

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

Mark Drakeford
First Minister

18 September 2020

1. Description

These Regulations provide local authorities across Wales with powers to:

- close, individual premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on the premises;
- prohibit certain events (or types of event) from taking place or impose restrictions or requirements in respect of the holding of, access to, or number of people attending the event;
- restrict access to, or close, public outdoor places (or types of outdoor public places)

by issuing directions to relevant people.

These Regulations revoke and replace the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 (referred to below as the “original Regulations”) made by the Welsh Ministers on 11 September 2020.

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 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 Senedd.

The Regulations revoke and replace the original Regulations due to a failure to properly record (in the instrument itself) the Welsh Ministers’ declaration that those Regulations were urgent, in accordance with section 45R(2) of the 1984 Act. I am grateful to the Committee for raising this matter in their draft Report on the original Regulations of 17 September 2020.

European Convention on Human Rights

The provisions allow local authorities to issue directions which could regulate the use of, or access to, premises or to close them, as well as to stop events from happening, directions may also be issued in order to prevent, or restrict, access to places to which the public have access. These powers would be exercisable, even where those responsible for the premises or events were otherwise complying with the requirements under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, but where other factors meant that the

ongoing opening of premises or places or holding of an event could lead to an increased risk of transmission of the virus.

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.

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. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations will, or may, engage rights under Article 6 (right to a fair trial); Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (peaceful enjoyment of possessions). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim.

Local authorities may only issue directions where necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area and proportionate to that aim. Any direction must be reviewed by the local authority who issued it at least once every seven days whilst it remains in force, and if no longer necessary or proportionate must be revoked. In addition, any such directions may be appealed to a magistrates' court by an interested party.

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

These Regulations provide local authorities with powers to control premises, events and public places in their area in order to help control coronavirus. This includes closing premises and public places and stopping events where necessary.

Part 3 continues a duty that was previously imposed on local authorities, a National Park authority, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Part 4 provides for the enforcement of the restrictions or requirements imposed by the Regulations. Where it is reasonably believed that a person aged 18 or over has committed an offence under these regulations, an authorised person – a local authority designated officer, or a police officer or PCSO (in respect of obstruction of an officer, or failure to comply with a direction or reasonable instruction given by a police officer or with a prohibition notice) – may issue a Fixed Penalty Notice (FPN). In addition, persons designated by a National Park authority or Natural Resources Wales may exercise enforcement functions in relation to the closure by the authority or Natural Resources Wales of a footpath or access land.

When a local authority issues a direction, they are required to notify the Welsh Ministers as soon as possible. This must include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction, the date and time on which the restriction comes into effect, and the date and time on which it will end.

The Welsh Government maintains close contact with local authorities on the operation and enforcement of the coronavirus restrictions, and having checked with them are not aware of any directions being given under the original Regulations since they came into force. In addition the Welsh Ministers have not received any notifications of directions, as required under those Regulations.

These Regulations come into force at the beginning of 18 September 2020.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 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 continue to assess the risks to public health stemming from coronavirus to be high.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. As outlined when the original Regulations were made, throughout the pandemic, the Welsh Government has been in close contact with local authority enforcement officers who have reported these powers are needed where a serious and imminent threat to health exists and existing powers are insufficient. This could, for example, be where a local authority is aware of a planned event at which the numbers of people expected to seek to use a space, or the nature of a particular event, would make it unsafe due to coronavirus transmission.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the regulatory framework in place to respond to the ongoing threat arising from coronavirus. The powers provided by the original Regulations were outlined in a press conference I held on 11 September.

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 as part of the ongoing response to a serious and imminent threat to public health.

An integrated impact assessment is being developed and will be published shortly.