

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 11 January 2021	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV

Informal pre-meeting (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest
09.30
- 2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3
09.30–09.35 (Page 1)
CLA(5)–01–21 – Paper 1 – Statutory Instruments with clear reports
Affirmative Resolution Instruments
- 2.1 SL(5)713 – The Land Transaction Tax (Specified Amount of Relevant Rent)
(Wales) (Amendment) Regulations 2021
- 3 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3
09.35–09.45
Negative Resolution Instruments
- 3.1 SL(5)691 – The Digital Health and Care Wales (Establishment and
Membership) Order 2020

(Pages 2 – 23)



CLA(5)-01-21 – Paper 2 – Report

CLA(5)-01-21 – Paper 3 – Regulations

CLA(5)-01-21 – Paper 4 – Explanatory Memorandum

3.2 SL(5)692 – The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

(Pages 24 – 55)

CLA(5)-01-21 – Paper 5 – Report

CLA(5)-01-21 – Paper 6 – Regulations

CLA(5)-01-21 – Paper 7 – Explanatory Memorandum

3.3 SL(5)693 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020

(Pages 56 – 72)

CLA(5)-01-21 – Paper 8 – Report

CLA(5)-01-21 – Paper 9 – Regulations

CLA(5)-01-21 – Paper 10 – Explanatory Memorandum

3.4 SL(5)694 – The Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (Wales) Regulations 2020

(Pages 73 – 86)

CLA(5)-01-21 – Paper 11 – Report

CLA(5)-01-21 – Paper 12 – Regulations

CLA(5)-01-21 – Paper 13 – Explanatory Memorandum

3.5 SL(5)697 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 87 – 106)

CLA(5)-01-21 – Paper 14 – Report

CLA(5)-01-21 – Paper 15 – Regulations

CLA(5)-01-21 – Paper 16 – Explanatory Memorandum

CLA(5)-01-21 – Paper 17 – Letter from the Minister for Finance and Trefnydd, 11 December 2020

3.6 SL(5)705 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020

(Pages 107 – 123)

CLA(5)–01–21 – Paper 18 – Report

CLA(5)–01–21 – Paper 19 – Regulations

CLA(5)–01–21 – Paper 20 – Explanatory Memorandum

CLA(5)–01–21 – Paper 21 – Letter from the Minister for Finance and Trefnydd, 18 December 2020

CLA(5)–01–21 – Paper 22 – Written statement, 17 December 2020
Made Affirmative Resolution Instruments

3.7 SL(5)715 – The Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020

(Pages 124 – 142)

CLA(5)–01–21 – Paper 23 – Report

CLA(5)–01–21 – Paper 24 – Regulations

CLA(5)–01–21 – Paper 25 – Explanatory Memorandum

CLA(5)–01–21 – Paper 26 – Letter from the Minister for Health and Social Services, 23 December 2020

CLA(5)–01–21 – Paper 27 – Written statement, 23 December 2020

3.8 SL(5)706 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

(Pages 143 – 277)

CLA(5)–01–21 – Paper 28 – Report

CLA(5)–01–21 – Paper 29 – Regulations

CLA(5)–01–21 – Paper 30 – Explanatory Memorandum

CLA(5)–01–21 – Paper 31 – Letter from the First Minister, 18 December 2020

CLA(5)–01–21 – Paper 32 – Written statement, 18 December 2020

3.9 SL(5)708 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020

(Pages 278 – 293)

CLA(5)–01–21 – Paper 33 – Report

CLA(5)–01–21 – Paper 34 – Regulations

CLA(5)-01-21 – Paper 35 – Explanatory Memorandum

CLA(5)-01-21 – Paper 36 – Letter from the First Minister, 19 December 2020

CLA(5)-01-21 – Paper 37 – Written statement, 19 December 2020

3.10 SL(5)711 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 294 – 306)

CLA(5)-01-21 – Paper 38 – Report

CLA(5)-01-21 – Paper 39 – Regulations

CLA(5)-01-21 – Paper 40 – Explanatory Memorandum

CLA(5)-01-21 – Paper 41 – Letter from the First Minister, 21 December 2020

CLA(5)-01-21 – Paper 42 – Written statement, 22 December 2020

3.11 SL(5)709 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 307 – 330)

CLA(5)-01-21 – Paper 43 – Report

CLA(5)-01-21 – Paper 44 – Regulations

CLA(5)-01-21 – Paper 45 – Explanatory Memorandum

CLA(5)-01-21 – Paper 46 – Letter from the Minister for Finance and Trefnydd, 21 December 2020

3.12 SL(5)710 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

(Pages 331 – 350)

CLA(5)-01-21 – Paper 47 – Report

CLA(5)-01-21 – Paper 48 – Regulations

CLA(5)-01-21 – Paper 49 – Explanatory Memorandum

CLA(5)-01-21 – Paper 50 – Letter from the Minister for Finance and Trefnydd, 21 December 2020

4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

09.45-09.50

- 4.1 SL(5)689 – The Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020**
(Pages 351 – 363)
- CLA(5)–01–21 – Paper 51 – Report
CLA(5)–01–21 – Paper 52 – Regulations
CLA(5)–01–21 – Paper 53 – Explanatory Memorandum
- 5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**
09.50–09.55
- 5.1 SL(5)685 – The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020**
(Pages 364 – 368)
- CLA(5)–01–21 – Paper 54 – Report
CLA(5)–01–21 – Paper 55 – Welsh Government response
- 5.2 SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**
(Pages 369 – 373)
- CLA(5)–01–21 – Paper 56 – Report
CLA(5)–01–21 – Paper 57 – Welsh Government response
- 5.3 SL(5)699 – The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020**
(Pages 374 – 380)
- CLA(5)–01–21 – Paper 58 – Report
CLA(5)–01–21 – Paper 59 – Welsh Government response
- 6 Standing Order 30B Report: The European Union (Withdrawal) Act and Common Frameworks**
09.55–10.00 (Pages 381 – 399)
- CLA(5)–01–21 – Paper 60 – Written statement
CLA(5)–01–21 – Paper 61 – Report

7 Written Statements under Standing Order 30C

10.00–10.05

7.1 WS–30C(5)209 – The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

(Pages 400 – 403)

CLA(5)–01–21 – Paper 62 – Written statement

CLA(5)–01–21 – Paper 63 – Commentary

7.2 WS–30C(5)210 – The Plant Health (Amendment) (EU Exit) Regulations 2020

(Pages 404 – 407)

CLA(5)–01–21 – Paper 64 – Written statement

CLA(5)–01–21 – Paper 65 – Commentary

8 Written Statements under the Protocol between the Welsh Government and the Committee

10.05–10.10

8.1 PS(5)001 – The World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

(Pages 408 – 410)

CLA(5)–01–21 – Paper 66 – Written statement

9 Papers to note

10.10–10.20

9.1 Letter from the Chair of the Northern Ireland Assembly Committee for Economy: Shared Prosperity Fund

(Pages 411 – 412)

CLA(5)–01–21 – Paper 67 – Letter from the Chair of the Northern Ireland
Assembly Committee for Economy, 14 December 2020

9.2 Letter from the Minister for Environment, Energy and Rural Affairs: UK Fisheries Bill

(Pages 413 – 415)

CLA(5)–01–21 – Paper 68 – Letter from the Minister for Environment, Energy
and Rural Affairs, 16 December 2020

- 9.3 Letter from the Deputy Minister and Chief Whip: Domestic Abuse Bill**
(Pages 416 – 417)
CLA(5)–01–21 – Paper 69 – Letter from the Deputy Minister and Chief Whip,
16 December 2020
- 9.4 Correspondence from the Law Commission: Consultation paper on devolved
Tribunals in Wales**
(Pages 418 – 420)
CLA(5)–01–21 – Paper 70 – Correspondence from the Law Commission, 17
December 2020
CLA(5)–01–21 – Paper 71 – Written statement, 17 December 2020
- 9.5 Statement by the UK Government: Update on the UK Internal Market Bill**
(Pages 421 – 422)
CLA(5)–01–21 – Paper 72 – Statement by the UK Government, 17 December
2020
- 9.6 Letter from the Minister for Environment, Energy and Rural Affairs: British–
Irish Council Environment work sector Ministerial meeting**
(Pages 423 – 424)
CLA(5)–01–21 – Paper 73 – Letter from the Minister for Environment, Energy
and Rural Affairs, 18 December 2020
- 9.7 Letter from the Minister for Environment, Energy and Rural Affairs: UK
Agriculture Bill**
(Pages 425 – 427)
CLA(5)–01–21 – Paper 74 – Letter from the Minister for Environment, Energy
and Rural Affairs, 22 December 2020
- 9.8 Letter from the National Residential Landlords Association to the Minister for
Finance and Trefnydd: Changes to Land Transaction Tax Higher Rate**
(Pages 428 – 429)
CLA(5)–01–21 – Paper 75 – Letter from the National Residential Landlords
Association to the Minister for Finance and Trefnydd, 5 January 2021
- 9.9 Correspondence from the Minister for Health and Social Services: Legislative
Consent Memorandum on the Medicines and Medical Devices Bill**
(Pages 430 – 433)

CLA(5)-01-21 – Paper 76 – Letter from the Minister for Health and Social Services, 5 January 2021

CLA(5)-01-21 – Paper 77 – Letter from the Minister for Health and Social Services to the Chair of the Health, Social Care and Sport Committee, 5 January 2021

9.10 Letter from the Counsel General: Joint Ministerial Committee (EU Negotiations)

(Page 434)

CLA(5)-01-21 – Paper 78 – Letter from the Counsel General, 6 January 2020

9.11 Letter from the Counsel General: Ministerial Forum for Trade

(Page 435)

CLA(5)-01-21 – Paper 79 – Letter from the Counsel General, 7 January 2020

10 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting and from Item 1 of the meeting on 18 January 2021

10.20

11 Proposed Order in Council: The Government of Wales Act 2006 (Amendment) Order 2021 – consideration of draft report

10.20–10.40

(Pages 436 – 447)

CLA(5)-01-21 – Paper 80 – Draft report

12 Supplementary Legislative Consent Memorandum on the Environment Bill – consideration of key issues

10.40–11.00

(Pages 448 – 455)

[Supplementary Legislative Consent Memorandum](#)

CLA(5)-01-21 – Paper 81 – Legal advice note

CLA(5)-01-21 – Paper 82 – Letter to the Minister for Environment, Energy and Rural Affairs, 23 December 2020

13 Scrutiny of regulations made under the EU (Withdrawal) Act 2018 – update

11.00–11.05

(Pages 456 – 457)

CLA(5)–01–21 – Paper 83 – Letter from the Minister for Finance and
Trefnydd, 23 December 2020

14 Common Frameworks – update

11.05–11.15

(Pages 458 – 495)

CLA(5)–01–21 – Paper 84 – Outline agreement summary for the Food
Compositional Standards and Labelling Framework

CLA(5)–01–21 – Paper 85 – Letter from the Minister for Housing and Local
Government to the Chair of the Climate Change, Environment and Rural
Affairs Committee, 18 December 2020

CLA(5)–01–21 – Paper 86 – Letter from the Minister for Finance and
Trefnydd to the Chair of the Economy, Infrastructure and Skills Committee,
21 December 2020

CLA(5)–01–21 – Paper 87 – Letter from the Minister for Economy, Transport
and North Wales to the Chair of the Economy, Infrastructure and Skills
Committee, 22 December 2020

Date of the next meeting – 18 January 2021

Statutory Instruments with Clear Reports 11 January 2021

SL(5)713 – The Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) (Amendment) Regulations 2021

Procedure: Affirmative

These Regulations amend the Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) Regulations 2018, which specify the amount of relevant rent under paragraph 36(1)(b) of Schedule 6 to the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017.

The purpose of these Regulations is to amend the amount of 'relevant rent' that will be used to trigger the anti-avoidance rule in paragraph 34. This anti-avoidance rule is designed to limit the opportunities for taxpayers to benefit from two zero rate bands when being granted a lease.

Regulation 4 of these Regulations amends the amount of relevant rent specified from £9,000 to £13,500 from the date that these Regulations come into force, in line with the threshold increases provided in the Land Transaction Tax (Tax Rates and Tax Bands) (Wales) (Amendment) Regulations 2020. For transactions with an effective date occurring prior to the coming into force of these Regulations, the previous amount of £9,000 will continue to apply.

Parent Act: Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017

Date Made:

Date Laid: 22 December 2020

Coming into force date:



Agenda Item 3.1

SL(5)691 – The Digital Health and Care Wales (Establishment and Membership) Order 2020

Background and Purpose

This Order is made under section 22 of the National Health Service (Wales) Act 2006, which permits the Welsh Ministers to create Special Health Authorities.

The Order provides for the establishment of Digital Health and Care Wales ('DHCW') and makes provision about its constitution and overarching functions. Further detail regarding how DHCW will operate is contained in regulations which will come into force at the same time as the Order on 30 December 2020. A separate report has been prepared in relation to those regulations.

The Order makes provision for the establishment of DHCW and provides for the membership of the new body. It also confirms that DHCW is to exercise functions as directed by the Welsh Ministers in connection with the matters set out within the Order, including in relation to the design, development and delivery of digital platforms, services and systems for the Health and Care Sector in Wales. The Welsh Ministers also have the power to direct DHCW as to the exercise of any functions.

DHCW will be a new organisation within NHS Wales, sitting alongside the current seven Health Boards, three NHS Trusts and a single Special Health Authority (Health Education Improvement Wales); with the overarching responsibility for providing a source for digital platforms, services and systems for the health and care sector in Wales.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

One point is 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.

Can the Welsh Government confirm why the Explanatory Memorandum and Regulatory Impact Assessment have only been laid in English?



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.

Legal Advisers

Legislation, Justice and Constitution Committee

4 January 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1451 (W. 313)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Establishment and Membership)
Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 22 of the National Health Service (Wales) Act 2006 (“the Act”). It establishes a new Special Health Authority, Digital Health and Care Wales (“DHCW”), and makes provision about its functions and membership.

Article 3 sets out the nature of DHCW’s functions which are to be specified more particularly in directions given by the Welsh Ministers under section 24 of the Act. DHCW’s functions will relate to the provision of digital platforms, systems and services and supporting the improvement of such systems and any such other functions as the Welsh Ministers may direct so as to secure the provision or promotion of services under the Act.

Article 4 sets out DHCW’s membership and article 5 provides that the Public Bodies (Admission to Meetings) Act 1960 applies to DHCW’s meetings.

This Order makes no provision relating to the transfer of officers, property or liabilities.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1451 (W. 313)

**NATIONAL HEALTH
SERVICE, WALES**

The Digital Health and Care Wales
(Establishment and Membership)
Order 2020

Made 7 December 2020

Laid before Senedd Cymru 9 December 2020

Coming into force 30 December 2020

The Welsh Ministers make the following Order in exercise of the powers conferred by section 22(1), (2), (4)(a) and (c) of the National Health Service (Wales) Act 2006⁽¹⁾.

Title, commencement and interpretation

1.—(1) The title of this Order is the Digital Health and Care Wales (Establishment and Membership) Order 2020.

(2) This Order comes into force on 30 December 2020.

(3) In this Order—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“clinical officer” (“*swyddog clinigol*”) means an officer who is a registered healthcare professional; registered medical practitioner; registered nurse; registered pharmacist; dental practitioner; or optometrist;

“DHCW” (“*IGDC*”) means Digital Health and Care Wales;

(1) 2006 c. 42. (“the 2006 Act”).

“dental practitioner” (*ymarferydd deintyddol*) means a person registered under the Dentists Act 1984(1);

“digital platforms, systems and services” (*plafformau, systemau a gwasanaethau digidol*) means hardware, software and other arrangements for the digital collection, storage, processing, analysis, use and dissemination of health service data;

“health service data” (*data gwasanaethau iechyd*) means data processed for or in connection with the provision or promotion of services under the Act;

“optometrist” (*optometrydd*) means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989(2);

“registered healthcare professional” (*proffesiynolyn gofal iechyd cofrestredig*) means a person registered on the register maintained by the Health and Care Professions Council in accordance with article 5 of the Health and Social Work Professions Order 2001(3);

“registered medical practitioner” (*ymarferydd meddygol cofrestredig*) means a fully registered person within the meaning of the Medical Act 1983(4) who holds a licence to practice under that Act;

“registered nurse” (*nyrs gofrestrdig*) means a nurse, midwife or nursing associate registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001(5) by virtue of a qualification which is an approved qualification for the purposes of registration in the relevant part of the register;

“registered pharmacist” (*fferyllydd cofrestredig*) means a person registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010(6).

Establishment of DHCW

2. There is established a Special Health Authority known as Digital Health and Care Wales or Iechyd a Gofal Digidol Cymru.

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- (1) 1984 c. 24.
(2) 1989 c. 44.
(3) S.I. 2002/254 amended by S.I. 2009/1182.
(4) 1983 c. 54.
(5) S.I. 2002/253.
(6) S.I. 2010/231.

Functions of DHCW

3. DHCW is to exercise such functions as the Welsh Ministers may direct⁽¹⁾ in connection with—

- (a) the provision, design, management, development and delivery of digital platforms, systems and services;
- (b) the collection, analysis, use and dissemination of health service data;
- (c) the provision of advice and guidance to the Welsh Ministers about improving digital platforms, systems and services;
- (d) supporting bodies and persons identified in directions given by the Welsh Ministers to DHCW in relation to matters relevant to digital platforms, systems and services;
- (e) any other matter so as to secure the provision or promotion of services under the Act.

Membership of DHCW

4.—(1) The membership of DHCW consists of—

- (a) a chair;
- (b) a vice-chair;
- (c) not more than 5 members who are not officers of DHCW in addition to the chair and vice-chair;
- (d) not more than 5 members who are officers of DHCW which must include:
 - (i) a chief officer;
 - (ii) a finance officer;
 - (iii) a clinical officer;
- (e) not more than 3 associate members who are not eligible to vote in any proceedings of DHCW and who are not included for the purposes of the calculation in paragraph (2).

(2) The number of members who are officers of DHCW must not exceed the number of members who are not such officers.

(3) The members of DHCW referenced at article 4(1)(a),(b) and (c) are to be known as the non-officer members.

(4) The members of DHCW referenced at article 4(1)(d) are to be known as the officer members.

(5) The members of DHCW referenced at article 4(1)(e) are to be known as the associate members.

(1) See section 24 of the 2006 Act.

Public meetings

5. The Public Bodies (Admission to Meetings) Act 1960(1) is to apply to DHCW.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

7 December 2020

(1) 1960 c. 67; *see* paragraph 1(g) of the Schedule to the Public Bodies (Admission to Meetings) Act 1960, which was inserted by paragraph 91 of Schedule 1 to the Health Authorities Act 1995 (c. 17).

Explanatory Memorandum to

The Digital Health and Care Wales (Establishment and Membership) Order 2020

And

The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 **Digital Health and Care Wales (Establishment and Membership) Order 2020** and **The Digital Health and Care Wales (Membership and Procedure) Regulations 2020**.

I am satisfied that the benefits justify the likely costs.

Vaughan Gething

Minister for Health and Social Services

9 December 2020

1. Description

1.1 The Legislation summarised below will establish a new Special Health Authority called Digital health and Care Wales.

a. The Digital Health and Care Wales (Establishment and Membership) Order 2020 ('the Order')

1.2 The order provides for the establishment of Digital Health and Care Wales ('DHCW') and makes provision about its constitution and overarching functions.

b. The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

1.3 The Regulations supplement the Order and make detailed provision about the membership and procedures of DHCW. They provide for the appointment, eligibility and disqualification of members and DHCW's meetings, proceedings and committees.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The two statutory instruments being brought forward to establish DHCW are being made together, are inextricably linked, and would be difficult to understand if read in isolation. It is therefore considered beneficial to bring forward a single composite Explanatory Memorandum and Regulatory Impact Assessment.

3. Legislative background

3.1 The Welsh Ministers have powers in section 22 of the National Health Service (Wales) Act 2006 ('the 2006 Act') to establish a Special Health Authority for the purpose of exercising any functions which may be conferred on them by or under the 2006 Act. The power is exercisable by order. Under section 24 of the 2006 Act the Welsh Ministers may direct a Special Health Authority to exercise functions of the Welsh Ministers relating to the health service. The Welsh Ministers may also, under section 23, give directions to a Special Health Authority about its exercise of any functions, save in respect the matters which are specifically reserved in section 23(2)¹.

3.2 Under powers conferred by Schedule 5 to the 2006 Act, the Welsh Ministers have the power to make regulations in respect of the members and officers of a Special Health Authority. They may also make provision in relation to matters such as the appointment and tenure of members,

¹ Section 23(2) provides that the Welsh Ministers may not give directions in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics, which are not relevant here.

the appointment of committees, the procedures of the Authority and other matters.

4. Purpose & intended effect of the legislation

Background

- 4.1 The NHS Wales Informatics Service ('NWIS') is the organisation leading on the delivery of national digital health and care services for NHS Wales. Established on 1 April 2010 (as part of the NHS Wales Healthcare Reform Programme) it brought together:
- Informing Healthcare (IHC),
 - Health Solutions Wales (HSW),
 - Business Services Centre (Information Management and Technology element only),
 - Corporate Health Information Programme (CHIP), and the
 - Primary Care Informatics Programme (PCIP).
- 4.2 NWIS is a non-statutory organisation, hosted under the statutory framework of Velindre NHS Trust. It has its own Directors and Corporate Structure, with staff located across Wales.

