

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales 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) (Wales) Regulations 2020.

Vaughan Gething, Minister for Health and Social Services
27 March 2020

1. Description

These Regulations put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people. The Regulations also require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

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 National Assembly for Wales. 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 Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the National Assembly for Wales.

The Regulations revoke the *Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020* and the *Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020*.

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, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

These 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”.

These Regulations place restrictions on the movement of individuals so that they can only leave the place where they live if they have a reasonable excuse. This includes for the purposes of obtaining food, medicine or essential provisions, accessing specified services, exercising once a day, seeking medical assistance, travelling to work if it is not reasonably practicable to undertake this in the place where they live, to donate blood, to attend a funeral of a family member, or for meeting legal obligations.

No public gatherings of more than two people are allowed unless everyone in the gathering is from the same household, or where the gathering is essential for work, responds to an emergency, or enables attendance at a funeral.

The Regulations imposes restrictions and requirement on businesses. They list in Schedule 1 certain businesses which must close, including businesses which sell food and drink for consumption on their premises, provided that if they sell food and drink for consumption off their premises they may continue to do so; certain businesses which must close but which, at the request of the Welsh Ministers or local authorities, may provide certain services, including services for vulnerable people and emergency services on their premises; and certain business which may remain open, but which must take all reasonable measures to ensure that a distance of two metres is kept between individuals on their premises.

Although these Regulations revoke two sets of Health Protection Regulations¹ made in response to the public health threats from coronavirus, they also reinstate the requirements for the closure of businesses selling food or drink for consumption on the premises (as detailed above), holiday sites, camping sites, amusement arcades and indoor play centres, to protect against the risks to public health arising from coronavirus. They also continue the duty on local authorities, National Park authorities, National Resources Wales and The National Trust to close footpaths or access land to prevent large numbers of people congregating or being in close proximity to each other, and to publish a list of closures on their websites.

¹ The Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020

The Regulations make provision for enforcement of these restrictions, including powers to direct people to return to the place they are living or to remove them to that place and to disperse gatherings. Contravention of the requirements in the Regulations is an offence punishable by an (unlimited) fine, the Regulations allow for fixed penalty notices (up to £60, or £120 where the person receiving the fixed penalty notice has previously received a notice under the Regulations) to be issued, as an alternative to criminal proceedings being brought. Provision is also made to allow for a power of entry if a relevant person has reasonable grounds to suspect a requirement imposed by these Regulations is being contravened, where considered necessary, for the purpose of ascertain whether it has been contravened.

In relation to the requirement to close premises and businesses during the emergency period, the Regulations make specific provision relating to holiday sites, hotels and bed and breakfast accommodation and other holiday accommodation (including holiday apartments, hostels and boarding houses), including specific exemptions for limited purposes.

The Welsh Ministers are required to keep the need for the restrictions under review every 21 days, the first review will take place by 15 April. As soon as the Welsh Ministers consider that the restrictions are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction. Closure of the businesses, therefore, lasts until a direction is given by the Welsh Ministers.

These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 11 March 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK assess the risks to public health stemming from coronavirus to be high. The number of transmissions and admissions to hospital in Wales has been increasing and an urgent response is essential.

The Welsh Ministers consider that restrictions and requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

The restrictions form part of the UK response to coronavirus. Restrictions have also been put in place by regulations made by the Secretary of State in relation to businesses, public spaces and the movement of individuals in England.

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. Individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

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.