend the premises of special schools, pupil referral units and SEN units in schools. They also do not prevent a boarder from residing in accommodation at the school premises.

The Regulations also provide for the enforcement of these requirements and restrictions.

It is critical to take all reasonable steps to contain increasing transmission of coronavirus. The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are necessary and proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

² <https://gov.wales/sites/default/files/publications/2020-11/technical-advisory-group-evidence-review-on-children-and-young-people-under-18-in-preschool-school-or-college-following-the-firebreak.pdf>

³ <https://gov.wales/sites/default/files/publications/2020-12/technical-advisory-group-statement-regarding-non-pharmaceutical-interventions-in-the-pre-christmas-period.pdf>

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, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 10th December 2020, supported by a press statement.

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.