Purpose

- 4.3 In 2019, Welsh Government commissioned two major reviews of digital delivery in Wales looking at how digital systems are designed to work together ('the Digital Architecture Review') and at delivery structures and decision-making arrangements ('the Digital Governance Review'). These two reviews provide the context to our approach and delivery.
- 4.4 Given the sensitivity of the recommendations raised by the 'Digital Governance Review', officials developed options based on the general engagement undertaken by both reviews, including the stakeholder task and finish groups, on consideration of existing governance and hosting models across NHS Wales (which provide several examples of different approaches), and discussions with the Minister.
- 4.5 In a written statement on 30 September 2019, the Minister for Health and Social Services announced:

"The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an

independent chair and board members, with experience and understanding of digital change.”

- 4.6 Bringing into force the legislation listed above is the first step towards achieving the commitment made by the Minister. The legislation will establish DHCW, make provision as to its membership to enable it to undertake the work necessary in advance of the body becoming operational later in 2021.

Intended effect of the legislation

The Digital Health and Care Wales (Establishment and Membership) Order 2020

- 4.7 The Order makes provision for the establishment of DHCW and provides for the membership of the new body. It also confirms that DHCW is to exercise functions as directed by the Welsh Ministers in connection with the matters set out within the Order, including in relation to the design, development and delivery of digital platforms, services and systems for the Health and Care Sector in Wales. The Welsh Ministers also have the power to direct DHCW as to the exercise of any functions.
- 4.8 DHCW will be a new organisation within NHS Wales, sitting alongside the current seven Health Boards, three NHS Trusts and a single Special Health Authority (Health Education Improvement Wales – HEIW); with the overarching responsibility for providing a source for Digital platforms, services and systems for the Health and Care Sector in Wales.

The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

- 4.9 The Board will comprise of a minimum of six members and may be comprised of up to fifteen members in total, split between independent, officer members and ex-officio (associate) members. The number of officer members may not exceed the number of non-officer members. There will be at least three officer members, which will include within that number a Chief Officer.
- 4.10 The Membership Regulations will set out procedural matters and detail in relation to the various members, including their appointment, eligibility, tenure, disqualification, suspension and removal from office. In addition, the Regulations require DHCW to make standing orders regarding its meetings and proceedings. They also set out requirements in relation to the appointment of and exercise of functions by committees and provide powers to the vice-chair in the event of the Chair being unavailable, so that DHCW may continue to operate effectively. Lastly, the Regulations also set out duties in relation to reporting.

- 4.11 In relation to the Chief Officer, the Welsh Ministers will make the first appointment, with subsequent appointments being made by the independent (non-officer) members. Specific provision is also made in the Regulations as to how the other members are to be appointed.
- 4.12 The Order and Membership Regulations provide the legal framework for the establishment of Digital Health and Care Wales.

5. Consultation and Regulatory Impact Assessment (RIA)

- 5.1 Between 7 September 2020 and 30 November 2020, Welsh Government sought views from stakeholders on the proposed functions of a new Special Health Authority called Digital Health and Care Wales (DHCW).
- 5.2 The consultation described why Welsh Government are proposing the change; the proposed functions currently being undertaken by NHS Wales Informatics Service (NWIS) that will be taken forward by DHCW; and how these functions can facilitate the evolution of digital maturity across the health and care sector in Wales.
- 5.3 The consultation requested views on the following areas and stakeholders were asked to submit their comments via an online form, email or post.
- The proposed functions of DHCW.
 - The proposed board structure for DHCW.
 - Whether one or more of the proposed functions of DHCW overlaps with a function already being undertaken by a different organisation in Wales (that is not NWIS).
 - Additional functions that should be included within the responsibility of DHCW.
 - Any impacts the proposed functions may have on the Welsh language.

6. General overview of the consultation responses.

- 6.1 There were a total of seventy seven responses to the consultation. Some of the written responses reflected the consolidated views of organisations within NHS Wales.
- 6.2 In general, responses tended to elicit comments from respondents which were broadly supportive of the proposals. The open nature of the consultation form meant many provided additional information, added caveats or raised issues for further consideration. These were varied and, in many cases, were specific to the respondent and/or the organisation that they represented.
- 6.3 Some cross-cutting issues included the need to integrate any changes in the context of the current policy landscape and with regard to existing

structures, as well as to learn from and use the experience of existing bodies and programmes and the need to share best practice.

- 6.4 The consultation focussed on the proposed functions of DHCW, however, some respondents highlighted operational concerns for the new organisation which do not directly correlate to the functions Welsh Government propose to confer on DHCW. Where this is the case these concerns will be highlighted for consideration by the DHCW board once appointed.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

- 7.1 The Welsh Government considered a number of options in response to the recommendations made in the ‘the Digital Architecture Review’ and ‘the Digital Governance Review’. These options were:
1. Do Nothing
 2. No change of structure, but add a ‘joint committee’ governance wrapper around NWIS in Velindre
 3. Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive
 4. Transition NWIS to a new standalone Special Health Authority
- 7.2 An assessment was made of the extent to which each of these options delivers the recommendations made in the two commissioned reports.

Option 1 – Do Nothing

- 7.3 This option would not address any of the recommendations from the Wales Audit Office (WAO) and Public Accounts Committee (PAC) reports or the Governance Review. Pursuing this option would further undermine confidence and engagement across NHS Wales and could have a detrimental impact on the reputation of Welsh Ministers and the ability to deliver/develop national digital systems and services.
- 7.4 This option was therefore rejected but is retained in the RIA to act as the baseline against which to assess the costs and benefits of the alternative options.

Option 2 – No change of structure, but add a ‘joint committee’ governance wrapper around NWIS in Velindre

- 7.5 While this option would address some of the recommendations from the WAO and PAC reports around governance and accountability and would move towards a ‘shared services’ model as described in the governance review, it was felt this option would maintain the currently ambiguous hosting arrangements, lack financial accountability and would be seen as a largely ‘cosmetic’ change. For these reasons, this option was rejected.

Option 3 – Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive

- 7.6 This option would go further than options 1 and 2 in addressing the recommendations by the WAO and PAC, showing ‘significant’ change. However, this approach stops short of addressing the key governance changes required. There would however be some disruption in transitioning from Velindre to a different organisation with different processes and requirements, even within the wider NHS Wales system.

Given the scale of NWIS there could also be an impact on the receiving organisation which could distract senior leadership from their existing priorities and focus. As a result, this option was rejected.

Option 4: Transition NWIS to a new standalone Special Health Authority

- 7.7 This option was felt to address the WAO and PAC recommendations to their fullest extent, and to maximise the direct and transparent accountability of NWIS as a national digital service. As such, this option was identified as the preferred option.
- 7.8 In September 2019, the Minister for Health and Social Services announced his intention to transition the NHS Wales Information Service (NWIS) into a Special Health Authority.
- 7.9 In light of the above, the following options have been taken forward for further consideration in the RIA:
- Option 1 – Do Nothing
 - Option 4 - Transition NWIS to a new standalone Special Health Authority

8. Costs

Option 1 – Do Nothing

Costs

- 8.1 This is the baseline option and as such, there are no additional costs associated with this option.

Benefits

- 8.2 Given that current systems would continue, there would be no benefits to this option in terms of value for money against the investment made into this area of the system. However, there would be a benefit in that no additional establishment or transitional costs would be required. There would be no policy benefit in relation to digital services across the NHS in Wales. There could however, be an unquantifiable potential benefit for the staff involved, in that they would continue within their current roles, organisations and locations.

Option 4 - Transition NWIS to a new standalone Special Health Authority

Costs

- 8.3 This option is likely to require more resources than options 1, 2 and 3, although the task is relatively straightforward (compared for example to establishing HEIW) because NWIS is an established organisation with existing people, premises, processes and policies.

8.4 There would also be costs associated with transitioning NWIS into a 'clean' SHA and establishing a new Board. The costs for Board membership may decrease if less time is required per month.

8.5 The costs to "Transition NWIS to a new standalone Special Health Authority" will mainly be incurred in the 2020-21 financial year. However, some costs may flow into 2021-22 to support programme closure activity.

Resource	Description	Cost
Programme Team	Costs for Programme Team <i>Staff costs incurred by Welsh Government to deliver the programme.</i>	£160,000
Legal	Costs for Legal Advice and Legislative Drafting <i>Legal costs incurred by Welsh Government to provide legal advice and drafting of legislation.</i>	£20,000
Communications and Engagement	Costs for Communications and Engagement Activities <i>Wider communication and engagement activities to support the programme.</i>	£10,000
People	Non-Officer Member costs. <i>Remuneration and associated costs for a Chair, Vice Chair and Five independent members.</i>	£126,500
Other Costs	Other Ad hoc programme costs (such as Gateway Reviews etc.).	£20,000
Transition Costs	See Appendix B for details	£717,800
	Total	£1,054,300

Benefits

8.6 There are some short-term benefits linked to the governance and transparency of establishing the new SHA, which are set out below:

- a. An independent organisation allows a dedicated chair and board exclusively focussed on digital delivery, and would help to emphasise the importance of digital services alongside other key enablers such as education.
- b. By establishing a Special Health Authority, it will help improve the transparency, reporting and accountability of digital services within NHS Wales through a formalised governance framework.

- c. This would move the national digital service in Wales to a similar status as other parts of the UK (for example England's NHS Digital is constituted as an arms-length public body), and would be seen as a 'significant' change.
- 8.7 The full benefits of the Programme will be realised in the long term and will continue over a sustained period. Benefits that relate to the functions of the new organisation will be captured Regulatory Impact Assessment that accompanies the associated legislation leading up to 1 April 2021.
- 8.8 Longer term benefits the new organisation will provide across the system in Wales will be identified and addressed by the Board of the new organisation as part of their business and IMTP plans.

9. Summary

- 9.1 Option 4 provides opportunities for a clean break, which allows addressing the recommendations of the Wales Audit Office and Public Accounts Committee to the fullest, without negatively affecting the digital services provided to professionals and patients.
- 9.2 Aligning the Special Health Authority to a new formalised governance framework will not just improve transparency, reporting and accountability of digital services within NWIS Wales but will also provide much needed confidence across the system that the changes undertaken are substantial in nature and not just cosmetic.

10. Consultation

Wales Audit Office Review - Informatics Systems in NHS Wales – 10 January 2018

- 10.1 Work to develop policy in this area started in 2018 when the Wales Audit Officer (now Audit Wales) commissioned a review into Informatics Systems in NHS Wales. Whilst compiling their report, the WAO interviewed a range of people including Welsh Government officials, NWIS Staff and a range of officers from Health Boards and Trusts.

The Parliamentary Review of Health and Social Care in Wales – January 2018

- 10.2 The Parliamentary Review of Health and Social Care in Wales was undertaken in January 2018. In formulating their views, the Parliamentary Review heard from a wide range of people including members of the public, service users, staff in health and social care, and the third sector, and considered evidence about national and international models of care.

Public Accounts Committee Report – November 2018

- 10.3 Based on the recommendations set out in the Wales Audit Officer and Parliamentary Review, the Public Accounts Committee agreed to undertake an inquiry into informatics systems in NHS Wales, covering a wide range of issues. The Committee received extensive written and oral evidence as part of their inquiry. There have been a number of Public Accounts Committee Evidence Sessions to date and the transcripts of all oral evidence sessions and written evidence received are openly available².

The NHS Wales Digital Architecture Review

- 10.4 Welsh Government and NHS Wales engaged Channel 3 Consulting to undertake a review of the NHS Wales Digital Architecture, recognising the ambition for digital transformation across Wales at pace.
- 10.5 The focus of this review was to assess the extent to which the current Digital Architecture of NHS Wales is ready to meet the ambition set out in “A Healthier Wales”, and whether it is scalable to support digital transformation across Welsh health and social care.
- 10.6 The review involved technical reviews with NWIS and workshops and interviews with over one hundred key stakeholders from NWIS, all Health Boards, and the universities, augmented by three “deep dives” at Aneurin Bevan and Cwm Taf Health Boards, and Public Health Wales Trust.

The NHS Wales Digital Governance Review

- 10.7 The review had a whole system scope, covering local and national services, all NHS services, and the Welsh Community Care Information System (WCCIS) and undertaken by independent consultants, who engaged very widely with all stakeholders across Wales, including NHS Wales Informatics Service (NWIS) and Velindre NHS Trust.
- 10.8 The Review engaged widely with stakeholders on an open and collaborative basis. The findings and recommendations from the Review have been widely shared with NHS Wales Stakeholders through an engagement programme.
- 10.9 The Digital Governance Review found that there was widespread support for change across NHS Wales.

The Ministerial Written Statement – 30 September 2019

² <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=20803>

- 10.10 In his written statement, the Minister for Health and Social Services set out actions in response to the two reviews, which has been widely reported announcing that:

“The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an independent chair and board members, with experience and understanding of digital change.”

- 10.11 The Minister for Health and Social Services also agreed there should be a new set of arrangements for Wales in regards to delivering informatics and Digital transformation. This will help underpin key commitments published by Welsh Government such as *A Healthier Wales* and *Informed Health and Care Strategy*. Officials therefore consider there is a mandate for this change

External Consultation

- 10.12 Welsh Government published a consultation on the functions of the Digital Special Health Authority for Wales on 7 September 2020 and ran for twelve weeks, closing on 30 November 2020.

- 10.13 The high level functions subject to consultation were as follows:

- Application Development and Support
- Digital Services design, commissioning, planning & delivery
- Information and Communications Technology
- Quality Management & Regulatory Compliance
- Information Management
- Information Governance
- Cyber Security
- Finance and Business Assurance
- Reporting Services
- Workforce Improvement

- 10.14 Overall, the consultation responses welcomed the establishment of DHCW and were very supportive of the proposals.

11. Competition Assessment

- 11.1 The competition assessment has been completed and is included at Appendix A.

12. Post implementation review

- 12.1 The RIA sets out the anticipated potential costs of this legislation, in addition to the benefits and opportunities and realising these benefits is how success will be measured.
- 12.2 It is anticipated that a review will take place within five years of the full implementation of this legislation; with a further review at the ten year point, whereby the longer term benefits will have had the opportunity to be realised.
- 12.3 The key factors in measuring whether those benefits have been realised are as follows:
- A reduction in vacancies across the digital workforce across NHS Wales.
 - A reduction in skills gaps across digital professions.
 - Improved satisfaction ratings from patients and health care professionals through the national survey.
 - Improved staff survey results in relation to digital platforms, systems and services.
 - Improved value for investment, measured by an increase in outputs and/or service provision for similar investment against that made under the current system.
 - A reduction in consultancy and contractor spend on digital activity across the NHS in Wales.

APPENDIX A –The Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

APPENDIX B – Detailed Transitional Costs

Transition Costs		
Resource	Description	Option 4
Communications and Engagement	Covering the branding and messaging for Digital Health and Care Wales as well as launch events and ancillary marketing activities.	£54,000
Statutory Financial Services Readiness	Ensuring the appropriate financial controls, processes and reporting procedures are in place and tested prior to 1 April 2021 go-live date. This includes key staff costs as well as supplier costs associated with the building of the organisation's Financial ledger and purchase of capital asset register for the new organisation.	£247,700
Workforce and Organisational Development Readiness	Supplier costs relating to the setting up of new ESR and expenses systems for the organisation in readiness for the go-live date.	£57,400
Governance Readiness	Supporting the ongoing development of the Board and Governance processes for Digital Health and Care Wales, this includes consultancy costs as well as staffing costs for the transition project manager, Board Secretary and Chair and Independent Members (following their appointment by Welsh Government).	£312,200
Legal Preparation	Legal advice to support the commercial activities relating to the transition such as the novation of contracts from Velindre to the SHA, Employment Law advice relating to the TUPE transfer and the setting up of employment licences and general legal advice relating to the creation of the Statutory Instruments to establish the SHA	£46,500
Total:		£717,800

Agenda Item 3.2

SL(5)692 – The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

Background and Purpose

The Digital Health and Care Wales (Establishment and Membership) Order 2020 (“the Order”) establishes Digital Health and Care Wales (“DHCW”) and makes provision about its constitution and overarching functions.

These Regulations supplement the Order and make detailed provision about the membership and procedures of DHCW. They set out procedural matters and detail in relation to the various members, including their appointment, eligibility, tenure, disqualification, suspension and removal from office. In addition, these Regulations require DHCW to make standing orders regarding its meetings and proceedings.

Together, the Order and these Regulations provide the legal framework for the establishment of DHCW.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 14(2) provides that, in certain circumstances, the non-officer members may remove an associate member (appointed in accordance with regulation 3(6)(b)) from office.

Unlike regulations 11(2) and 13(2) - which expressly provide that written notice must be given *to the member* - it is not immediately apparent from the wording of regulation 14(2) what the non-officer members must do with the written notice in order to comply with the provision.

When considered alongside the wording of regulation 14(3), it could be inferred that written notice under regulation 14(2) must be given to the member (as that is what is required in order to suspend a member under 14(3)). However, this is not expressed clearly in the wording of regulation 14(2) and we believe that the ambiguity would be avoided if the wording “to the member” was included in the relevant place.



2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The beginning of regulation 14(5) reads “A person whose appointment is suspended under paragraph (1)”. It appears that the reference to paragraph (1) is incorrect, as the relevant power to suspend is contained in paragraph (3) of regulation 14, not paragraph (1).

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.

Regulation 2 in the English language version of these Regulations defines “the 1992 Act”, “the Act” and “the Order” first and then continues to list definitions in alphabetical order. Can the Welsh Government confirm why the same approach has not been adopted in the Welsh language version of these Regulations, where the entire list of definitions is in alphabetical order?

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.

Can the Welsh Government confirm why the Explanatory Memorandum and Regulatory Impact Assessment have only been laid in English?

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.

Footnote (5) on page 4 of these Regulations refers to the National Health Service Reform (Scotland) Act 2004 *[emphasis added]*, but “2004” has been omitted from the reference.

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the complete reference were used.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 December 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1469 (W. 315)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Membership and Procedure)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the membership and procedure of Digital Health and Care Wales (“DHCW”). DHCW is a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 by the Digital Health and Care Wales (Establishment and Membership) Order 2020.

In particular, Part 2 of these Regulations provides the procedure for the appointment of the office of the chair, vice-chair, the chief officer and other members of DHCW (regulations 3, 4 and 5). Part 3 makes provision regarding the term of office of those appointments (regulations 6, 7 and 8). Part 4 makes provision in relation to eligibility and disqualification of members (regulations 9 and 10) and suspension and removal from office of members (regulations 11, 12, 13 and 14).

Part 5 makes provision relating to the procedures of DHCW, including the powers of a vice-chair in the chair’s absence (regulation 15) and the appointment of, and exercise of functions by, committees, sub-committees, joint committees and joint sub-committees (regulations 16 and 17). Provision is also made in relation to the conduct of meetings and proceedings (regulation 18). Part 6 makes provision requiring DHCW to prepare and keep accounts and to prepare and furnish reports to the Welsh Ministers (regulations 19 and 20).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to

the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1469 (W. 315)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Membership and Procedure)
Regulations 2020**

Made 7 December 2020

Laid before Senedd Cymru 9 December 2020

Coming into force 30 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 25(1)(b), 25(2) and 203(9) and (10) of, and paragraphs 3(3) and (4), 5 and 13 of Schedule 5 to, the National Health Service (Wales) Act 2006⁽¹⁾ and after consultation in accordance with paragraph 4(1) of Schedule 5 to that Act.

PART 1

General

Title and commencement

1.—(1) The title of these Regulations is the Digital Health and Care Wales (Membership and Procedure) Regulations 2020.

(2) These Regulations come into force on 30 December 2020.

Interpretation

2. In these Regulations—

(1) 2006 c. 42.

“the 1992 Act” (“*Deddf 1992*”) means the Trade Union and Labour Relations (Consolidation) Act 1992(1);

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“the Order” (“*y Gorchymyn*”) means the Digital Health and Care Wales (Establishment and Membership) Order 2020(2);

“associate member” (“*aelod cyswllt*”) has the meaning given in article 4(5) of the Order;

“clinical officer” (“*swyddog clinigol*”) has the meaning given in article 1(3) of the Order;

“DHCW” (“*IGDC*”) means Digital Health and Care Wales established by the Order;

“health service body” (“*corff gwasanaeth iechyd*”) means—

- (a) a clinical commissioning group established under section 14D of the National Health Service Act 2006(3),
- (b) the Common Services Agency for Scottish Health Services constituted under section 10(1) of the National Health Service (Scotland) Act 1978(4),
- (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(5),
- (d) the Health and Social Care Information Centre established under section 252 of the Health and Social Care Act 2012(6),
- (e) the Health Research Authority established under section 109 of the Care Act 2014(7),
- (f) a Local Health Board,
- (g) the National Health Service Commissioning Board established under section 1H of the National Health Service Act 2006,

(1) 1992 c. 52.
 (2) S.I. 2020/1451 (W. 313)
 (3) 2006 c. 41, section 14D inserted by s. 25(1) of the Health and Social Care Act 2012 c. 7.
 (4) 1978 c. 29 (“the 1978 Act”), s. 10(1) amended by s. 25(3), Schedule 6 paragraph 2 of the Health Services Act 1980 c. 53.
 (5) Relevant amendments were made to section 2 of the 1978 Act by the Health and Social Services and Social Security Adjudications Act 1983 c. 41, Schedule 7 paragraph 1; Smoking, Health and Social Care (Scotland) Act 2005 asp 13, Schedule 2, paragraph 2(2); National Health Service and Community Care Act 1990 c. 19, s. 28(a)(i) and (ii), s. 28(b), s. 28(c), s. 66(1) and Schedule 9 paragraph 19(1); National Health Service Reform (Scotland) Act asp 7, Schedule 1 paragraph 1(2)(a) and (b).
 (6) 2012 c. 7.
 (7) 2014 c. 23.

