

SL(5)616 – The Health Protection (Coronavirus, Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

Background and Purpose

These Regulations provide local authorities across Wales with powers, by issuing directions to relevant people, 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; and
- restrict access to, or close, public outdoor places (or types of outdoor public places).

These Regulations also continue a duty already 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.

The Regulations revoke and replace the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 (the Original Regulations) due to a failure to properly record (in the instrument itself) the Welsh Ministers' declaration that the Original Regulations were urgent, in accordance with section 45R(2) of the Public Health (Control of Disease) Act 1984 (the 1983 Act).

Procedure

Made affirmative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations came into force before they were laid before the Senedd. We note the notification provided by Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 17 September 2020, which states:

"I have today made the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, which come into force on at the beginning of 18 September 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered."

The letter does not contain an explanation of why these Regulations need to come into force before they are laid, although we acknowledge that this is likely to be in order to urgently correct the position under the Original Regulations and ensure the functions contained in these Regulations are quickly available to local authorities.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Explanatory Memorandum helpfully explains that:

"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."

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Regulation 9 requires a local authority to have regard to any guidance issued by the Welsh Ministers about directions under Part 2. There are a number of provisions which would appear to benefit from further explanation that would be set out in such guidance, for example indication of what constitutes "critical infrastructure" for the purposes of regulation 5(3), "essential goods and public services" for the purposes of regulation 5(5) or a "reasonable excuse" for acting in contravention of a direction.

At the time of writing, the "Enforcement and fines" section of the Coronavirus regulations: frequently asked questions page of the Welsh Government's website refer to the



enforcement and fines regime under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, but not these Regulations. The page states that it was last updated on 14 September 2020.

The guidance in relation to these Regulations does not appear to be published on the Welsh Government website, or at least it is not easily identifiable.

We think that making the guidance available, or more easily accessible, would be a helpful aid for local authorities and members of the public wishing to understand the impact of these Regulations.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations require a local authority to take reasonable steps to give prior notice of a premises direction, event direction or public place direction. That prior notice must be given:

- in relation to a premises direction, to a person carrying on a business from the premises and, if different, any person who owns or occupies the premises;
- in relation to an event direction, to a person involved in the organisation of the event and, if different, any person who owns or occupies the premises at which the event will take place; and
- in relation to a public place direction, to persons carrying on a business from premises within the public place and ensure it is brought to the attention of any person who owns, occupies or is responsible for any premises in the public place.

Regulation 11 requires a local authority to give a direction to:

- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns, occupies or is otherwise responsible for the premises;
- in the case of an event direction, a person involved in organising the event and, if different, a person who owns, occupies or is otherwise responsible for the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and each person who owns, occupies or is otherwise responsible for any premises in the public place.

Regulation 12 provides for an interested person to make an appeal to the Magistrates' Court against a direction or make representations about the direction to the Welsh Ministers. The definition of "interested person" is:

- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns or occupies the premises;



- in the case of an event direction, a person involved in organising the event and, if different, a person who owns or occupies the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and a person who owns, occupies or is responsible for any premises in the public place.

The phrase “is otherwise responsible for the premises” is used in some, but not all, regulations concerning the making of directions. Using that phrase in some regulations appears to suggest that there is a distinction made between persons that own and occupy premises, and those that are responsible for premises. If that is the case, a person responsible for premises, but who is not the owner or occupier of those premises may:

- receive prior notice only in relation to a public place direction;
- be given a premises direction, an event direction or a public place direction; and
- only appeal or make representations in relation to a public place direction.

This appears to suggest a difference in treatment between the types of notice in relation to each of these matters, but it is not clear why this distinction is necessary.

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Committee Consideration

The Committee considered the instrument at its meeting on 28 September 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee agreed to write to the Welsh Government to seek clarification on why it was necessary for the regulations came to come into force before they were laid before the Senedd, which is a requirement of the Statutory Instruments Act 1946.