- (h) an NHS foundation trust established under section 30 of the National Health Service Act 2006,
- (i) an NHS trust established under section 18 of the Act or established under section 25 of the National Health Service Act 2006,
- (j) the National Institute for Health and Care Excellence established under section 232 of the Health and Social Care Act 2012,
- (k) the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽¹⁾,
- (l) a Special Health Authority established under section 22 of the Act;

“non-officer member” (“*aelod nad yw’n swyddog*”) has the meaning given in article 4(3) of the Order;

“officer member” (“*aelod sy’n swyddog*”) has the meaning given in article 4(4) of the Order;

“recognised” (“*cydnabod*”), in relation to a trade union, has the meaning given by the 1992 Act;

“trade union” (“*undeb llafur*”) has the meaning given by the 1992 Act.

PART 2

Appointment of members of DHCW

Appointment of members

3.—(1) The members of DHCW are appointed as follows—

- (a) the chair, vice-chair and up to 5 other non-officer members are appointed by the Welsh Ministers;
- (b) the chief officer is appointed in accordance with paragraph (3);
- (c) the officer members are appointed in accordance with paragraph (4);
- (d) the associate members are appointed in accordance with paragraph (6).

(2) The non-officer members must not be employees of DHCW.

(3) The chief officer is appointed by the non-officer members, apart from the first chief officer who is appointed by the Welsh Ministers.

(4) The officer members are appointed as follows:

(1) 2009 c. 1.

- (a) the first finance officer and first clinical officer are appointed by the non-officer members;
 - (b) all other officer members are appointed by the non-officer members and the chief officer.
- (5) The officer members are to be employees of DHCW.
- (6) The associate members are appointed as follows:
- (a) the Welsh Ministers, or DHCW acting with the consent of the Welsh Ministers, may appoint up to 2 associate members, and
 - (b) where one or more trade unions are recognised by DHCW, 1 associate member may be appointed in accordance with regulation 4.

Appointment of the trade union associate member

4.—(1) Where one or more trade unions are recognised by DHCW, the non-officer members must invite each of the trade unions recognised by DHCW to nominate an eligible candidate for appointment as an associate member.

(2) The invitation must specify the period within and manner in which a nomination is to be made.

(3) The non-officer members must appoint a person from among the eligible candidates, if any are nominated, as an associate member.

(4) A person is an eligible candidate for nomination under paragraph (1) only if the person is—

- (a) a member of DHCW's staff,
- (b) a member of a trade union recognised by DHCW, and
- (c) nominated within the period specified under paragraph (2).

Non-officer members

5. The Welsh Ministers must ensure that the arrangements for the appointment of persons as non-officer members take into account the code published by the Minister for the Cabinet Office which sets out—

- (a) the principles for public appointments, and
- (b) the guidance on the practices to be followed in relation to making public appointments.

PART 3

Terms of office

Non-officer members

6.—(1) A non-officer member holds office for such period, and on such terms and conditions, as may be specified by the Welsh Ministers in the terms of appointment, but this is subject to paragraphs (2), (3), (4) and Part 4.

(2) The period of office specified in a non-officer member's terms of appointment may not exceed 4 years.

(3) A person who has held office as a non-officer member may be eligible for reappointment as a non-officer member but a person must not be a non-officer member for a total period of more than 8 years.

(4) A non-officer member may resign from office by giving written notice to the Welsh Ministers.

Officer members

7. An officer member holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment.

Associate members

8.—(1) Subject to Part 4, an associate member appointed in accordance with regulation 3(6)(a) holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment.

(2) Where an associate member is appointed by DHCW in accordance with regulation 3(6)(a), the terms and conditions of appointment must be approved by the Welsh Ministers.

(3) A person who has held office as an associate member appointed in accordance with regulation 3(6)(a) may be reappointed as an associate member subject to any provision to the contrary in the terms of their appointment.

(4) An associate member appointed in accordance with regulation 3(6)(b) holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment, but this is subject to paragraph (5).

(5) The period of office specified in the terms of appointment of an associate member appointed in accordance with regulation 3(6)(b) may not exceed 4 years.

(6) A person who has held office as an associate member appointed in accordance with regulation 3(6)(b) may be eligible for reappointment.

PART 4

Eligibility, disqualification, suspension and removal

Non-officer members – eligibility

9.—(1) A person is not eligible to be a non-officer member if that person is, or has been within the 12 months prior to appointment, in the paid employment of—

- (a) a Local Health Board,
- (b) an NHS trust established under section 18 of the Act, or
- (c) a Special Health Authority in relation to Wales established by the Welsh Ministers under section 22 of the Act.

(2) For the purposes of paragraph (1), a person is not to be treated as having been in paid employment by reason of having held the position of chair, vice-chair or non-officer member of a Local Health Board; a chair, vice-chair or non-executive director of an NHS trust; or a chair, vice-chair or non-officer member of a Special Health Authority.

(3) A person ceases to be eligible to be a non-officer member if following that person's appointment as a non-officer member they take up paid employment with any of the bodies listed in paragraph (1) other than in the circumstances specified in paragraph 9(2).

Non-officer members and associate members appointed by the Welsh Ministers or by DHCW acting with the Welsh Ministers' consent – disqualification

10.—(1) This regulation applies to any person appointed as—

- (a) a non-officer member;
- (b) an associate member by the Welsh Ministers or by DHCW in accordance with regulation 3(6)(a).

(2) A person is disqualified from being appointed, or from continuing to hold office as a member, where that person falls within one or more paragraphs of the Schedule.

(3) If a person has been appointed as a member and becomes disqualified under this regulation, the person must notify DHCW and the Welsh Ministers in writing of the disqualification.

Non-officer members and associate members appointed by the Welsh Ministers or by DHCW acting with the Welsh Ministers' consent – removal from office

11.—(1) This regulation applies to any person appointed as—

- (a) a non-officer member;
- (b) an associate member by the Welsh Ministers or by DHCW in accordance with regulation 3(6)(a).

(2) The Welsh Ministers, or DHCW if it has made the appointment, may by written notice to the member remove that person from office if satisfied—

- (a) that it is not in the interests of DHCW or of the health service for that person to continue to hold office,
- (b) that the person is unfit to be a member of DHCW or is unwilling or unable to exercise the functions of a member of DHCW,
- (c) that person ceases to be eligible to be a non-officer member under regulation 9(3), or
- (d) that the person is disqualified under regulation 10 from holding office or was disqualified at the time of their appointment.

Non-officer members and associate members appointed by the Welsh Ministers or by DHCW with the Welsh Ministers' consent – suspension from office

12.—(1) The Welsh Ministers, or DHCW if it has made the appointment, may suspend a person from office while considering whether to remove that person from office under regulation 11.

(2) The Welsh Ministers, or DHCW if it has made the appointment, must give notice of the decision to suspend a person in accordance with the terms of appointment.

(3) A person whose appointment is suspended under paragraph (1) may not perform the functions of any member during the period of suspension.

Officer member – removal and suspension from office

13.—(1) This regulation applies to any person appointed as an officer member.

(2) The non-officer members may by written notice to the member remove that person from office if satisfied that it is not in the interests of DHCW or of the health service for that person to continue to hold office.

(3) The non-officer members may by written notice to the member suspend that person from office if it appears to them that there may be grounds to exercise the power in paragraph (2).

(4) A person whose appointment is suspended under paragraph (3) may not perform the functions of any member during the period of suspension.

Trade union associate member – removal and suspension from office

14.—(1) This regulation applies to an associate member appointed by the non-officer members in accordance with regulation 3(6)(b).

(2) The non-officer members may by written notice remove that person from office if satisfied that the person is unfit to be a member of DHCW or is unwilling or unable to exercise the functions of a member of DHCW.

(3) The non-officer members may by written notice to the person suspend that person from office if it appears to the non-officer members that there may be grounds to exercise the power in paragraph (2).

(4) An associate member ceases to hold office if the member ceases to be an eligible candidate for appointment as an associate member under regulation 4(4).

(5) A person whose appointment is suspended under paragraph (1) may not perform the functions of any member during the period of suspension.

PART 5

Procedure

Powers of vice-chair in chair's absence

15.—(1) This regulation applies if—

- (a) the chair is suspended under regulation 12,
- (b) the office of chair is temporarily vacant for any reason, or
- (c) the chair is unable or unwilling to perform the duties of chair owing to illness, absence or any other cause.

(2) Where this regulation applies the vice-chair is to act as chair until a new chair is appointed or the existing chair resumes the chair's duties.

Appointment of committees and sub-committees

16.—(1) Subject to any directions given by the Welsh Ministers, DHCW may—

- (a) establish committees and sub-committees;

- (b) together with one or more Special Health Authorities, establish joint committees or joint sub-committees;

consisting wholly or partly of persons who are not members of DHCW.

(2) DHCW must establish any such committees, sub-committees, joint committees and joint sub-committees referred to in paragraph (1) if directed to do so by the Welsh Ministers.

Arrangements for the exercise of functions

17.—(1) Subject to any directions given by the Welsh Ministers, DHCW may make arrangements for the exercise of any of its functions by a committee, sub-committee, joint committee or joint sub-committee appointed under regulation 16, or by an officer of DHCW, subject to such restrictions and conditions as DHCW thinks fit.

(2) An arrangement under paragraph (1) does not affect DHCW's responsibility for or its ability to exercise a delegated function.

Meetings and proceedings

18.—(1) Subject to any directions given by the Welsh Ministers, DHCW must make standing orders for the regulation of its proceedings and business.

(2) Where a committee, sub-committee, joint committee or joint sub-committee has been established in accordance with regulation 16, subject to any directions given by the Welsh Ministers, DHCW must approve any standing orders that may be made by that committee, sub-committee, joint committee or joint sub-committee.

PART 6

Accounts and Reports

Reports

19.—(1) For each financial year DHCW must—

- (a) prepare an annual report on how it has discharged its functions during that year, and
- (b) send a copy of that report to the Welsh Ministers as soon as possible after the end of that financial year.

(2) DHCW must—

- (a) make such other reports to the Welsh Ministers in such manner and at such time as the Welsh Ministers direct, and

- (b) provide the Welsh Ministers with such information as the Welsh Ministers from time to time request.

Accounts

20. For each financial year DHCW must—

- (a) prepare accounts and keep records in relation to those accounts, and
- (b) prepare a statement of accounts;

in accordance with any directions given by the Welsh Ministers.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

7 December 2020

SCHEDULE Regulation 10

DISQUALIFICATION

Criminal convictions

1.—(1) The person has within the period of 5 years immediately preceding the date of the proposed appointment been convicted, or at any time during their term of office is convicted—

- (a) in the United Kingdom of any criminal offence, or
- (b) outside the United Kingdom of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part;

and, in either case, the final outcome of the proceedings was a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of paying a fine.

(2) For the purposes of this paragraph, the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted.

Bankruptcy

2.—(1) The person is subject to a bankruptcy restrictions order, an interim bankruptcy restrictions order or has a composition or an arrangement with creditors.

(2) Where a person is disqualified under subparagraph (1)—

- (a) if the bankruptcy is annulled on the ground that the person ought not to have been adjudged bankrupt or on the ground that the person's debts have been paid in full, that person becomes eligible for appointment as a member on the date of the annulment,
- (b) if the person is discharged from bankruptcy, that person becomes eligible for appointment as a member on the date of the discharge,
- (c) if, having made a composition or arrangement with creditors, the person's debts are paid in full, that person becomes eligible for appointment as a member on the date upon which such debts are paid in full, and

- (d) if, having made a composition or arrangement with creditors, a period of 5 years has expired from the date on which the terms of the composition or arrangement were fulfilled, that person becomes eligible for appointment as a member.

Dismissal from health service body

3.—(1) The person has been dismissed as a member, otherwise than by reason of redundancy, or non-renewal of a fixed term contract, from paid employment with a health service body.

(2) A person who is disqualified under sub-paragraph (1) may, after the expiry of 2 years from the date of dismissal, apply in writing to the Welsh Ministers to have that disqualification removed.

(3) Where the Welsh Ministers have directed that a disqualification is to be removed under sub-paragraph (2), the person is no longer disqualified for the purpose of this Schedule.

(4) If the Welsh Ministers refuse a person's application under sub-paragraph (2), no further application may be made by the person before the expiry of the period of 2 years beginning with the date of the person's last application.

(5) For the purpose of this paragraph, a person is not to be treated as having been in paid employment by reason only of having been—

- (a) in the case of a health service body which is not an NHS trust or an NHS foundation trust (other than a clinical commissioning group), the chair, vice-chair or a non-officer member of the body,
- (b) in the case of an NHS trust, the chair, vice-chair or a non-executive director of the trust,
- (c) in the case of an NHS foundation trust, the chair, a governor or a non-executive director of the trust, or
- (d) in the case of a clinical commissioning group, the chair or a member of the governing body.

(6) In sub-paragraph (5)(a), “non-officer member” means a member of a health service body who is not employed by the body.

Termination of membership of health service body

4.—(1) The person has—

- (a) had his or her membership as chair, vice-chair, member or director of a health service body terminated, other than by reason of redundancy, voluntary resignation, reorganisation of the health service body, or

expiry of the period of office for which that person was appointed, or

- (b) been removed from office as the chair or a member of the governing body of a clinical commissioning group.

(2) If a person is disqualified under sub-paragraph (1) the disqualification ceases to have effect on the expiry of 2 years beginning on the date of the termination of the term of appointment or such longer period as may have been specified by the body that terminated the person's membership.

(3) The Welsh Ministers may reduce the period of disqualification mentioned in sub-paragraph (2) on the application of the disqualified person.

(4) When the period of disqualification under sub-paragraph (2) comes to an end, the person is no longer disqualified for the purpose of this Schedule.

Explanatory Memorandum to

The Digital Health and Care Wales (Establishment and Membership) Order 2020

And

The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 **Digital Health and Care Wales (Establishment and Membership) Order 2020** and **The Digital Health and Care Wales (Membership and Procedure) Regulations 2020**.

I am satisfied that the benefits justify the likely costs.

Vaughan Gething

Minister for Health and Social Services

9 December 2020

1. Description

1.1 The Legislation summarised below will establish a new Special Health Authority called Digital health and Care Wales.

a. The Digital Health and Care Wales (Establishment and Membership) Order 2020 ('the Order')

1.2 The order provides for the establishment of Digital Health and Care Wales ('DHCW') and makes provision about its constitution and overarching functions.

b. The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

1.3 The Regulations supplement the Order and make detailed provision about the membership and procedures of DHCW. They provide for the appointment, eligibility and disqualification of members and DHCW's meetings, proceedings and committees.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The two statutory instruments being brought forward to establish DHCW are being made together, are inextricably linked, and would be difficult to understand if read in isolation. It is therefore considered beneficial to bring forward a single composite Explanatory Memorandum and Regulatory Impact Assessment.

3. Legislative background

3.1 The Welsh Ministers have powers in section 22 of the National Health Service (Wales) Act 2006 ('the 2006 Act') to establish a Special Health Authority for the purpose of exercising any functions which may be conferred on them by or under the 2006 Act. The power is exercisable by order. Under section 24 of the 2006 Act the Welsh Ministers may direct a Special Health Authority to exercise functions of the Welsh Ministers relating to the health service. The Welsh Ministers may also, under section 23, give directions to a Special Health Authority about its exercise of any functions, save in respect the matters which are specifically reserved in section 23(2)¹.

3.2 Under powers conferred by Schedule 5 to the 2006 Act, the Welsh Ministers have the power to make regulations in respect of the members and officers of a Special Health Authority. They may also make provision in relation to matters such as the appointment and tenure of members,

¹ Section 23(2) provides that the Welsh Ministers may not give directions in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics, which are not relevant here.

the appointment of committees, the procedures of the Authority and other matters.

4. Purpose & intended effect of the legislation

Background

- 4.1 The NHS Wales Informatics Service ('NWIS') is the organisation leading on the delivery of national digital health and care services for NHS Wales. Established on 1 April 2010 (as part of the NHS Wales Healthcare Reform Programme) it brought together:
- Informing Healthcare (IHC),
 - Health Solutions Wales (HSW),
 - Business Services Centre (Information Management and Technology element only),
 - Corporate Health Information Programme (CHIP), and the
 - Primary Care Informatics Programme (PCIP).
- 4.2 NWIS is a non-statutory organisation, hosted under the statutory framework of Velindre NHS Trust. It has its own Directors and Corporate Structure, with staff located across Wales.

Purpose

- 4.3 In 2019, Welsh Government commissioned two major reviews of digital delivery in Wales looking at how digital systems are designed to work together ('the Digital Architecture Review') and at delivery structures and decision-making arrangements ('the Digital Governance Review'). These two reviews provide the context to our approach and delivery.
- 4.4 Given the sensitivity of the recommendations raised by the 'Digital Governance Review', officials developed options based on the general engagement undertaken by both reviews, including the stakeholder task and finish groups, on consideration of existing governance and hosting models across NHS Wales (which provide several examples of different approaches), and discussions with the Minister.
- 4.5 In a written statement on 30 September 2019, the Minister for Health and Social Services announced:

"The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an

independent chair and board members, with experience and understanding of digital change.”

- 4.6 Bringing into force the legislation listed above is the first step towards achieving the commitment made by the Minister. The legislation will establish DHCW, make provision as to its membership to enable it to undertake the work necessary in advance of the body becoming operational later in 2021.

Intended effect of the legislation

The Digital Health and Care Wales (Establishment and Membership) Order 2020

- 4.7 The Order makes provision for the establishment of DHCW and provides for the membership of the new body. It also confirms that DHCW is to exercise functions as directed by the Welsh Ministers in connection with the matters set out within the Order, including in relation to the design, development and delivery of digital platforms, services and systems for the Health and Care Sector in Wales. The Welsh Ministers also have the power to direct DHCW as to the exercise of any functions.
- 4.8 DHCW will be a new organisation within NHS Wales, sitting alongside the current seven Health Boards, three NHS Trusts and a single Special Health Authority (Health Education Improvement Wales – HEIW); with the overarching responsibility for providing a source for Digital platforms, services and systems for the Health and Care Sector in Wales.

The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

- 4.9 The Board will comprise of a minimum of six members and may be comprised of up to fifteen members in total, split between independent, officer members and ex-officio (associate) members. The number of officer members may not exceed the number of non-officer members. There will be at least three officer members, which will include within that number a Chief Officer.
- 4.10 The Membership Regulations will set out procedural matters and detail in relation to the various members, including their appointment, eligibility, tenure, disqualification, suspension and removal from office. In addition, the Regulations require DHCW to make standing orders regarding its meetings and proceedings. They also set out requirements in relation to the appointment of and exercise of functions by committees and provide powers to the vice-chair in the event of the Chair being unavailable, so that DHCW may continue to operate effectively. Lastly, the Regulations also set out duties in relation to reporting.

- 4.11 In relation to the Chief Officer, the Welsh Ministers will make the first appointment, with subsequent appointments being made by the independent (non-officer) members. Specific provision is also made in the Regulations as to how the other members are to be appointed.
- 4.12 The Order and Membership Regulations provide the legal framework for the establishment of Digital Health and Care Wales.

5. Consultation and Regulatory Impact Assessment (RIA)

- 5.1 Between 7 September 2020 and 30 November 2020, Welsh Government sought views from stakeholders on the proposed functions of a new Special Health Authority called Digital Health and Care Wales (DHCW).
- 5.2 The consultation described why Welsh Government are proposing the change; the proposed functions currently being undertaken by NHS Wales Informatics Service (NWIS) that will be taken forward by DHCW; and how these functions can facilitate the evolution of digital maturity across the health and care sector in Wales.
- 5.3 The consultation requested views on the following areas and stakeholders were asked to submit their comments via an online form, email or post.
- The proposed functions of DHCW.
 - The proposed board structure for DHCW.
 - Whether one or more of the proposed functions of DHCW overlaps with a function already being undertaken by a different organisation in Wales (that is not NWIS).
 - Additional functions that should be included within the responsibility of DHCW.
 - Any impacts the proposed functions may have on the Welsh language.

6. General overview of the consultation responses.

- 6.1 There were a total of seventy seven responses to the consultation. Some of the written responses reflected the consolidated views of organisations within NHS Wales.
- 6.2 In general, responses tended to elicit comments from respondents which were broadly supportive of the proposals. The open nature of the consultation form meant many provided additional information, added caveats or raised issues for further consideration. These were varied and, in many cases, were specific to the respondent and/or the organisation that they represented.
- 6.3 Some cross-cutting issues included the need to integrate any changes in the context of the current policy landscape and with regard to existing

structures, as well as to learn from and use the experience of existing bodies and programmes and the need to share best practice.

- 6.4 The consultation focussed on the proposed functions of DHCW, however, some respondents highlighted operational concerns for the new organisation which do not directly correlate to the functions Welsh Government propose to confer on DHCW. Where this is the case these concerns will be highlighted for consideration by the DHCW board once appointed.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

- 7.1 The Welsh Government considered a number of options in response to the recommendations made in the ‘the Digital Architecture Review’ and ‘the Digital Governance Review’. These options were:
1. Do Nothing
 2. No change of structure, but add a ‘joint committee’ governance wrapper around NWIS in Velindre
 3. Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive
 4. Transition NWIS to a new standalone Special Health Authority
- 7.2 An assessment was made of the extent to which each of these options delivers the recommendations made in the two commissioned reports.

Option 1 – Do Nothing

- 7.3 This option would not address any of the recommendations from the Wales Audit Office (WAO) and Public Accounts Committee (PAC) reports or the Governance Review. Pursuing this option would further undermine confidence and engagement across NHS Wales and could have a detrimental impact on the reputation of Welsh Ministers and the ability to deliver/develop national digital systems and services.
- 7.4 This option was therefore rejected but is retained in the RIA to act as the baseline against which to assess the costs and benefits of the alternative options.

Option 2 – No change of structure, but add a ‘joint committee’ governance wrapper around NWIS in Velindre

- 7.5 While this option would address some of the recommendations from the WAO and PAC reports around governance and accountability and would move towards a ‘shared services’ model as described in the governance review, it was felt this option would maintain the currently ambiguous hosting arrangements, lack financial accountability and would be seen as a largely ‘cosmetic’ change. For these reasons, this option was rejected.

Option 3 – Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive

- 7.6 This option would go further than options 1 and 2 in addressing the recommendations by the WAO and PAC, showing ‘significant’ change. However, this approach stops short of addressing the key governance changes required. There would however be some disruption in transitioning from Velindre to a different organisation with different processes and requirements, even within the wider NHS Wales system.

Given the scale of NWIS there could also be an impact on the receiving organisation which could distract senior leadership from their existing priorities and focus. As a result, this option was rejected.

Option 4: Transition NWIS to a new standalone Special Health Authority

- 7.7 This option was felt to address the WAO and PAC recommendations to their fullest extent, and to maximise the direct and transparent accountability of NWIS as a national digital service. As such, this option was identified as the preferred option.
- 7.8 In September 2019, the Minister for Health and Social Services announced his intention to transition the NHS Wales Information Service (NWIS) into a Special Health Authority.
- 7.9 In light of the above, the following options have been taken forward for further consideration in the RIA:
- Option 1 – Do Nothing
 - Option 4 - Transition NWIS to a new standalone Special Health Authority

8. Costs

Option 1 – Do Nothing

Costs

- 8.1 This is the baseline option and as such, there are no additional costs associated with this option.

Benefits

- 8.2 Given that current systems would continue, there would be no benefits to this option in terms of value for money against the investment made into this area of the system. However, there would be a benefit in that no additional establishment or transitional costs would be required. There would be no policy benefit in relation to digital services across the NHS in Wales. There could however, be an unquantifiable potential benefit for the staff involved, in that they would continue within their current roles, organisations and locations.

Option 4 - Transition NWIS to a new standalone Special Health Authority

Costs

- 8.3 This option is likely to require more resources than options 1, 2 and 3, although the task is relatively straightforward (compared for example to establishing HEIW) because NWIS is an established organisation with existing people, premises, processes and policies.

8.4 There would also be costs associated with transitioning NWIS into a 'clean' SHA and establishing a new Board. The costs for Board membership may decrease if less time is required per month.

8.5 The costs to "Transition NWIS to a new standalone Special Health Authority" will mainly be incurred in the 2020-21 financial year. However, some costs may flow into 2021-22 to support programme closure activity.

Resource	Description	Cost
Programme Team	Costs for Programme Team <i>Staff costs incurred by Welsh Government to deliver the programme.</i>	£160,000
Legal	Costs for Legal Advice and Legislative Drafting <i>Legal costs incurred by Welsh Government to provide legal advice and drafting of legislation.</i>	£20,000
Communications and Engagement	Costs for Communications and Engagement Activities <i>Wider communication and engagement activities to support the programme.</i>	£10,000
People	Non-Officer Member costs. <i>Remuneration and associated costs for a Chair, Vice Chair and Five independent members.</i>	£126,500
Other Costs	Other Ad hoc programme costs (such as Gateway Reviews etc.).	£20,000
Transition Costs	See Appendix B for details	£717,800
	Total	£1,054,300

Benefits

8.6 There are some short-term benefits linked to the governance and transparency of establishing the new SHA, which are set out below:

- a. An independent organisation allows a dedicated chair and board exclusively focussed on digital delivery, and would help to emphasise the importance of digital services alongside other key enablers such as education.
- b. By establishing a Special Health Authority, it will help improve the transparency, reporting and accountability of digital services within NHS Wales through a formalised governance framework.

- c. This would move the national digital service in Wales to a similar status as other parts of the UK (for example England's NHS Digital is constituted as an arms-length public body), and would be seen as a 'significant' change.
- 8.7 The full benefits of the Programme will be realised in the long term and will continue over a sustained period. Benefits that relate to the functions of the new organisation will be captured Regulatory Impact Assessment that accompanies the associated legislation leading up to 1 April 2021.
- 8.8 Longer term benefits the new organisation will provide across the system in Wales will be identified and addressed by the Board of the new organisation as part of their business and IMTP plans.

9. Summary

- 9.1 Option 4 provides opportunities for a clean break, which allows addressing the recommendations of the Wales Audit Office and Public Accounts Committee to the fullest, without negatively affecting the digital services provided to professionals and patients.
- 9.2 Aligning the Special Health Authority to a new formalised governance framework will not just improve transparency, reporting and accountability of digital services within NWIS Wales but will also provide much needed confidence across the system that the changes undertaken are substantial in nature and not just cosmetic.

10. Consultation

Wales Audit Office Review - Informatics Systems in NHS Wales – 10 January 2018

- 10.1 Work to develop policy in this area started in 2018 when the Wales Audit Officer (now Audit Wales) commissioned a review into Informatics Systems in NHS Wales. Whilst compiling their report, the WAO interviewed a range of people including Welsh Government officials, NWIS Staff and a range of officers from Health Boards and Trusts.

The Parliamentary Review of Health and Social Care in Wales – January 2018

- 10.2 The Parliamentary Review of Health and Social Care in Wales was undertaken in January 2018. In formulating their views, the Parliamentary Review heard from a wide range of people including members of the public, service users, staff in health and social care, and the third sector, and considered evidence about national and international models of care.

Public Accounts Committee Report – November 2018

- 10.3 Based on the recommendations set out in the Wales Audit Officer and Parliamentary Review, the Public Accounts Committee agreed to undertake an inquiry into informatics systems in NHS Wales, covering a wide range of issues. The Committee received extensive written and oral evidence as part of their inquiry. There have been a number of Public Accounts Committee Evidence Sessions to date and the transcripts of all oral evidence sessions and written evidence received are openly available².

The NHS Wales Digital Architecture Review

- 10.4 Welsh Government and NHS Wales engaged Channel 3 Consulting to undertake a review of the NHS Wales Digital Architecture, recognising the ambition for digital transformation across Wales at pace.
- 10.5 The focus of this review was to assess the extent to which the current Digital Architecture of NHS Wales is ready to meet the ambition set out in “A Healthier Wales”, and whether it is scalable to support digital transformation across Welsh health and social care.
- 10.6 The review involved technical reviews with NWIS and workshops and interviews with over one hundred key stakeholders from NWIS, all Health Boards, and the universities, augmented by three “deep dives” at Aneurin Bevan and Cwm Taf Health Boards, and Public Health Wales Trust.

The NHS Wales Digital Governance Review

- 10.7 The review had a whole system scope, covering local and national services, all NHS services, and the Welsh Community Care Information System (WCCIS) and undertaken by independent consultants, who engaged very widely with all stakeholders across Wales, including NHS Wales Informatics Service (NWIS) and Velindre NHS Trust.
- 10.8 The Review engaged widely with stakeholders on an open and collaborative basis. The findings and recommendations from the Review have been widely shared with NHS Wales Stakeholders through an engagement programme.
- 10.9 The Digital Governance Review found that there was widespread support for change across NHS Wales.

The Ministerial Written Statement – 30 September 2019

² <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=20803>

- 10.10 In his written statement, the Minister for Health and Social Services set out actions in response to the two reviews, which has been widely reported announcing that:

“The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an independent chair and board members, with experience and understanding of digital change.”

- 10.11 The Minister for Health and Social Services also agreed there should be a new set of arrangements for Wales in regards to delivering informatics and Digital transformation. This will help underpin key commitments published by Welsh Government such as *A Healthier Wales* and *Informed Health and Care Strategy*. Officials therefore consider there is a mandate for this change

External Consultation

- 10.12 Welsh Government published a consultation on the functions of the Digital Special Health Authority for Wales on 7 September 2020 and ran for twelve weeks, closing on 30 November 2020.

- 10.13 The high level functions subject to consultation were as follows:

- Application Development and Support
- Digital Services design, commissioning, planning & delivery
- Information and Communications Technology
- Quality Management & Regulatory Compliance
- Information Management
- Information Governance
- Cyber Security
- Finance and Business Assurance
- Reporting Services
- Workforce Improvement

- 10.14 Overall, the consultation responses welcomed the establishment of DHCW and were very supportive of the proposals.

11. Competition Assessment

- 11.1 The competition assessment has been completed and is included at Appendix A.

12. Post implementation review

- 12.1 The RIA sets out the anticipated potential costs of this legislation, in addition to the benefits and opportunities and realising these benefits is how success will be measured.
- 12.2 It is anticipated that a review will take place within five years of the full implementation of this legislation; with a further review at the ten year point, whereby the longer term benefits will have had the opportunity to be realised.
- 12.3 The key factors in measuring whether those benefits have been realised are as follows:
- A reduction in vacancies across the digital workforce across NHS Wales.
 - A reduction in skills gaps across digital professions.
 - Improved satisfaction ratings from patients and health care professionals through the national survey.
 - Improved staff survey results in relation to digital platforms, systems and services.
 - Improved value for investment, measured by an increase in outputs and/or service provision for similar investment against that made under the current system.
 - A reduction in consultancy and contractor spend on digital activity across the NHS in Wales.

APPENDIX A –The Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

APPENDIX B – Detailed Transitional Costs

Transition Costs		
Resource	Description	Option 4
Communications and Engagement	Covering the branding and messaging for Digital Health and Care Wales as well as launch events and ancillary marketing activities.	£54,000
Statutory Financial Services Readiness	Ensuring the appropriate financial controls, processes and reporting procedures are in place and tested prior to 1 April 2021 go-live date. This includes key staff costs as well as supplier costs associated with the building of the organisation's Financial ledger and purchase of capital asset register for the new organisation.	£247,700
Workforce and Organisational Development Readiness	Supplier costs relating to the setting up of new ESR and expenses systems for the organisation in readiness for the go-live date.	£57,400
Governance Readiness	Supporting the ongoing development of the Board and Governance processes for Digital Health and Care Wales, this includes consultancy costs as well as staffing costs for the transition project manager, Board Secretary and Chair and Independent Members (following their appointment by Welsh Government).	£312,200
Legal Preparation	Legal advice to support the commercial activities relating to the transition such as the novation of contracts from Velindre to the SHA, Employment Law advice relating to the TUPE transfer and the setting up of employment licences and general legal advice relating to the creation of the Statutory Instruments to establish the SHA	£46,500
	Total:	£717,800

Agenda Item 3.3

SL(5)693 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales)(Coronavirus) (No. 3) Regulations 2020

Background and Purpose

Section 82 of the Coronavirus Act 2020 (“the Act”) ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the “relevant period”. The “relevant period” is defined by section 82(12) of the Act as beginning on 26 March 2020, and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority (in relation to Wales, this is the Welsh Ministers).

Previous regulations have extended the relevant period until 30 September and, most recently, the 31 December 2020.

These Regulations extend the moratorium provided by section 82 of the Act further, until 31 March 2021.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts

Regulation 2 deals with the (extension of the) relevant period. The English version states “with 31st March 2021” whilst the Welsh version states “ar 31 Mawrth.” In accordance with paragraph 8.4 of Welsh Government drafting guidelines the Welsh text should state “gan orffen a 31 Mawrth.”

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

None.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1456 (W. 314)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) (No. 3)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 82 of the Coronavirus Act 2020 ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning on 26 March 2020, and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority.

The Welsh Ministers are the relevant national authority in relation to Wales.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020 (S.I. 2020/606 (W. 140)) extended the “relevant period” until 30 September 2020.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020 (S.I. 2020/960 (W. 214)) further extended the “relevant period” until 31 December 2020.

As a result of these Regulations, the moratorium provided by section 82 of the Act is further extended until 31 March 2021.

Regulation 2 of these Regulations extends the “relevant period” until 31 March 2021.

Regulation 3 of these Regulations revokes The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government's website at www.gov.wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1456 (W. 314)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) (No. 3)
Regulations 2020**

Made 7 December 2020

Laid before Senedd Cymru 9 December 2020

Coming into force 31 December 2020

The Welsh Ministers make the following Regulations in exercise of the power conferred on them by section 82(12) of the Coronavirus Act 2020⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020.

(2) These Regulations come into force on 31 December 2020.

Extension of relevant period providing protection from forfeiture etc.

2. For the purposes of section 82 (business tenancies in England and Wales: protection from forfeiture etc.) of the Coronavirus Act 2020, the “relevant period”, as defined in subsection (12) of that section ends, in relation to Wales, with 31 March 2021.

(1) 2020 c. 7.

Revocation

3. The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020(2) are revoked.

Ken Skates

Minister for Economy, Transport and North Wales,
one of the Welsh Ministers

7 December 2020

(2) S.I. 2020/960 (W. 214).

Explanatory Memorandum to the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020

This Explanatory Memorandum has been prepared by the Economy, Skills & Natural Resources Group 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 Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Ken Skates MS
Minister for Economy, Transport & North Wales
9 December 2020

PART 1

1. Description

These Regulations make provision to extend the duration of the moratorium provided by section 82 of the Coronavirus Act (2020) (“the Act”), during which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The Welsh Ministers has the executive competence to make these Regulations pursuant to section 82 of the Coronavirus Act 2020 (“the Act”). Section 82(12) of the Act defines the “relevant period” as “ending with 30 June 2020 or such later date as may be specified by the relevant national authority in regulations made by statutory instrument (and that power may be exercised on more than one occasion so as to further extend the period)”. Section 82(12) of the Act further confirms that “relevant national authority” means in relation to Wales, the Welsh Ministers.

3. Legislative background

Section 82 of the Act makes provision that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning with the day after the day the Act was passed (26th March 2020), and ending with 30th June 2020, or such later date as may be specified by the relevant national authority in regulations. The power to specify a later date may be exercised on more than one occasion so as to further extend the period.

The Welsh Ministers are the “relevant national authority” in relation to Wales, and are therefore able to make regulations, to extend the “relevant period” for protections beyond 30th June 2020, thereby maintaining the protection provided by section 82 of the Act to such later date specified in regulations.

Regulations currently in force, The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.2) Regulations 2020 extend the “relevant period” until 31 December 2020.

These Regulations follow the Senedd’s negative resolution procedure.

4. Purpose and intended effect of the legislation

The purpose of the Regulations is to specify that the “relevant period”, as defined by section 82(12) of the Act, is to end, in relation to Wales, with 31st March 2021.

The effect of the Regulations is to extend the “relevant period” in which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent

may not be enforced, by action or otherwise for a further 3 months to 31st March 2021.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

Four options have been considered:

Option 1: Do nothing - Allow the provision protecting commercial tenants from eviction due to non-payment of rent to lapse on 31st December 2020.

Option 2: Make Regulations to extend the protection for a further 1 month to 31st January 2021.

Option 3: Make Regulations to extend the protection for a further 3 months to 31st March 2021. This is the preferred option.

Option 4: Make Regulations to extend the protection for a further 6 months to 30th June 2021.

Costs and benefits

There are potential financial implications associated with all options. With options 2, 3 and 4 there may be increasing pressure for Welsh Ministers to provide additional financial support to commercial landlords during this period to counteract the protection provided to tenants. Extending the protection is intended to support the economic recovery by trying to ensure businesses are able to continue trading.

However, the assessment is supplemented by data from a voluntary fortnightly [Business Impact of Coronavirus \(COVID-19\) Survey \(BICS\)](#). It is carried out by the Office for National Statistics (ONS), which captures the views of businesses on the impact of the coronavirus (COVID-19) on turnover, workforce prices, trade and business resilience.

The annex contains some further information on the survey and the findings should be viewed in the context of this information. It should be noted that whilst the data is relatively timely, the situation with COVID-19 is very fast moving so the key messages from the survey may become outdated very quickly. Furthermore, the survey is not forward looking so future business conditions and impacts are not covered. The survey is voluntary and may only reflect the characteristics of those that responded; the results are experimental.

Option 1: Do nothing - Allow the provision protecting commercial tenants from forfeiture proceedings due to non-payment of rent to lapse on 31st December 2020.

Without making, amending and extending the Regulations, the protection will lapse and as a result there is an increased risk that commercial tenants could be evicted from their premises for non-payment of rent. As the principle aim of the original legislation was to protect commercial tenants and jobs, removal of the current protection would put those commercial tenants, some of which may have

been supported financially by both the Welsh and UK Governments, back at risk as the economy recovers.

A consequence of this option is that commercial landlords will be free to take action for non-payment of rent. This will lead either to payment of some or all of rent owed by commercial tenants, or forfeiture proceedings. However, due to the uncertainty of the current economic climate, landlords would need to carefully consider whether they would benefit financially as tenants may in any event not be able to make the necessary payments. It might be difficult to find a replacement tenant, or to sell the property, as demand for commercial space in some sectors (e.g. leisure, retail and hospitality) is likely to have reduced, at least in the short term.

The results from Wave 16 of the ONS BICS survey covers the period of 5 **October to 18 October**. It shows that, of businesses who have not permanently stopped trading, 82% of businesses in Wales had applied for the Coronavirus Job Retention Scheme, compared to 80% of businesses in Scotland, 68% in Northern Ireland and 74% in England¹.

Given the high relative dependence on the CJRS scheme in Wales, this option may place businesses in Wales at financial risk. Furthermore, given that other UK nations are extending protection, businesses in Wales may be placed at a comparative disadvantage if an extension is not put in place. However, this would need to be viewed in the context of financial risks to landlords who may experience cash flow issues if further extensions are granted.

Welsh businesses have also made use of a wide range of government schemes during the crisis. These include:

- Business grants funded by UK and devolved governments;
- Government backed accredited loans or finance agreements; and
- The CJRS.

Of businesses who have not permanently stopped trading, 16% of those operating in Wales had not applied for any of these schemes, this compares to 23% in England, 27% in Northern Ireland and 18% in Scotland¹.

The conclusion is that Option 1 would not achieve the policy objective of supporting business and protecting commercial tenants from forfeiture during the Coronavirus pandemic.

Option 2 – Make Regulations to extend the protection for a further 1 month to 31st January 2021

While extending the provisions for a short period of time – namely a month – would limit the burden on landlords, this option is not likely to be sufficient to

¹ Latest BICS release is for Wave 17 covering the period between 19 October and 1 November. However, that release does not contain these figures.

signal to the Welsh economy that there is a significant framework of support in place to allow businesses to adapt.

Furthermore, an extension of this period of time will drastically reduce the scope for the Welsh Government to develop a more sustainable set of proposals.

Option 3: Make Regulations to extend the protection for a further 3 months to 31st March 2021.

Coronavirus has reduced economic activity, leading to a drop in income for many businesses. The ONS BICS survey shows:

- 50% of businesses in Wales reported a decrease in turnover outside of normal range. This compares to 51% in Scotland, 47% in England and 50% in Northern Ireland.²
- Across all businesses currently trading in Wales, 13% declared that profits have decreased by more than 50%, 13% said profits had decreased between 20-50% and 23% said profits had decreased by up to 20%
- Of the UK countries, Wales had the third highest proportion of businesses with more than six months of cash reserves at 37%. This compares to 39% in Scotland, 36% in England and 43% in Northern Ireland.
- 44% of businesses in Wales had less than 6 months cash reserves, below the overall UK figure of 46%. Around 3% of Welsh businesses reported they had no cash reserves.

Insolvency³ .:

In Wales, of businesses not permanently stopped trading:

- 1% had a severe risk of insolvency
- 10% had a moderate risk of insolvency
- 51% had a low risk of insolvency
- 26% had no risk of insolvency

Footfall⁴

In Wales, of businesses currently trading:

- 25% reported footfall had decreased
- 15% reported footfall had stayed the same
- 3% reported footfall had increased

Customer interest³

² These figures were calculated using weighted numbers

³ The figures relating to insolvency and customer interest are from BICS Wave 15 (covering the period between 21 September to 4 October) as Waves 16 and 17 do not contain these figures.

⁴ The figures relating to footfall are from BICS Wave 16 (covering the period between 5 October to 18 October) as Wave 17 does not contain these figures.

In Wales, of businesses currently trading:

- 30% reported customer interest had decreased
- 36% reported customer interest had stayed the same
- 10% reported customer interest had increased

Capital expenditure

Welsh businesses appear to have also had their capital expenditure affected by the coronavirus (COVID-19) pandemic.

Of all businesses continuing to trade in Wales, 13% reported that capital expenditure had stopped, while 31% reported that capital expenditure had been lower than normal.

This option will allow the Welsh Government to continue to protect commercial tenants during a continuing time of uncertainty, but at the same time does not excessively remove the rights and remedies which enable landlords to pursue non-payment of rent.

The commercial property sector and market plays an important role in the economy and in delivering and providing business critical infrastructure in the form of commercial premises from which businesses can operate and grow. It is therefore important to recognise the needs of both landlord and tenant businesses.

This protection does not remove the requirement to pay rent, but suspends a landlord's right to take forfeiture action for non-payment of rent. Tenants will still be liable for any arrears, and will have to pay any rent owed once the protection is lifted or face actions such as forfeiture. The landlord's actions will not prejudice them from exercising a right to forfeit in the future, once the moratorium is over, unless the landlord and tenant have agreed otherwise by way of a rent deferment agreement or such similar agreement in relation to the payment of rent.

In recommending Option 3, the Welsh Government recognises the position of landlords, as investors in and providers of critical business infrastructure. The provisions of Option 3 will continue to put landlords at something of a disadvantage in negotiating rent deferment arrangements to ease tenants' current predicaments whilst seeking to protect their assets. Officials will continue engaging with the UK Government to explore interventions to alleviate these pressures.

Option 4: Make Regulations to extend the protection for a further 6 months to 30th June 2021.

Option 4 would allow more time (than Option 3) for officials to develop alternative mechanisms of support for businesses and enable the UK Government greater capacity to review structures and the possibility for further fiscal or non-fiscal provisions.

This protection does not remove the requirement to pay rent, but suspends a landlord's right to take forfeiture action for non-payment of rent. Tenants will still be liable for any arrears, and will have to pay any rent owed once the protection is lifted or face actions such as forfeiture. The landlord's actions will not prejudice them from exercising a right to forfeit in the future, once the moratorium is over, unless the landlord and tenant have agreed otherwise by way of a rent deferment agreement or such similar agreement in relation to the payment of rent.

However, an extension to 30th June 2021 would represent a 15 month moratorium. As these Regulations are viewed as an emergency response to the Coronavirus pandemic, this length may put landlords and investors under substantial pressure. In addition to increasing challenges on landlords and investors, this is likely to signal a lack of confidence in economic recovery efforts.

6. Consultation

An engagement exercise with key stakeholders to better understand the impact that Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.2) Regulations 2020 has had on both commercial tenants and landlords in Wales was undertaken, concluding in November 2020.

We received a number of representations from stakeholders and in summary the key points made were:

- Emphasis was placed on the development of a more nuanced approach to these provisions; refining the reach of relevant businesses to only severely affected sectors
- The moratorium has offered vital support to extremely vulnerable commercial tenants
- Opportunistic companies may take advantage of the moratorium despite an ability to pay
- Low collection rates of rent and service charges have had a significant impact on property owners and their ability to invest which will, in turn, impact on the restart of the economy
- Attention should be given to aggressive debt enforcement
- Constructive dialogue between landlords and businesses are crucial to maintaining a strong relationship and this aspiration should be encouraged
- Sufficient time should be permitted for businesses and landlords to prepare and adjust in line with interventions in this area

The concerns raised by stakeholders will be central to the development of policy positions and will inform further discussions with the UK Government on this issue.

7. Competition Assessment

On completion of the Competition Filter test it was determined that there are no effects on competition.

8. Post implementation review

The effect of these Regulations is time limited and the position will be reviewed prior to the proposed extension end date of 31st March 2021.

9. Annex

Measuring the data

The Business Impact of Coronavirus (COVID-19) Survey (BICS) is voluntary and may only reflect the characteristics of those that responded; the results are experimental.

Table 1. Sample and response rates for Waves 15, 16 and 17 of BICS

Wave	22 October 2020 Publication Wave 15	5 November 2020 Publication Wave 16	19 November 2020 Publication Wave 17
Sample	24,353	24,315	38,760
Response	5,970	5,755	10,377
Rate	24.5%	23.7%	26.8%

Source: Office for National Statistics – [Business Impact of Coronavirus \(COVID-19\) Survey](#)

Wave 15

The indicators and analysis presented in this bulletin are based on responses from the voluntary fortnightly business survey, which captures businesses responses on how their turnover, workforce prices, trade and business resilience have been affected in the two week reference period. These data relate to the period 21 September to 4 October 2020.

The sample design for BICS was reviewed and refreshed in Wave 7 and will be the basis for future waves. This sample redesign improves our coverage for the smaller sized businesses.

The survey was sent to around 24,000 UK businesses, and results presented in this release are based on a limited number of responses, around 24.5% (5,970) of all businesses surveyed who responded.

Estimates from the Business Impact of Coronavirus (COVID-19) Survey (BICS) are unweighted with several tables now weighted (including imputation). A detailed description of the weighting methodology and its differences to unweighted results can be found in the recently published Business Impact of Coronavirus (COVID-19) Survey: preliminary weighted results. Currently, weighted data is only available for these three variables. However, weighted data for other variables is currently being developed.

Unweighted tables* should be treated with caution when used to evaluate the impact of COVID-19 across the UK economy. Each business was assigned the

same weight regardless of turnover, size or industry, and the data in the latest period are final.

**For certain workforce tables the proportions are based on employment within responding businesses.*

Wave 16

The indicators and analysis presented in this bulletin are based on responses from the voluntary fortnightly business survey, which captures businesses responses on how their turnover, workforce prices, trade and business resilience have been affected in the two week reference period. These data relate to the period 5 October to 18 October 2020.

The sample design for BICS was reviewed and refreshed in Wave 7 and will be the basis for future waves. This sample redesign improves our coverage for the smaller sized businesses.

The survey was sent to around 24,000 UK businesses, and results presented in this release are based on a limited number of responses, around 23.7% (5,755) of all businesses surveyed who responded.

Estimates from the Business Impact of Coronavirus (COVID-19) Survey (BICS) are now weighted with only regional tables currently unweighted. A detailed description of the weighting methodology and its differences to unweighted results can be found in the recently published Business Impact of Coronavirus (COVID-19) Survey: preliminary weighted results.

Unweighted tables* should be treated with caution when used to evaluate the impact of COVID-19 across the UK economy. Each business was assigned the same weight regardless of turnover, size or industry, and the data in the latest period are final.

**For certain workforce tables the proportions are based on employment within responding businesses.*

Wave 17

The indicators and analysis presented in this bulletin are based on responses from the voluntary fortnightly business survey, which captures businesses responses on how their turnover, workforce prices, trade and business resilience have been affected in the two week reference period. These data relate to the period 19 October to 1 November 2020.

The sample design for BICS was reviewed and refreshed in Wave 17 and will be the basis for future waves. This sample redesign improves our coverage for the smaller sized businesses and the survey will go to approximately 39,000 businesses.

The survey was sent to around 39,000 UK businesses, and results presented in this release are based on a limited number of responses, around 26.8% (10,377) of all businesses surveyed who responded.

Estimates from the Business Impact of Coronavirus (COVID-19) Survey (BICS) are now weighted with only regional tables currently unweighted. A detailed description of the weighting methodology and its differences to unweighted results can be found in the recently published Business Impact of Coronavirus (COVID-19) Survey: preliminary weighted results.

Unweighted tables* should be treated with caution when used to evaluate the impact of COVID-19 across the UK economy. Each business was assigned the same weight regardless of turnover, size or industry, and the data in the latest period are final.

**For certain workforce tables the proportions are based on employment within responding businesses.*

SL(5)694 – The Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (Wales) Regulations 2020

Background and Purpose

These Regulations implement temporary arrangements to facilitate the production and supply of PPE during the Covid-19 pandemic. These arrangements are similar to the proposals in the European Commission's Recommendation 2020/403 of 13 March 2020 on conformity assessment and market surveillance procedures within the context of the COVID-19 threat, but the arrangements in these Regulations are specific to Wales and came into force on IP completion day. The easements are time limited, in that a Health and Safety Executive ("HSE") assessment of the PPE is required by specified dates.

Regulation 2 permits PPE to be placed on the market while it is undergoing conformity assessment procedures but before these have been completed and any conformity marking has been affixed. Regulation 3 permits PPE to be procured without undergoing conformity assessment procedures and conformity marking being affixed but this must only be made available to healthcare and frontline workers. In both cases, the PPE must have been assessed by the HSE and found to be compliant with the essential health and safety requirements in Annex II of Regulation 2016/425/EU of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (as amended and retained in UK law). Where the conditions are met, the obligations in Regulation 2016/425 will be treated as satisfied for the purposes of the Personal Protective Equipment (Enforcement) Regulations 2018 and in respect of PPE for healthcare workers and other frontline workers, the market surveillance authority will not require the non-compliance to be brought to an end. This is solely in cases where the conformity assessment procedure has not been completed and the conformity mark has not been affixed due to reliance on regulation 2 or 3 of these Regulations.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.



Technical Scrutiny

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

Merits Scrutiny

The following point is 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

This instrument is made under sections 45C, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984 ("the 1984 Act"). Section 45Q(2)(a) and (4)(b) of the 1984 Act provide that regulations made under section 45C may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Senedd (i.e. the affirmative procedure). However, section 45Q(3) of the 1984 Act provides that this does not apply if the instrument contains a declaration that the person making it is of the opinion that the instrument does not contain any provision made by virtue of section 45C(3)(c) of the 1984 Act which imposes or enables the imposition of a special restriction or requirement, or any other restriction or requirement which has or would have a significant effect on a person's rights.

The Welsh Ministers are of that opinion and a declaration has been included to that effect within the regulations. The instrument is therefore subject to the negative resolution procedure. The purpose of the instrument is to increase the availability of PPE and reduce public health risks, rather than impose special restrictions or requirements.

Implications arising from exiting the European Union

These Regulations are not being made under the European Union (Withdrawal) Act 2018 but relate to the withdrawal of the United Kingdom from the European Union.

These Regulations and Regulation 2016/425/EU of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (as amended), which the Regulations refer to, form part of retained EU law following IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

4 January 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1489 (W. 318)

PUBLIC HEALTH, WALES

**The Personal Protective Equipment
(Temporary Arrangements)
(Coronavirus) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 45C, 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984 implementing temporary arrangements to facilitate the production and supply of PPE during the Covid-19 crisis. These arrangements are similar to the proposals in the European Commission's Recommendation 2020/403 of 13 March 2020 on conformity assessment and market surveillance procedures within the context of the COVID-19 threat ((OJ L 79I, 16.3.20 p. 1-5), but the arrangements in these Regulations are specific to Wales and may only be relied on if the HSE has authorised them by a specified date and come into force on IP completion day.

Regulation 2 permits PPE to be placed on the market while it is undergoing conformity assessment procedures but before these have been completed and any conformity marking has been affixed. Regulation 3 permits PPE to be procured without undergoing conformity assessment procedures and conformity marking being affixed but this must only be made available to healthcare and frontline workers. In both cases, the PPE must have been assessed by the HSE and found to be compliant with the essential health and safety requirements in Annex II of Regulation 2016/425/EU of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (as amended and retained in UK law). Where the conditions are met, the obligations in Regulation 2016/425 will be treated as satisfied for the purposes of the Personal Protective Equipment (Enforcement) Regulations 2018 (S.I. 2018/390) and in respect of PPE for healthcare workers and other

frontline workers, the market surveillance authority will not require the non-compliance to be brought to an end. This is solely in cases where the conformity assessment procedure has not been completed and the conformity mark has not been affixed due to reliance on regulation 2 or 3 of these Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1489 (W. 318)

PUBLIC HEALTH, WALES

**The Personal Protective Equipment
(Temporary Arrangements)
(Coronavirus) (Wales) Regulations
2020**

Made 9 December 2020

Laid before Senedd Cymru 10 December 2020

*Coming into force in accordance with
regulation 1(1)*

The Welsh Ministers make the following regulations in exercise of the powers conferred by section 45C, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾.

The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to the threat to public health posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers declare, in accordance with section 45Q(3), that they are of the opinion that these Regulations do not contain any provision made by virtue of section 45C(3)(c) of that Act which imposes or enables the imposition of a special restriction or requirement, or any other restriction or requirement which has or would have a significant effect on a person's rights.

(1) 1984 c. 22 Section 45C was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function under this section is conferred on "the appropriate Minister". Under section 45T(6) of the 1984 Act the appropriate Minister, in respect of Wales, is the Welsh Ministers.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (Wales) Regulations 2020 and come into force on implementation period completion day.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations—

- (a) “the PPE Regulation” (“*y Rheoliad PPE*”) means Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC(1);
- (b) expressions in these Regulations which appear in the PPE Regulation have the same meaning as in the PPE Regulation;
- (c) “the 2018 Regulations” (“*Rheoliadau 2018*”) means the Personal Protective Equipment (Enforcement) Regulations 2018(2).

(4) In these Regulations—

“Covid PPE” (“*PPE Covid*”) means PPE that is—

- (i) necessary for protection against the coronavirus disease; and
- (ii) requires conformity assessment by an approved body, in accordance with Article 19 of the PPE Regulation;

“CE marking” (“*nod CE*”) has the meaning given to it in Article 3(18) of Regulation (EU) 2016/425 (as it has effect in EU law);

“coronavirus” (“*coronafeirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“coronavirus disease” (“*clefyd y coronafeirws*”) means COVID-19 (the official designation of the disease which can be caused by coronavirus);

(1) The PPE Regulation is incorporated into domestic law by section 3(1) of the European Union (Withdrawal) Act 2018 (c. 16) and is prospectively amended with effect from IP completion day by regulation 38 of, and Schedule 35 to, the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696).

(2) S.I. 2018/390; the instrument was made in part under section 2(2) of the European Communities Act 1972 (c. 68) and is accordingly saved by virtue of section 2(2)(a) of the European Union (Withdrawal) Act 2018 (c. 16); amendments extending to Great Britain are made prospectively with effect from IP completion day, by S.I. 2019/696; there are other amendments, but none are relevant to these Regulations.

“EHSR” (“*GIDH*”) means the essential health and safety requirements applicable to the Covid PPE as set out in Annex 2 to the PPE Regulation;

“the HSE” (“*yr Awdurdod Gweithredol Iechyd a Diogelwch*”) means the Health and Safety Executive⁽¹⁾;

“notified body” (“*corff a hysbyswyd*”) means a conformity assessment body that is not an approved body, that has been assigned an identification number under Article 29 of Regulation (EU) 2016/425 (as it has effect in EU law).

Temporary arrangements for the making available of Covid PPE

2.—(1) This regulation applies to Covid PPE only.

(2) Notwithstanding the requirements of Articles 8(2), 10(2) and 11(2) of the PPE Regulation, where the conditions set out in paragraph (3) are met, Covid PPE may be made available on the market by a relevant economic operator before—

- (a) the applicable conformity assessment procedure has been carried out; and
- (b) the UK marking has been affixed.

(3) The conditions referred to in paragraph (2) are that before an economic operator makes the Covid PPE available—

- (a) the Covid PPE has been submitted for conformity assessment to an approved body; and
- (b) after the Covid PPE has been submitted to an approved body, the HSE—
 - (i) has assessed the Covid PPE as compliant with the EHSR relevant to the assessment process; and
 - (ii) has notified an economic operator at any time before 1st April 2021 of the assessment that the Covid PPE is compliant with the EHSR against which it has been assessed.

(4) Where an economic operator relies on regulation 2A of the 2018 Regulations and submits Covid PPE to a notified body, a reference in this regulation to—

- (a) the UK marking is to be read as a reference to the CE marking;
- (b) an approved body is to be read as a reference to a notified body.

(1) Established under section 10 of the Health and Safety at Work etc. Act 1974 (c. 37).

Temporary arrangements for the making available of Covid PPE for healthcare and other frontline workers

3.—(1) This regulation applies to Covid PPE only.

(2) Notwithstanding the requirements of Articles 8(2), 10(2) and 11(2) of the PPE Regulation, where the conditions set out in paragraph (3) are met, Covid PPE may be made available by a relevant economic operator for the use of healthcare and other frontline workers, without—

- (a) the applicable conformity assessment procedure having been carried out; and
- (b) the UK marking having been affixed.

(3) The conditions referred to in paragraph (2) are that before an economic operator makes the Covid PPE available—

- (a) the Covid PPE has been purchased by or on behalf of the Welsh Ministers or an NHS body for use in the health service or other frontline services; and
- (b) the HSE—
 - (i) has assessed the Covid PPE as compliant with the EHSR relevant to the assessment process; and
 - (ii) has notified an economic operator at any time before 1st July 2021 of the assessment that the Covid PPE is compliant with the EHSR against which it has been assessed.

(4) In this regulation—

“healthcare worker” (*“gweithiwr gofal iechyd”*) means an individual working as part of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006(1);

“NHS body” (*“corff y GIG”*) has the meaning given in section 206 of the National Health Service (Wales) Act 2006(2);

“other frontline services” (*“gwasanaethau rheng flaen eraill”*) means the provision of social care and community or residential drug and alcohol services;

“other frontline workers” (*“gweithwyr rheng flaen eraill”*) means any individual working in other frontline services;

(1) 2006 c. 42.

(2) Section 206 was inserted by section 297 of and paragraph 12 and 38(1)(b) of Schedule 21 to the Health and Social Care Act 2012 (c.7).

“social care” (“*gofal cymdeithasol*”) includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

Enforcement

4.—(1) Where an economic operator has made Covid PPE available in reliance on regulations 2 or 3, the economic operator will not be treated as having contravened the requirements and obligations set out in Articles 8(2), 10(2) or 11(2) of the PPE Regulation for the purposes of regulation 7(1) of the 2018 Regulations if—

- (a) the applicable conformity assessment procedure has not been completed in relation to the Covid PPE; or
- (b) the UK marking has not been affixed to the Covid PPE.

(2) Paragraph (3) applies where an economic operator has made Covid PPE available in reliance on regulation 3 and—

- (a) the applicable conformity assessment procedure has not been completed in relation to the Covid PPE; or
- (b) the Covid PPE does not bear the UK marking.

(3) Where this paragraph applies, a failure by an economic operator to take the action required under Article 41(1)(b), (c) and (d) of the PPE Regulation will not be treated as non-compliance with the PPE Regulation and the economic operator will not be guilty of an offence for the purposes of regulation 7(3) of the 2018 Regulations.

(4) Where PPE has been assessed by HSE before implementation period completion day, pursuant to the European Commission Recommendation (EU) 2020/403 of 13 March 2020 on conformity assessment and market surveillance procedures within the context of the COVID-19 threat⁽¹⁾, these Regulations do not affect the validity of that HSE assessment.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
9 December 2020

(1) OJ L 79I, 16.3.2020, p. 1–5

Explanatory Memorandum to the Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (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 Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (Wales) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

10 December 2020

1. Description

This instrument continues temporary regulatory arrangements to facilitate the production and supply of Personal Protective Equipment (PPE) during the Covid-19 pandemic. These arrangements modify the effect of Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (“the PPE Regulation”) (as it has been amended and retained in UK law) and the effect of sanctions under the Personal Protective Equipment (Enforcement) Regulations 2018, S.I. 2018/390 (“the 2018 Regulations”).

The temporary arrangements were adopted by the UK Government in March 2020 following Commission Recommendation 2020/403. The Recommendation will not carry over in to domestic law in Great Britain at the end of the Transition Period, so new provision is being made to continue with the easements so long as they are needed. This instrument therefore makes specific provision for arrangements continuing after the end of the Transition Period, modifying the effect of the PPE Regulation (as it has been amended and retained in UK law) and the effect of sanctions under the 2018 Regulations.

These arrangements ease the regulatory requirements for conformity assessment for certain categories of PPE while maintaining process to ensure essential safety, for a limited time in order to increase the supply of essential Covid-19-related PPE on the UK market and for healthcare or specified health and care sector frontline workers. The easements are time limited, in that they require a Health and Safety Executive (HSE) assessment by specified dates.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

This instrument is made under sections 45C, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) for the purpose of increasing the availability of PPE and reducing the public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARSCoV-2).

The instrument is subject to the negative resolution procedure in accordance with section 45Q(3) of the 1984 Act, as the Welsh Ministers are of the opinion that these Regulations do not contain any provision made by virtue of section 45C(3)(c) of that Act which imposes or enables the imposition of a special restriction or requirement, or any other restriction or requirement which has or would have a significant effect on a person’s rights.

This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union.

3. Legislative background

The 1984 Act and Regulations made under it provide a legislative framework for health protections in Wales.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in Wales.

This instrument is made under section 45C for the purpose of increasing the availability of PPE and reducing the public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARSCoV-2).

4. Purpose and intended effect of the legislation

Under the EU framework which applies before the end of the Transition Period, PPE is a product which is subject to harmonised rules. Union harmonisation legislation is a body of law which governs the sale or supply of a harmonised good for commercial purposes on the European Union market. The harmonised technical requirements are set out in legislation and apply to all goods of this type.

The PPE Regulation sets out the harmonised rules that must be met before PPE products can be placed on the market. The purpose of the legislation is to ensure safe and effective products are placed on the market by requiring manufacturers to show how their products meet the 'essential health and safety requirements'.

In the UK, the 2018 Regulations provide a system for the enforcement of the PPE Regulation and designates the market surveillance authority. In Great Britain, this is a weights and measures authority or in circumstances where the PPE is to be made available to workers or members of the public for non-private use, this is the HSE.

In March 2020, the UK relied upon the European Commission's Recommendation 2020/403 (updated in July 2020) which contained a number of proposals to speed up the supply of PPE during the Covid-19 crisis, two of which relate to PPE that is not a medical device. These arrangements firstly enable the NHS and the Welsh Ministers to procure non-conformity assessed PPE for healthcare or specified frontline health and care sector workers, as long as the PPE meets essential health and safety requirements, as approved by HSE. Secondly, they permit PPE which requires conformity assessment to be placed on the UK market before the full conformity assessment procedures have been completed and before a conformity mark has been affixed. The conformity assessment procedures should be completed as soon as possible afterwards. The HSE must also have certified that the PPE meets essential health and safety requirements.

The Welsh Ministers are making this instrument to provide additional clarity and ensure there is no confusion at the end of the Transition Period, and that legal certainty is provided to manufacturers, importers and distributors of PPE that the temporary arrangements relating to the conformity assessment process will

continue in the short-term, in Wales. This is vital to speed up supply of essential Covid-19 related PPE.

5. Consultation

A formal public consultation has not been undertaken given this instrument's provisions are limited to extending the status quo, enabling the continuation of regulatory arrangements facilitating the supply of PPE whilst the Covid-19 pandemic continues and given the need for an urgent response to ensure the continued supply of PPE.

6. Regulatory Impact Assessment (RIA)

The Regulations are urgently required to maintain the supply of PPE for use during the ongoing Covid-19 pandemic and to enable existing arrangements to continue. As such, no RIA has been carried out in relation to these Regulations. This is in line with the policy set out in the Welsh Ministers' RIA Code for subordinate legislation.

SL(5)697 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations (“the Public Health Information Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

The International Travel Regulations also confer powers on specified persons in specified circumstances to issue fixed penalty notices in relation to offences committed under the regulations, including in relation to offences for failure to comply with the requirements to isolate.

These Regulations amend the International Travel Regulations to:

- implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health. Regulation 2 removes the Canary Islands from the list of exempt countries and territories, whilst regulation 4 adds Botswana and Saudi Arabia to the list of exempt countries and territories; and
- change the amount of the fixed penalty notice that may be issued in relation to a failure to isolate under the International Travel Regulations. Regulation 6 replaces the fixed sum of £1,000 with a sliding scale starting at £500 for a first offence.

The Public Health Information Regulations require the operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus, including measures required by the International Travel Regulations.

These Regulations amend the Public Health Information Regulations to:



- change the amount of the fixed penalty notice that may be issued under the Public Health Information Regulations. Regulations 8 of these Regulations replaces the fixed sum of £4,000 with a sliding scale starting at £1,000 for a first offence; and
- make consequential amendments to reflect amendments made by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 to the International Travel Regulations to reduce the period for which a person is required to isolate from 14 days to 10 days.

These Regulations came into force at 4.00 a.m. on 12 December 2020.

Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul these Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following four 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.

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 11 December 2020. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

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.

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:



"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Public Health Information Regulations of 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. 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.

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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 a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 11 December, it is also explained that:

"Due to the immediacy of the Regulations they have not been subject to consultation."

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.

We note that there has been no regulatory impact assessment in relation to these Regulations. The Explanatory Memorandum provides that there has been no regulatory impact assessment:

"due to the need to put them in place urgently to deal with a serious and imminent threat to public health."

When considering previous regulations that amended the International Travel Regulations, the Committee reported on the absence of an equality impact assessment for the amending Regulations and the International Travel Regulations.

The Welsh Government responded to the reports in relation to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) No. 18 and No. 19 Regulations No. on 24 November 2020. In particular, we note the following:

"Regulations have been made to respond to a public health emergency, so it has not been possible to produce and publish an Equality Impact Assessment alongside them. An Integrated Impact Assessment of international travel isolation requirements will be published in due course."

Implications arising from exiting the European Union

None.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1521 (W. 325)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Amendment)
(No. 2) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations (S.I. 2020/595 (W. 136)) (“the Public Health Information Regulations”).

The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);
- the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order (S.I. 2020/942);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);

- the Health Protection (Coronavirus International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020 (S.I. 2020/1362) (W. 301);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316).

The Public Health Information Regulations have been previously amended by:

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020 (S.I. 2020/1118) (W. 253).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. The International Travel Regulations also confer powers on specified persons in specified circumstances to issue fixed penalty notices in relation to offences committed under the regulations, including in relation to offences for failure to comply with the requirements to isolate.

Persons entering Wales after being in one or more of the countries and territories (or parts of countries and territories) listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories and parts of countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Part 2 of these Regulations amends the list of exempt countries and territories. Regulation 2 amends the International Travel Regulations to remove the entry for the Canary Islands from the list of exempt countries and territories. Regulation 4 amends the International Travel Regulations to add Botswana and Saudi Arabia to the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations make transitional provision in connection with these countries’ and territories’ change of status. The transitional provisions address a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

Part 3 of these Regulations amends the amount of the fixed penalty notice that may be issued under regulation 16(6) of the International Travel Regulations. Regulation 6 of these Regulations replaces the fixed sum of £1000 with a sliding scale starting at £500 for a first offence.

The Public Health Information Regulations require the operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus, including measures required by the International Travel Regulations.

Part 4 of these Regulations amends the Public Health Information Regulations. Regulations 7 and 9 of these Regulations make consequential amendments as a result of the amendments made by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316) to the International Travel Regulations to reduce the period

for which a person is required to isolate from 14 days to 10 days.

Regulation 8 of these Regulations amends the amount of the fixed penalty notice that may be issued under regulation 7(1) of the Public Health Information Regulations. Regulation 7 of these Regulations replaces the fixed sum of £4000 with a sliding scale starting at £1000 for a first offence.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1521 (W. 325)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Amendment)
(No. 2) Regulations 2020**

Made at 2.04 p.m. on 11 December 2020

*Laid before Senedd
Cymru at 6.00 p.m. on 11 December 2020*

*Coming into force at 4.00 a.m. on 12
December 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 12 December 2020.

(3) In these Regulations—

⁽¹⁾ 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

“the International Travel Regulations” (“*y Rheoliadau Teithio Rhyngwladol*”) means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);

“the Public Health Information Regulations” (“*y Rheoliadau Gwybodaeth Iechyd y Cyhoedd*”) means the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020(2).

PART 2

Amendments to the list of exempt countries and territories outside the common travel area in Schedule 3 to the International Travel Regulations

Removal of countries from the list of exempt countries and territories outside the common travel area

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit the following entry—

“Canary Islands”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 12 December 2020, and
- (b) was last in the Canary Islands—
 - (i) within the period of 10 days ending with the day of P’s arrival in Wales, and
 - (ii) before 4.00 a.m. on 12 December 2020.

(2) P is, by virtue of having been in the Canary Islands to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations

(1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301) and S.I. 2020/1477 (W. 316).

(2) S.I. 2020/595 (W. 136), amended by S.I. 2020/714 (W.160) and S.I. 2020/1118 (W. 253).

as having arrived in Wales from, or having been in, a non-exempt country or territory.

Additions to the list of exempt countries and territories outside the common travel area

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

“Kingdom of Saudi Arabia”

“Republic of Botswana”.

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 12 December 2020—

- (a) a person (“P”) was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in a country listed in regulation 4, and
- (b) P’s last day of isolation is 12 December 2020 or a day after that day.

(2) The addition of the countries listed in regulation 4 to Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P’s last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 12 December 2020, and
- (b) was in a country listed in regulation 4 within the period of 10 days ending with the day of P’s arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a country listed in regulation 4, to be determined by reference to whether the country was a non-exempt country when P was last there (and not by reference to the country’s status upon P’s arrival in Wales).

(5) In this regulation, “isolation requirement” has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P’s last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

PART 3

Amendments to Part 4 of the International Travel Regulations

Amendments to Part 4 (enforcement and offences) of the International Travel Regulations

6.—(1) Regulation 16 of the International Travel Regulations (fixed penalty notices) is amended as follows.

(2) In paragraph (6), for “must be £1000” substitute “is to be as set out in paragraph (6A)”.

(3) After paragraph (6), insert—

“(6A) The amount specified as the fixed penalty in paragraph (6) is to be—

- (a) in the case of the first fixed penalty notice received, £500;
- (b) in the case of the second fixed penalty notice received, £1000;
- (c) in the case of the third fixed penalty notice received, £2000;
- (d) in the case of the fourth and any subsequent fixed penalty notice received, £4000.”

PART 4

Amendment to the Public Health Information Regulations

Amendment to regulation 6 (Offences) of the Public Health Information Regulations

7. In regulation 6(2) after “in” insert “regulation 3(1) or (3) or”.

Amendment to regulation 7 (Fixed penalty notices) of the Public Health Information Regulations

8. For regulation 7(5) substitute—

“(5) The amount of fixed penalty specified under paragraph 4(c) is to be—

- (a) in the case of the first penalty notice received, £1000;
- (b) in the case of the second penalty notice received, £2000;
- (c) in the case of the third penalty notice received, £4000;
- (d) in the case of the fourth and any subsequent fixed penalty notice received, £10,000.”

Amendment to the Schedule to the Public Health Information Regulations

9.—(1) In Part 1 of the Schedule for “14” substitute “10”.

(2) In Part 2 of the Schedule for “14” substitute “10”.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

At 2.04 p.m. on 11 December 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) 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, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

11 December 2020

1. Description

These Regulations make amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”).

International Travel Regulations

Subject to specified exemptions, until 10 July 2020, the International Travel Regulations required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days. As of 10 December 2020, the isolation period was reduced to 10 days¹.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

The International Travel Regulations also confer powers on specified persons in specified circumstances to issue fixed penalty notices in relation to offences committed under the regulations, including in relation to offences for failure to comply with the requirements to isolate.

These Regulations amend the International Travel Regulations to:

- i. Implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health; and
- ii. change the amount of the fixed penalty notice that may be issued in relation to a failure to isolate under the International Travel Regulations.

Public Health Information Regulations

The Public Health Information Regulations require the operators of commercial air or sea passenger services that arrive in Wales from outside the common travel area to provide certain information to passengers using those services, relating to measures being taken in the United Kingdom in response to the incidence and spread of coronavirus, including measures required by the International Travel Regulations.

These Regulations amend the Public Health Information Regulations to:

- i. change the amount of the fixed penalty notice that may be issued under the Public Health Information Regulations; and

¹ Regulation 2 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020

- ii. make consequential amendments to reflect amendments made by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 to the International Travel Regulations to reduce the period for which a person is required to isolate from 14 days to 10 days.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Public Health Information Regulations of 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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations and the Public Health Information Regulations both provide further information on these powers.

4. Purpose and intended effect of the legislation

International Travel Regulations

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus.

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on the 28 November 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in the Canary Islands has increased. On the basis of this advice the Welsh Government

consider that isolation requirements should now be introduced for travellers coming into Wales from those countries.

The Regulations also add Botswana and Saudi Arabia to the list of exempt countries and territories. This is on the basis that the data received from the JBC has indicated that the risk to public health posed by the incidence and spread of coronavirus in those countries has decreased. Travellers from those countries will therefore not be required to isolate on arrival in Wales.

The revised requirements will come into effect for any travellers entering the Common Travel Area from those countries or territories on or after 4.00 am on Saturday 12 December 2020.

The Regulations also amend the amount of fixed penalty notice that may be issued for a failure to comply with the isolation requirements under the International Travel Regulations, replacing the fixed sum of £1000 with a sliding scale starting at £500 for a first offence.

This change will also come into force at 4.00 am on Saturday 12 December 2020.

Public Health Information Regulations

The Public Health Information Regulations were made on 15 June and came into force on 16 June in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus.

The Public Health Information Regulations must be reviewed every 21 days and require operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers with certain public health information relating to coronavirus.

The required period of self-isolation imposed by the International Travel Regulations on persons entering Wales after having been abroad has been reduced from 14 days to 10 days by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020. These Regulations make consequential amendments to the Public Health Information Regulations to reflect this.

The Regulations also amend the amount of fixed penalty notice that may be issued under the Public Health Information Regulations, replacing the fixed sum of £4000 with a sliding scale starting at £1000 for a first offence.

These changes to the Public Health Information Regulations will also come into force at 4.00 am on Saturday 12 December 2020.

None of the amendments to the International Travel Regulations or the Public Health Information Regulations made by the latest amending Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

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.

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.



Ein cyf/Our ref: MA/VG/4155/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

11 December 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Public Health Information Regulations").

International Travel Regulations

The Regulations made today will remove the Canary Islands from the list of exempt countries and territories in the International Travel Regulations. The Republic of Botswana and the Kingdom of Saudi Arabia will be added to the list of exempt countries and territories. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these countries.

The Regulations also amend the fixed penalty amounts that are payable in respect of offences related to the requirement to isolate in the International Travel Regulations and in respect of duties on carriers to provide information to passengers under the Public Health Information Regulations.

The Regulations also make consequential amendments to the Public Health Information Regulations to reflect changes made by the Health Protection

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

(Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 to the International Travel Regulations to reduce the period for which a person is required to isolate from 14 days to 10 days.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a large initial 'R' and a distinct 'E'.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)705 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020

Background and Purpose

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the International Travel Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations (“exempt countries and territories”) are not required to isolate. Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 amends the International Travel Regulations to remove the entries for Republic of Namibia, Uruguay and Virgin Islands of the United States.

Regulation 4 also provides an additional exception in relation to a person entering Wales who has been released from isolation in England under ‘Test to Release’ (by regulation 4(13A) of the Health Protection (Coronavirus International Travel) (England) Regulations 2020 (S.I. 2020/568) to enable any person with a negative result under that system to be permitted entry to Wales in limited circumstances.

These Regulations came into force at 4.00 am on 19 December 2020.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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



Merits Scrutiny

The following three 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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 18 December 2020.

In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

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

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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. 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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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 a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 18 December 2020, it is also explained that:

“Due to the immediacy of the Regulations they have not been subject to consultation.”



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.

As noted in the Welsh Government's reply to the Committee reports in relation to the No.18 and No. 19 "International Travel" Regulations, the Committee welcomes the commitment by the Welsh Government in respect of a future published Integrated Impact Assessment on international travel isolation requirements as set out below.

"Regulations have been made to respond to a public health emergency, so it has not been possible to produce and publish an Equality Impact Assessment alongside them. An Integrated Impact Assessment of international travel isolation requirements will be published in due course."

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1602 (W. 332)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 22)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

- (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);
 - the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 (S.I. 2020/942);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020 (S.I. 2020/1362) (W. 301);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316); and
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1521) (W. 325).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Part 2 of these Regulations amends the list of exempt countries and territories. Regulation 2 amends the International Travel Regulations to remove the entries

for the Republic of Namibia, Uruguay and the Virgin Islands of the United States.

Regulation 3 of these Regulations makes transitional provision in connection with these countries' and territories' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations.

Part 3 of these Regulations makes an amendment to Part 3 of the International Travel Regulations. Regulation 4 of these Regulations inserts, at regulation 8(2) of the International Travel Regulations, an additional exception to the requirement to isolate that is set out at regulation 8(1) to clarify the position in relation to a person entering Wales who has been released from isolation in England by regulation 4(13A) of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (S.I. 2020/568).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1602 (W. 332)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 22)
Regulations 2020**

Made at 2.49 p.m. on 18 December 2020

*Laid before Senedd
Cymru at 5.00 p.m. on 18 December 2020*

*Coming into force at 4.00 a.m. on 19
December 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 19 December 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(Coronavirus, International Travel) (Wales)
Regulations 2020(1).

PART 2

Amendments to the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

Removal of countries and territories from the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit the following entries—

“Republic of Namibia”

“Uruguay”

“Virgin Islands of the United States”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 19 December 2020, and
- (b) was last in a country or territory listed in regulation 2—
 - (i) within the period of 10 days ending with the day of P’s arrival in Wales, and
 - (ii) before 4.00 a.m. on 19 December 2020.

(2) P is, by virtue of having been in a country or territory listed in regulation 2 to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

(1) S.I. 2020/574 (W. 132), as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316) and S.I. 2020/1521 (W. 325).

PART 3

Amendment to Part 3 of the International Travel Regulations

Amendment to Part 3 (requirement to isolate etc.) of the International Travel Regulations

4.—(1) Part 3 (requirement to isolate etc.) of the International Travel Regulations is amended as follows.

(2) After regulation 8(2)(b) insert—

“(c) a person—

- (i) who is no longer required to isolate under the Health Protection (Coronavirus, International Travel) (England) Regulations 2020(1) by virtue of regulation 4(13A) of those Regulations,
- (ii) who is in Wales for one or more of the reasons listed in regulation 10(4)(b) to (k) of these Regulations, and
- (iii) who remains in Wales for no longer than is necessary.”

Vaughan Gething

Minister for Health and Social Services, one of the Welsh Ministers

At 2.49 p.m. on 18 December 2020

(1) S.I. 2020/568, amended by S.I. 2020/1337; there are other amending instruments but none are relevant.

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) 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, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

18 December 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

These Regulations amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on 11 December 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Republic of Namibia, Uruguay and US Virgin Islands has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from those countries and territories.

The revised requirements will come into effect for any travellers entering the Common Travel Area from those countries or territories on or after 4.00 am on Saturday 19 December 2020.

The Regulations also clarify the position in relation to a person entering Wales who has been released from isolation in England under 'Test to Release' to enable any person with a negative result under that system to be permitted entry to Wales in limited circumstances.

These changes will also come into force at 4.00 am on Saturday 19 December 2020.

None of the amendments to the International Travel Regulations made by the latest amending Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

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.

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.



Ein cyf/Our ref: MA/VG/4463/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

18 December 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and the Republic of Namibia, Uruguay and the US Virgin Islands will be removed from the list of exempt countries and territories. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these countries and territories.

The Regulations also clarify the position in relation to a person entering Wales who has been released from isolation in England under the 'Test to Release' system to enable any person with a negative result under that system to be permitted entry to Wales in limited circumstances.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

DATE **17 December 2020**

BY **Vaughan Gething Minister for Health and Social Services**

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these Regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Today I reviewed the latest JBC assessments and I have decided that the Republic of Namibia, Uruguay and the US Virgin Islands will be removed from the list of exempt countries and territories. Travellers from these countries and territories will be required to isolate on arrival in Wales.

The position in relation to a person entering Wales who has been released from isolation in England under 'Test to Release' has also been clarified to make it clear that such a person would still need to complete any outstanding isolation period in Wales unless entering for a specified purpose and for no longer than necessary. Any person entering Wales would of course also be subject to the local restrictions in place at that time.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 19 December.

Agenda Item 3.7

SL(5)715 – The Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the No. 5 Regulations”), making changes necessitated by the emerging health risks reported from South Africa that a new strain of coronavirus with high levels of transmissibility has been identified.

In particular, these Regulations:

- Extend the current isolation requirement imposed on travellers returning from South Africa to all members of the household of any person entering Wales from 9.00 a.m. on 24 December who has been in South Africa in the previous 10 days;
- Disapply all exemptions in Schedule 2 of the International Travel Regulations, so that no person arriving into Wales who has been in South Africa in the previous 10 days can be exempted from the requirements to provide passenger information or isolate;
- Provide a more limited list than is usual of reasons for temporarily leaving isolation;
- Prohibit any aircraft or ship coming directly from South Africa from arriving in Wales except for safety reasons (other than where that aircraft or ship’s journey began before these Regulations came into force).

Procedure

Made Affirmative.

The 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 dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(1) of these Regulations inserts a new regulation 12C into the International Travel Regulations.



The closing quotation mark denoting the end of the wording being substituted by regulation 12C(8) is missing.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(1) of these Regulations inserts a new regulation 12C into the International Travel Regulations.

Regulation 12C(1) provides that for the purposes of the regulation, “isolation requirement” has the meaning given by regulation 10(2) (of the International Travel Regulations).

Regulation 12C(9) contains similar wording, repeating the location of the definition of “isolation requirement” (i.e. the reader is again directed to regulation 10(2)).

We ask the Welsh Government to clarify why regulation 12C(9) appears to unnecessarily repeat the wording contained in regulation 12C(1).

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(2) of these Regulations inserts a new regulation 12D into the International Travel Regulations.

The heading to regulation 12D, in the English version, contains the wording “...travelling directly from *Denmark*” [*emphasis added*]. We assume that this is an error and the heading should in fact read “...travelling directly from South Africa”.

4. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

Regulation 4(5) of the Welsh version of these Regulations repeats the change made to regulation 30 of the No. 5 Regulations - the text “ynlle ‘neu 9(2)’ rhodder ‘, 9(2) neu 11A(2)’” appears twice. The error does not occur in the English language version.

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 or public policy likely to be of interest to the Senedd

We note the Regulations came into force before being laid before the Senedd. The Minister for Health and Social Services, Vaughan Gething, notified the Llywydd of this in a letter dated 23 December 2020. In particular, we note the following in the letter:

“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the



Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected in South Africa."

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments contained these Regulations do not change the engagement under the International Travel Regulations or the No. 5 Regulations of 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. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"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."

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting points raised.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1645 (W. 345)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, South Africa) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609) (W. 335)) (the “Restrictions Regulations”).

There are 3 Parts to the Regulations.

Part 1 provides that these Regulations come into force at 9.00 a.m. on 24 December 2020.

Part 2 of the Regulations amends the International Travel Regulations. Regulation 2(1) inserts provisions relating to South Africa into the International Travel Regulations as new regulation 12C. This provides that

when a person has been in South Africa in the last 10 days and arrives in Wales on or after 9.00 a.m. on 24 December 2020, the categories of exempt persons as detailed at Schedule 2 to the International Travel Regulations do not apply. The isolation requirements also apply to any members of a household in which the person is isolating. Regulation 2(2) insert a new regulation 12D into those Regulations prohibiting any aircraft or ship coming directly from South Africa from arriving in Wales except for safety reasons. Regulation 3 provides that new Regulation 12D of the International Travel Regulations does not apply where an aircraft or ship's journey began before Regulation 12D came into force.

Part 3 of the Regulations inserts new provisions relating to persons who have recently been in South Africa into the Restrictions Regulations. These provisions will provide that where a person is in Wales at 9.00 a.m. on 24 December 2020 having arrived within the period of 10 days ending immediately before that time and been in South Africa during that period, that person and any member of that person's household will need to isolate for a period of 10 days beginning with the day on which the person left South Africa.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1645 (W. 345)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, South Africa) (Wales)
Regulations 2020**

Made 23 December 2020

Coming into force at 9.00 a.m. on 24 December 2020

Laid before Senedd Cymru 29 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45B, 45C(1) and (3), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

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) in Wales.

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

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020.

(2) These Regulations come into force at 9.00 a.m. on 24 December 2020.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);
- (b) the “Restrictions Regulations” means the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020(2).

PART 2

Amendment to Part 3 of the International Travel Regulations

Insertion of new provisions relating to South Africa

2.—(1) In Part 3 of the International Travel Regulations (requirement to isolate etc.), before Part 4 insert—

“Special rules applicable to persons travelling from South Africa

12C.—(1) This regulation applies where an isolation requirement (within the meaning given by regulation 10(2)) is imposed on a person (“P”) because P—

- (a) has arrived in Wales from South Africa, or

(1) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/942, S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277) and S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325) and S.I. 2020/1602 (W. 332).

(2) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W.336) and S.I. 2020/1623 (W. 340).

(b) has, within the period of 10 days ending with the day of P's arrival in Wales, been in South Africa.

(2) Regulations 7(1) and 8(1) are to be read in relation to P as if references to "a non-exempt country or territory" were references to "South Africa".

(3) The isolation requirement imposed on P by virtue of regulation 7(1) or 8(1) as modified by paragraph (2), is also imposed on all members of P's household.

(4) Despite regulation 9(2), regulations 7 and 8 apply to P.

(5) A member of P's household is not exempt from the isolation requirement by virtue of regulation 9(2).

(6) Accordingly neither P nor any member of P's household is to be treated as a person described in any paragraph of Schedule 2.

(7) For the purposes of regulation 10, a member of P's household is to be treated as if that person were P.

(8) Regulation 10 applies to P (and a member of P's household by virtue of paragraph (7)) as if, for paragraph (4) of that regulation, there were substituted—

“(4) P may leave and be outside of the premises—

(a) for as long as is necessary—

(i) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;

(ii) to avoid serious illness, serious injury or other risk of serious harm;

(b) if required to do so by a constable.

(9) In this regulation, "isolation requirement" has the meaning given by regulation 10(2).”

(2) After regulation 12C insert—

“PART 3B

Travel from South Africa

Prohibition on the arrival of aircraft and vessels travelling directly from Denmark

12D.—(1) The person with management or control of an aircraft or vessel whose last point of departure was South Africa must not cause or permit it to arrive in Wales, unless it is reasonably necessary for it to do so to secure—

- (a) the safety of the aircraft or vessel, or
 - (b) the health and safety of any person aboard it.
- (2) Paragraph (1) does not apply to—
- (a) a commercially operated aircraft or vessel carrying no passengers;
 - (b) an aircraft or vessel operated by or in support of Her Majesty’s Government in the United Kingdom.
- (3) In this regulation—
- (a) “arrive” means—
 - (i) in relation to an aircraft, to land;
 - (ii) in relation to a vessel, to moor at any place;
 - (b) “passenger” means a person carried in or on an aircraft or vessel other than a member of its crew. ”
- (3) In regulation 14(1)—
- (a) in sub-paragraph (e), omit “or”;
 - (b) in sub-paragraph (f), at the end insert “or”;
 - (c) after sub-paragraph (f) insert—
“(g) 12D(1),”.

Transitional provision relating to regulation 2(2)

3. Regulation 12D of the International Travel Regulations, inserted by regulation 2(2) of these Regulations, does not apply in respect of any flight or voyage that commenced before these Regulations came into force.

PART 3

Amendments to Part 3 of the Restrictions Regulations

4.—(1) The Restrictions Regulations are amended as follows.

(2) After regulation 11 insert—

“Requirement to isolate: specific provision for people who have been in South Africa

11A.—(1) This regulation applies where a person (“P”)—

- (a) is in Wales at 9.00 a.m. on 24 December 2020,
- (b) has arrived in Wales within the period of 10 days ending immediately before 9.00 a.m. on 24 December 2020, and

(c) has been in South Africa within that period.

(2) Unless regulation 11B applies P, and any person living in the same household with P, may not leave or be outside the place where they are living until the end of the period of 10 days beginning with the day on which P left South Africa.

(3) If requested by a contact tracer, P must notify the contact tracer—

- (a) of the name of each person living at the place P is living, and
- (b) of the address of that place.

Isolation requirements: specific exception for people who have been in South Africa

11B.—(1) Paragraph (2) applies where a person is required to not leave or be outside of the place where the person is living by virtue of regulation 11A(2).

(2) The person may leave and be outside the place where the person is living—

- (a) for as long as is necessary to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;
- (b) if required to do so by a constable;
- (c) for as long is necessary to avoid serious illness, serious injury or other risk of serious harm.”

(2) In regulation 12, for “or 9(2)” substitute “, 9(2) or 11A(2)”.

(3) In regulation 14(2), after sub-paragraph (a) insert—

“(aa) where a person is required to isolate in accordance with regulation 11A(2), the person’s contact information and date of birth, or, where the person is a child, the contact details of a person with responsibility for the child and the child’s date of birth.”

(4) In regulation 22(4)(a), for “or 9(2)” substitute “, 9(2) or 11A(2)”.

(5) In regulation 30, for “or 9(2)” substitute “, 9(2) or 11A(2)”.

(6) In regulation 40—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), after “9(2)” insert “, 11A(2)”;
- (ii) in sub-paragraph (b), for “or 9(3)” substitute “, 9(3) or 11A(3)”;

(b) in paragraph (2)(a), for “or 9(3)” substitute “, 9(3) or 11A(3)”.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
23 December 2020

Explanatory Memorandum to the Health Protection (Coronavirus, South Africa) (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, South Africa) (Wales) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

29 December 2020

1. Description

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the No. 5 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 these Regulations do not change the engagement under the International Travel Regulations or the No. 5 Regulations of 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.

Coming into force

In accordance with section 4(1) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force before they were laid, owing to the urgent need to respond to identified changes in the risk to public health posed by arrivals from South Africa.

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), 45F(2) and 45P(2) of the 1984 Act.

The Explanatory Memoranda to the International Travel Regulations and the No. 5 Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales. South Africa is not currently on that exempt list, so travellers are already required to isolate upon arrival to Wales, but further amendments are now being made to the International Travel Regulations so as to extend this isolation requirement to all members of the household of any person entering Wales from 9.00 a.m. on 24 December.

The Regulations also disapply all sectoral exemptions in Schedule 2 of the International Travel Regulations, so that no person arriving into Wales who has been in South Africa in the previous 10 days can be exempted from the requirements to provide passenger information or isolate. A more limited list than is usual of reasons for temporarily leaving isolation will also apply, as part of the response to the threat to public health.

These changes are necessary because of emerging health risks being reported from South Africa that a new strain of covid virus with high levels of transmissibility has been identified.

To effectively respond to the emerging situation, amendments have also been made to the No. 5 Regulations, which will require a person who entered Wales before 9.00 a.m. on 24 December having been in South Africa in the previous 10 days to isolate for 10 days from the date they were last in South Africa. This requirement will also extend to any members of that person's household.

Finally, restrictions are inserted into the International Travel Regulations preventing vessels and aircraft from arriving directly into Wales from South Africa from 9am on 24 December.

These amendments coincide with the UK Government's implementation of immigration powers, which will refuse entry to all non-British national or resident travellers who arrive at the UK borders from 9:00 am Thursday 24 December.

To effectively support the implementation of these new requirements, Public Health Wales is now urgently contacting all residents in Wales who have been in South Africa in the past 10 days to explain the new isolation requirements.

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.

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.



Ein cyf/Our ref MA-P/VG/4534/20

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

23 December 2020

Dear Elin,

The Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 under sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 9.00 a.m. on 24 December. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on Tuesday 29 December.

In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected in South Africa. This variant is different to the UK variant reported to the WHO on 10 December (SARS-CoV-2 VUI 202012/01) but may share similar properties in terms of higher transmission, which increases the risk posed by travellers from South Africa, and also ensures that a four nations approach on international travel can be maintained.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 7 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 12 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
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CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'g'.

Vaughan Gething AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE The Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020

DATE 23 December 2020

BY Vaughan Gething, Minister for Health and Social Services

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days (later reduced to 10 days) and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these Regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

The Secretary of State for Transport reported to me this morning that a new variant of Covid-19 has been detected in South Africa. This variant is different to the UK variant reported to the WHO on 10 December (SARS-CoV-2 VUI 202012/01) but may share similar properties in terms of higher transmissibility. DHSC have reported there are two cases of the South African variant of Covid-19 in England.

A growing number of countries, including Germany and the Netherlands, have imposed travel restrictions on South Africa and we expect others to do the same. A decision was taken by the UK Government this morning to implement further travel restrictions on arrivals from South Africa. Most flights from South Africa route through airports in England.

The four CMOs met this morning to discuss this development, as a result of which it was decided that action should be taken to remove the sectoral exemptions for travellers

arriving from South Africa. All travellers arriving into Wales who have been in South Africa in the previous 10 days will be required to isolate for 10 days and will only be able to leave isolation in very limited circumstances. The same isolation requirements will also apply to all members of their household. These enhanced isolation requirements will also apply to persons already in Wales who have been in South Africa in the last 10 days and members of their households.

A further amendment will be made such that passenger planes and ships travelling directly from South Africa, and accompanied freight, will no longer be able to land or dock at Welsh ports.

The Regulations come into force at 9:00 am on Thursday 24 December, and they will be laid on Tuesday 29 December.

This statement is being issued during recess in order to keep members informed.

SL(5)706 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020. They impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus.

Since being made, they have been twice amended. The amending Regulations will be subject to separate reports.

Originally, the Regulations came into effect on 21 December 2020. However, by virtue of amending Regulations they, in fact, came into force on 20 December 2020. They will expire at the end of the day on 31 March 2021. They must be reviewed by 7 January 2021, again between 8 and 28 January 2020, and at least once in every subsequent period of 21 days.

There are 9 Parts to the Regulations, summarised below.

Part 1 sets the coming into force, review and expiry dates of the Regulations.

Part 2 imposes restrictions on gathering with other people, on travel and on the use of premises of certain specified businesses. This part establishes 4 different levels of restrictions which will apply according to circumstances.

Schedule 1 sets out the level which has the fewest restrictions (Alert Level 1).

When Alert Level 1 restrictions apply to an area: gatherings indoors in people's homes are allowed only between up to 6 people, or more if all present are members of the same household or an extended household consisting of up to 3 households and a single adult household. Other gatherings indoors are limited to 6 people or the members of one household if higher. Gatherings outdoors are limited to 30 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, up to a maximum of 100 people, in various prescribed circumstances. Larger scale events may also be allowed with the consent of the Welsh Ministers. Travel is allowed (i) within a Level 1 area (ii) to and from another Level 1 area and (iii) to or from a Level 2 areas. Travel from a Level 1 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Travel from a Level 3 or a Level 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 1 area is not allowed.



Most business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may not do so after 10.00 p.m. and must close no later than 10.20 p.m.

Schedule 2 sets out the next level (Alert Level 2).

When Alert Level 2 restrictions apply to an area: gatherings indoors in people's homes are allowed only between members of an extended household consisting of up to 2 households and a single adult household. Other gatherings indoors are limited to 4 people or the members of one household if higher. Gatherings outdoors are limited to 4 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, up to a maximum of 30 people, in various prescribed circumstances. Larger scale events may also be allowed with the consent of the Welsh Ministers. Travel is allowed (i) within a Level 2 area, (ii) to and from another Level 2 area, and (iii) to and from a Level 1 area. Travel from a Level 2 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Similarly travel from a Level 3 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 2 area is not allowed.

Most business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may only serve alcohol with meals and may not serve alcohol after 10.00 p.m. (closing no later than 10.20 p.m.).

Schedule 3 sets out the next level (Alert Level 3)

When Alert Level 3 restrictions apply to an area: gatherings in people's homes are allowed only between members of an extended household consisting of up to 2 households and a single adult household. Other gatherings indoors are limited to 4 people or the members of one household if higher. Other gatherings outdoors are limited to 4 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, allowing up to 15 30 people, to meet in various prescribed circumstances. Travel is allowed within a Level 3 area but travelling from a Level 3 area to any other area of Wales, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Travel from a Level 1, 2 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 3 area is not allowed.

Most premises that are ordinarily open to the public may continue to be open but premises used for entertainment or hospitality must either be closed or may open until 6.00 p.m. only and premises licensed to sell alcohol may not sell alcohol for consumption on the premises.



Schedule 4 sets out the most restrictive level (Alert Level 4)

When Alert Level 4 restrictions apply to an area: there is an overarching requirement to stay at home and not to travel to the area. Most premises ordinarily open to the public are required to be closed. The ability to come together for events and formally organised activities, and for premises to be open to the public, is subject to the need to take all “reasonable measures” to minimise the spread of, and exposure to, the coronavirus.

Schedule 5 prescribes the areas which are subject to an Alert Level. Since the Regulations were made, Schedule 5 has been amended and the whole of Wales is subject to Alert Level 4 as at the date of this report.

Schedule 6 sets out a relaxation of the restrictions for the period of 23 to 27 December 2020. Since the Regulations were made, they have subsequently been amended so that the relaxation only applies to 25 December 2020.

Part 3 imposes requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive for coronavirus must not leave the place where they live for 10 days (except in limited circumstances). People who have had “close contact” with someone who has tested positive for coronavirus must not leave the place where they live for 10 days (except in limited circumstances). An exception is provided for those who regularly test negative in accordance with a formal scheme.

Part 4 makes provision for the purpose of minimising risk of exposure to coronavirus in premises open to the public and in workplaces. All reasonable measures must be taken to ensure that a distance of 2 metres is maintained between persons on the premises.

Part 5 provides that face coverings must be worn on public transport, including in taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 6 provides for circumstances in which schools may be required to be open when they may otherwise be closed to allow children of critical workers or children who are vulnerable to attend.

Part 7 relates, together with **Schedules 8** and **9**, to the enforcement of the restrictions and requirements.

Part 8 makes provision about offences and penalties.

Part 9 sets out defined terms, revokes previous Regulations and makes a consequential amendment.

Procedure

Made Affirmative.



The 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 dissolved or 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 or public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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). The implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. 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."



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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

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

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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.

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

We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

“The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government’s [Technical Advisory Cell](#) and available on the gov.wales website. The latest briefing, dated 11 December, sets out the seriousness of the public health position.

The Chief Medical Officer recommends that an appropriate response to the public health situation is that Wales move to Alert Level 4 ...”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1609 (W. 335)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

There are 9 Parts to the Regulations.

Part 1 provides that these Regulations come into force on 21 December 2020 (other than Part 6 which comes into force on 23 December 2020) and expire at the end of the day on 31 March 2021. It also provides that the Regulations must be reviewed regularly to ensure that the restrictions and requirements imposed remain proportionate.

Part 2 imposes restrictions on people gathering, on people travelling and on the use of premises of specified businesses or services that are ordinarily open to the public. Part 2 puts 4 different levels of restrictions in place that can apply depending on the

circumstances. Which level applies is based on what the Welsh Ministers consider to be the appropriate and proportionate response to the incidence and spread of coronavirus.

Schedule 1 sets out the lowest level – **Alert Level 1** – restrictions; Schedule 2 sets out **Alert Level 2** restrictions; Schedule 3 sets out **Alert Level 3** restrictions and Schedule 4 the highest level – **Alert Level 4** – restrictions (under which there are strict limitations on people gathering and travelling, and most premises are required to close). Schedule 5 sets out which alert level applies to an area. At the time of making the Regulations the same alert level applies across the whole of Wales, but the Regulations can be amended to apply different alert levels on a regional or local basis (as well as amending the alert level for the whole of Wales).

A number of the restrictions refer to the concept of an “extended household”. This enables more than one household to agree to come together for the purposes of the rules by forming a larger, extended, household. In addition there are separate provisions that allow a single adult household (a person who lives alone or only with a child or adult they care for) to agree to come together for these purposes with another household. These arrangements are exclusive and must be agreed to by all of the adults in each household that forms an extended household.

A summary of the restrictions that apply at each alert level is provided below. All restrictions are subject to exceptions listed in the Regulations.

When **Alert Level 1** restrictions apply to an area:

- gatherings indoors in people’s homes are allowed only between up to 6 people, or more if all present are members of the same household or an extended household consisting of up to 3 households and a single adult household;
- gatherings indoors (away from people’s homes) are limited to 6 people (not including children under 11) or the members of 1 household if higher;
- gatherings outdoors (including in people’s gardens) are limited to 30 people (not including children under 11) or the members of 1 household or an extended household if higher;
- different rules apply to gathering for activities that are formally organised, allowing more people (up to 50 indoors and up to 100 outdoors) to come together;
- as an exception to the general prohibition on organising events, events involving up to 50

people in attendance at any one time indoors, or 100 people outdoors, are allowed;

- larger scale events may also be allowed but only with the consent of the Welsh Ministers;
- travelling is allowed within a Level 1 area and to and from another Level 1 area or any Level 2 areas, but travelling from a Level 1 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed;
- similarly travelling from a Level 3 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 1 area is not allowed;
- nearly all business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may not do so after 10.00 p.m. and must close no later than 10.20 p.m.

When **Alert Level 2** restrictions apply to an area:

- gatherings indoors in people's homes are allowed only between members of an extended household consisting of up to 2 households and a single adult household;
- gatherings indoors (away from people's homes) are limited to 4 people (not including children under 11) or the members of 1 household if higher;
- gatherings outdoors (including in people's gardens) are limited to 4 people (not including children under 11) or the members of 1 household or an extended household if higher;
- different rules apply to gathering for activities that are formally organised, allowing more people (up to 15 indoors and up to 30 outdoors) to come together;
- as an exception to the general prohibition on organising events, events involving up to 15 people in attendance at any one time indoors, or 30 people outdoors, are allowed;
- larger scale events may also be allowed but only with the consent of the Welsh Ministers;
- travelling is allowed within a Level 2 area and to and from another Level 2 area or any Level 1 areas, but travelling from a Level 2 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed;
- similarly travelling from a Level 3 or 4 area, or from any areas of high incidence of

coronavirus elsewhere in the UK, to a Level 2 area is not allowed;

- nearly all business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may only serve alcohol with meals and may not serve alcohol after 10.00 p.m. (closing no later than 10.20 p.m.).

When **Alert Level 3** restrictions apply to an area:

- gatherings in people's homes (indoors and outdoors) are allowed only between members of an extended household consisting of up to 2 households and a single adult household;
- gatherings indoors (away from people's homes), or outdoors in regulated premises, are limited to 4 people (not including children under 11) or the members of 1 household if higher;
- gatherings outdoors (away from people's homes or regulated premises) are limited to 4 people (not including children under 11) or the members of 1 household or an extended household if higher;
- different rules apply to gathering for activities that are formally organised, allowing more people (up to 15 indoors and up to 30 outdoors) to come together;
- as an exception to the general prohibition on organising events, events involving up to 15 people in attendance at any one time indoors, or 30 people outdoors, are allowed;
- travelling is allowed within a Level 3 area but travelling from a Level 3 area to any other area of Wales, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed;
- similarly travelling from a Level 1, 2 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 3 area is not allowed;
- most premises that are ordinarily open to the public may continue to be open but premises used for entertainment or hospitality must either be closed or may open until 6.00 p.m. only – and premises licensed to sell alcohol may not sell alcohol for consumption on the premises.

When **Alert Level 4** restrictions apply to an area:

- there is an overarching requirement to stay at home if you live in the area and not to travel to the area if you live outside;

- most premises ordinarily open to the public are required to be closed.

The ability to come together for events and formally organised activities, and for premises to be open to the public, is subject to the need to take all “reasonable measures” to minimise the spread of, and exposure to, the coronavirus (see Part 5).

The restrictions on events are closely associated with the restrictions on gathering as people attending an event may also be gathering with others. An event is widely defined (in regulation 57(4)) as any occasion planned or scheduled for a particular purpose at which people are at the same place for that purpose (regardless of whether they are also gathering).

As an exception to this system, Schedule 6 makes specific provision modifying the restrictions relating to extended households (and travelling to meet members of an extended household) for the period between 23 and 27 December 2020 (with an additional day allowed before and after this period in the case of persons travelling from and to Northern Ireland).

Parts 3 to 6 impose further restrictions and requirements which generally apply in all circumstances.

Part 3 imposes requirements on people who have tested positive for coronavirus and their close contacts. Regulations 6 and 7 provide that adults and children who have tested positive for coronavirus must not leave the place they are living for 10 days (except in the circumstances provided for by regulation 10). Regulations 8 and 9 provide that people who have had “close contact” with someone who has tested positive for coronavirus must not leave the place they are living for 10 days (except in the circumstances provided for by regulation 10). The 10 day period of isolation begins either the day after a person tests positive, the day after the day which a person reports as the day they first experience symptoms or the day after a person has close contact. Regulation 11 provides an exception to the requirement to isolate if people test negative regularly in accordance with a formal scheme of testing. Regulation 12 relates to obligations of adults in respect of children required to isolate, regulation 13 enables notices given under this Part by contact tracers to be withdrawn and regulation 14 makes provision about the use of information held by contact tracers.

Part 4 makes provision for the purpose of minimising risk of exposure to coronavirus in premises open to the public and in workplaces. Regulation 16 applies to “regulated premises” and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on

the premises; (2) all other reasonable measures to be taken, for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that not carrying out an activity, closing part of premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures.

Part 5 provides that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 6 provides for circumstances in which schools may be required to be open when they may otherwise be closed to allow children of critical workers or children who are vulnerable to attend.

Part 7 relates to the enforcement of the restrictions and requirements. Regulation 25 makes provision about those who can take enforcement action, regulation 26 makes further provision (in Schedules 8 and 9) about enforcing the need to take preventative measures under regulation 16, regulation 27 relates to compliance notices, and regulation 28 to powers of removal and dispersal. Regulations 29 to 32 relate specifically to enforcing the requirements in relation to travelling, isolation, events, and wearing a face covering; and regulation 33 relates to the requirements' application to children. Regulation 34 contains a power to enter premises, regulation 35 relates to police powers to conduct road checks and regulation 36 makes supplemental provision about the exercise of powers by enforcement powers.

Part 8 makes provision about offences and penalties. Regulations 37 to 43 in Chapter 1 provide that a person who, without a reasonable excuse, contravenes the restrictions or requirements referred to commits an offence. An offence is punishable by an unlimited fine (regulation 44). Chapter 2 allows for offences to be punished by way of fixed penalty notices and makes provision about how they are applied and Chapter 3 relates to proceedings for offences under the Regulations.

Part 9 contains defined terms (regulation 57), revokes previous Regulations and makes a consequential amendment.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1609 (W. 335)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
Regulations 2020**

Made at 5.45 p.m. on 18 December 2020

*Laid before Senedd
Cymru at 10.00 p.m. on 18 December 2020*

*Coming into force in accordance with
regulation 1(3) and (4)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

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

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

PART 1

Introduction, review and expiry

Title, application and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) These Regulations, other than Part 6, come into force on 21 December 2020.

(4) Part 6 comes into force on 23 December 2020.

Review

2. The Welsh Ministers must review the need for the restrictions and requirements imposed by these Regulations, and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them—

(a) by 7 January 2021;

(b) at least once in the period from 8 January 2021 to 28 January 2021;

(c) at least once in each subsequent period of 21 days.

Expiry

3. These Regulations expire at the end of the day on 31 March 2021.

PART 2

Levels of restrictions on gathering, travelling, and on use of premises of businesses and services

Levels of restrictions

4.—(1) Schedules 1 to 4 set out restrictions and requirements that may apply in an area in relation to—

(a) gatherings;

(b) organising events;

(c) travelling to and from other areas;

- (d) the use of premises of specified businesses or services that are ordinarily open to the public.
- (2) The restrictions and requirements set out in Schedule 1 apply in relation to an Alert Level 1 area.
- (3) The restrictions and requirements set out in Schedule 2 apply in relation to an Alert Level 2 area.
- (4) The restrictions and requirements set out in Schedule 3 apply in relation to an Alert Level 3 area.
- (5) The restrictions and requirements set out in Schedule 4 apply in relation to an Alert Level 4 area.
- (6) Schedule 5 sets out which one of Schedules 1 to 4 apply to an area by specifying a level for that area.
- (7) Schedule 6 makes temporary provision modifying the restrictions and requirements relating to persons gathering and travelling over the Christmas period.
- (8) In these Regulations—
 - (a) an “Alert Level 1 area” is an area specified in the table in Schedule 5, where the table indicates it is an Alert Level 1 area;
 - (b) an “Alert Level 2 area” is an area specified in the table in Schedule 5, where the table indicates it is an Alert Level 2 area;
 - (c) an “Alert Level 3 area” is an area specified in the table in Schedule 5, where the table indicates it is an Alert Level 3 area;
 - (d) an “Alert Level 4 area” is an area specified in the table in Schedule 5, where the table indicates it is an Alert Level 4 area.

PART 3

Requirement to isolate etc.

CHAPTER 1

Requirement to isolate etc. where person tests positive for coronavirus or has close contact with such person

Interpretation of Part

5.—(1) In this Part, “close contact” means contact that a contact tracer considers may lead to a risk of infection or contamination with coronavirus, including—

- (a) having face-to-face contact with a person at a distance of less than 1 metre;
- (b) spending more than 15 minutes within 2 metres of a person;
- (c) travelling in a car or other small vehicle with a person or in close proximity to a person on an aeroplane or in the same carriage of a train.

(2) In regulations 6 and 8, references to an “adult” (“A”) include references to a child aged 16 or 17.

(3) For the purposes of this Part, a person has responsibility for a child if the person has—

- (a) custody or charge of the child for the time being, or
- (b) parental responsibility for the child.

(4) For the purposes of these Regulations, notification by means of the NHS Covid 19 smartphone app developed and operated by the Secretary of State is not a notification.

Requirement to isolate: adult with coronavirus

6.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that A has tested positive for coronavirus.

(2) A may not leave or be outside the place where A is living before the end of the last day of A’s isolation unless regulation 10 or 11 applies.

(3) If requested by a contact tracer, A must notify the contact tracer—

- (a) of the name of each person living at the place A is living, and
- (b) of the address of that place.

(4) The last day of A’s isolation is the last day of the period of 10 days beginning with the day after the day of the test which led to the notification referred to in paragraph (1) being given.

(5) But where A reports to a contact tracer the day on which symptoms first developed, the last day of A’s isolation is the last day of the period of 10 days beginning with the day after the day which A reports as being the day on which the symptoms first developed.

Requirement to isolate: child with coronavirus

7.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that a child (“C”) for whom A is a responsible adult has tested positive for coronavirus.

(2) C may not leave or be outside the place where C is living before the end of the last day of C’s isolation unless regulation 10 or 11 applies.

(3) If requested by a contact tracer, A must notify the contact tracer—

- (a) of the name of each person living at the place where C is living, and
- (b) of the address of that place.

(4) The last day of C’s isolation is the last day of the period of 10 days beginning with the day after the day

of the test which led to the notification referred to in paragraph (1) being given.

(5) But in a case where A reports to a contact tracer the day on which C's symptoms first developed, the last day of C's isolation is the last day of the period of 10 days beginning with the day after the day which A reports as being the day on which C's symptoms first developed.

Requirement to isolate after close contact: adult

8.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that A has had close contact with a person (“P”) who has tested positive for coronavirus.

(2) A may not leave or be outside the place where A is living before the end of the last day of A's isolation unless regulation 10 or 11 applies.

(3) If requested by a contact tracer, A must notify the contact tracer of the address of the place where A is living.

(4) The last day of A's isolation is the last day of the period of 10 days beginning with the day after the day which a contact tracer records as being the last day on which A had close contact with P before A received the notification referred to in paragraph (1).

(5) But where A is living in the same place as P, the last day of A's isolation is—

- (a) where P, or, where P is a child, a responsible adult (“R”) on P's behalf, reports to a contact tracer the day on which P's symptoms first developed, the last day of the period of 10 days beginning with the day after the day on which P, or R, reports as being the day on which P's symptoms first developed;
- (b) where no symptoms are reported, the last day of the period of 10 days beginning with the day after the day of the test which led to the notification being given to P, or R, that P had tested positive for coronavirus.

Requirement to isolate after close contact: child

9.—(1) This regulation applies where an adult (“A”) is notified by a contact tracer that a child (“C”) for whom A is responsible has had close contact with a person (“P”) who has tested positive for coronavirus.

(2) C may not leave or be outside the place where C is living before the end of the last day of C's isolation unless regulation 10 or 11 applies.

(3) If requested by a contact tracer, A must notify the contact tracer of the address of the place where C is living.

(4) The last day of C's isolation is the last day of the period of 10 days beginning with the day after the day which a contact tracer records as being the last day on which C had close contact with P before A received the notification referred to in paragraph (1).

(5) But where C is living in the same place as P, the last day of C's isolation is—

- (a) where P, or, where P is a child, a responsible adult ("R") on P's behalf, reports to a contact tracer the day on which P's symptoms first developed, the last day of the period of 10 days beginning with the day after the day on which P, or R, reports as being the day on which P's symptoms first developed, or
- (b) where no symptoms are reported, the last day of the period of 10 days beginning with the day after the day of the test which led to the notification being given to P, or R, that P had tested positive for coronavirus.

Isolation requirements: general exceptions

10.—(1) Paragraph (2) applies where a person is required to not leave or be outside of the place where the person is living by virtue of regulation 6(2), 7(2), 8(2) or 9(2).

(2) The person may leave and be outside the place where the person is living for as long as is necessary—

- (a) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;
- (b) to access veterinary services where—
 - (i) they are urgently required, and
 - (ii) it is not possible for another person at the place that the person is living to access those services;
- (c) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings, where it is not possible or practicable to do so without leaving the place where the person is living;
- (d) to avoid illness, injury or other risk of harm;
- (e) for compassionate reasons, including to attend the funeral of—
 - (i) a family member;
 - (ii) a close friend;
- (f) to obtain basic necessities (including for other persons at the place where the person is living or any pets at that place) where it is not possible or practicable—
 - (i) for another person at the place where the person is living to obtain them, or

- (ii) to obtain them by delivery to that place from a third party;
- (g) to access public services (including social services or victims' services) where—
 - (i) access to the service is critical to the person's well-being, and
 - (ii) the service cannot be provided if the person remains at the place where the person is living;
- (h) to move to a different place to live where it becomes impracticable to remain at the place where the person is living;
- (i) where the person is a child who does not live in the same household as the child's parents, or one of the child's parents, to continue existing arrangements for access to, and contact between, the child and the child's parents, and for the purposes of this subparagraph, "parent" includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child.

(3) Regulations 6(2), 7(2), 8(2) and 9(2) do not apply to a person who is homeless.

(4) Regulation 6(2) does not apply to a person who—

- (a) has tested positive for coronavirus in the course of a research study (the "prior test"), and
- (b) tests positive for coronavirus in the course of the same study within the period of 90 days beginning with the date of the prior test.

Isolation requirements: exception for participants in a testing scheme

11.—(1) This regulation applies where—

- (a) a person ("P") is required to not leave or be outside of the place where P is living by virtue of regulation 8(2) or 9(2) ("the isolation requirement"), and
- (b) P agrees to participate in a testing scheme.

(2) If P's first test under the testing scheme is negative for coronavirus, the isolation requirement ceases to apply to P from the time P receives the result of the test, subject to paragraphs (3) and (4).

(3) If the result of a test taken by P under the testing scheme is positive for coronavirus, the isolation requirement applies to P from the time P receives the result of the test as if it had not ceased to apply by virtue of paragraph (2).

(4) Despite paragraph (2) the isolation requirement applies to P on—

- (a) non-test days;
- (b) any day on which P is required to take a test under the scheme but fails to do so.

(5) If P's last test under the testing scheme is negative for coronavirus, the isolation requirement ceases to apply to P from the earlier of—

- (a) the time P receives the result of the test, or
- (b) P's last day of isolation calculated in accordance with regulation 8 or 9 as the case may be.

(6) Where P is a child—

- (a) a person with responsibility for P must agree on P's behalf that P is to participate in a testing scheme;
- (b) the references in paragraphs (2) and (5)(a) to P receiving the result of a test include references to a person with responsibility for P receiving the result.

(7) In this regulation—

- (a) “testing scheme” means a scheme designated by the Welsh Ministers under which P is required to take a number of tests for coronavirus specified in the scheme, on dates and in a manner so specified;
- (b) “non-test day” means a day between the day on which P takes the first and last test under the scheme on which P is not required to take a test under the scheme.

Requirement on persons with responsibility for children

12. Where a requirement is imposed under regulation 7(2) or 9(2) on a child, a person with responsibility for the child must take all reasonable measures to ensure that the child complies with the requirement.

Withdrawing a notice which requires isolation

13.—(1) This regulation applies where a contact tracer—

- (a) has given a notification under regulation 6(1), 7(1), 8(1) or 9(1) (“the original notification”), but
- (b) subsequently notifies the recipient of the original notification that it is withdrawn.

(2) The original notification is treated as if it had not been given.

CHAPTER 2

Information

Power to use and disclose information

14.—(1) A contact tracer may disclose only such relevant information to a person (“the information holder”) as is necessary for the information holder to have—

- (a) for the purposes of—
 - (i) carrying out a function under these Regulations,
 - (ii) preventing danger to the health of the public as a result of the spread of infection or contamination with coronavirus, or
 - (iii) monitoring the spread of infection or contamination with coronavirus, or
- (b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(2) Relevant information is—

- (a) where a person is required to isolate in accordance with regulation 6(2), 7(2), 8(2) or 9(2)—
 - (i) the person’s contact information and date of birth, or, where the person is a child, the contact details of the adult who is notified that the child is required to isolate and the child’s date of birth;
 - (ii) the date the notification was given under regulation 6(1), 7(1), 8(1) or 9(1);
 - (iii) the particular period in respect of which the person is required to not leave or be outside of the place where the person is living calculated in accordance with regulation 6, 7, 8 or 9;
- (b) confirmation a person did not receive a positive coronavirus test and the person’s name, contact information and date of birth, or, where the person is a child, the name and contact details of an adult with responsibility for the child in addition to the child’s name and date of birth.

(3) The information holder may use relevant information disclosed under paragraph (1) only to the extent that it is necessary—

- (a) for the purposes of—
 - (i) carrying out a function under these Regulations,
 - (ii) preventing danger to the health of the public as a result of the spread of

infection or contamination with coronavirus, or

(iii) monitoring the spread of infection or contamination with coronavirus, or

(b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(4) Subject to paragraph (6), the information holder may disclose only such relevant information to another person (the “recipient”) as is necessary for the recipient to have—

(a) for the purposes of—

(i) carrying out a function of the recipient under these Regulations,

(ii) preventing danger to the health of the public as a result of the spread of infection or contamination with coronavirus, or

(iii) monitoring the spread of infection or contamination with coronavirus, or

(b) for a purpose connected with, or otherwise incidental to, a purpose described in subparagraph (a).

(5) Subject to paragraph (7), disclosure which is authorised by this regulation does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(6) This regulation does not limit the circumstances in which information may otherwise be disclosed under any other enactment or rule of law.

(7) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(8) In this regulation, “data protection legislation” and “personal data” have the same meanings as in section 3 of the Data Protection Act 2018⁽¹⁾.

PART 4

Taking preventative measures in regulated premises

Regulated premises and responsible persons

15.—(1) For the purposes of these Regulations, the following are “regulated premises”—

(1) 2018 c. 12.

- (a) premises of businesses or services listed in Schedule 7, to the extent that that the public have or are permitted access to the premises;
- (b) a vehicle used to provide a public transport service;
- (c) other premises where work is being carried out.

(2) In this Part, “responsible person”, in relation to regulated premises, means—

- (a) in relation to premises referred to in paragraph (1)(a) and (b), the person responsible for the premises,
- (b) in relation to premises referred to in paragraph (1)(c), the person responsible for the work being carried out on the premises.

Requirement to take all reasonable measures to minimise the risk of exposure to coronavirus

16.—(1) For the purposes of minimising the risk of exposure to coronavirus at regulated premises, or the spread of coronavirus by those who have been at regulated premises, the responsible person must—

- (a) take all reasonable measures to ensure—
 - (i) that a distance of 2 metres is maintained between any persons on the premises (except between members of the same household or a carer and the person assisted by the carer);
 - (ii) where persons are required to wait to enter the premises, that a distance of 2 metres is maintained between them (except between members of the same household or a carer and the person assisted by the carer),
- (b) take all other reasonable measures for that purpose, for example measures which limit close face-to-face interaction and maintain hygiene such as—
 - (i) changing the layout of premises including the location of furniture and workstations;
 - (ii) controlling use of entrances, passageways, stairs and lifts;
 - (iii) controlling use of shared facilities such as toilets and kitchens;
 - (iv) otherwise controlling the use of, or access to, any other part of the premises;
 - (v) installing barriers or screens;
 - (vi) providing or requiring use of personal protective equipment, and

- (c) provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.

(2) Measures that may be taken under paragraph (1) also include—

- (a) not carrying out certain activities;
- (b) closing a part of the premises;
- (c) allowing and enabling a person who ordinarily works at the premises to isolate due to testing positive for coronavirus or having had close contact with somebody who has tested positive, for a period—
 - (i) recommended in guidance published by the Welsh Ministers;
 - (ii) specified in a notification given to the person by a contact tracer;
- (d) collecting contact information from each person at the premises and retaining it for 21 days for the purpose of providing it to any of the following, upon their request—
 - (i) the Welsh Ministers;
 - (ii) a contact tracer;
- (e) taking reasonable measures to ensure that such contact information is correct.

Specific measures applicable to licensed premises

17.—(1) Where regulation 16(1) applies to a person responsible for premises authorised for the sale or supply of alcohol for consumption on the premises, the sale or supply of food or drink for consumption on the premises must be carried out in accordance with the reasonable measures specified in paragraph (2) (subject to paragraphs (3) and (4)).

(2) The reasonable measures are that—

- (a) there must be a person controlling entry to the premises and allocating a limited time period during which customers may stay in the premises;
- (b) customers must be seated in the premises anywhere other than at a bar—
 - (i) when ordering food or drink,
 - (ii) when being served with food or drink, and
 - (iii) when consuming food or drink.

(3) But where food is provided at the premises on a buffet basis, customers may select food from the buffet and return to where they are seated.

(4) Paragraph (2) does not apply to—

- (a) workplace canteens, or
- (b) premises in an educational establishment.

(5) For the purposes of paragraph (1)—

- (a) food or drink sold in holiday or travel accommodation as part of room service is not to be treated as being sold for consumption on the premises;
- (b) food or drink sold for consumption in an area adjacent to the premises where seating is made available for customers is to be treated as being sold for consumption on the premises.

(6) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, paragraphs (1) to (4) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

Guidance about taking reasonable measures

18.—(1) A person required to take reasonable measures under regulation 16(1) or 17(1) must have regard to guidance issued by the Welsh Ministers about those measures.

(2) The Welsh Ministers—

- (a) may revise guidance issued under paragraph (1), and
- (b) must publish the guidance (and any revisions).

(3) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).

(4) Guidance issued by the Welsh Ministers under—

- (a) paragraph (1) of regulation 20 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020⁽¹⁾, or
- (b) paragraph (1) of regulation 24 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020⁽²⁾,

is to be treated as if it were guidance issued under paragraph (1) of this regulation.

(1) S.I. 2020/1149 (W. 261).

(2) S.I. 2020/1219 (W. 276), as amended by S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1409 (W. 311), S.I. 2020/1477 (W. 316) and S.I. 2020/1522 (W. 326).

PART 5

Face coverings

Requirement to wear face covering on public transport

19.—(1) A person (“P”) who is travelling as a passenger on a vehicle used to provide a public transport service must wear a face covering.

(2) But this is not required—

- (a) where an exemption applies under paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) on a vehicle providing a school transport service;
- (c) on a ferry where—
 - (i) the part of the ferry which is open to passengers is entirely outdoors, or
 - (ii) a distance of at least 2 metres can be maintained between persons on the part of the ferry which is open to passengers;
- (d) on a cruise ship;
- (e) where P is allocated a cabin, berth or other similar accommodation on the vehicle, at any time when P is in that accommodation—
 - (i) alone, or
 - (ii) only with members of P’s household or a member of the household’s carer;
- (f) where—
 - (i) P is permitted, or ordinarily required, to board and to stay in a vehicle when using the public transport service,
 - (ii) the vehicle is not itself used for the provision of a public transport service, and
 - (iii) P stays in that vehicle;
- (g) on an aircraft which neither took off from, nor is to land at, a place in Wales;
- (h) on a vessel which does not dock at a port in Wales.

(4) The circumstances in which P has a reasonable excuse to not wear a face covering include—

- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within

the meaning of section 6 of the Equality Act 2010⁽¹⁾);

- (b) where P has to remove the face covering to communicate with a person who has difficulty communicating (in relation to speech, language or otherwise);
- (c) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to P or others;
- (d) where P is travelling to avoid injury, or to escape a risk of harm, and does not have a face covering;
- (e) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, if this is allowed on the vehicle and is reasonably necessary (for example due to the length of the journey);
- (f) where P is asked to remove the face covering by—
 - (i) an enforcement officer, or
 - (ii) the operator of the public transport service, an employee of the operator or a person authorised by the operator.

(5) An operator of a public transport service to which paragraph (1) applies must provide information to passengers about the requirement to wear face coverings on their vehicles.

(6) For the purposes of this regulation a “school transport service” means any transport service provided solely for the purpose of—

- (a) carrying a person to and from the school or other place at which the person receives education or training, or
- (b) otherwise facilitating a person’s attendance at a school or other place at which the person receives education or training.

Requirement to wear face covering in certain indoor public places

20.—(1) A person (“P”) must wear a face covering in indoor public areas of premises to which the public have or are permitted access.

(2) But this is not required—

- (a) where P is a child under the age of 11;
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (3).

(1) 2010 c. 15.

- (3) The circumstances in which P has a reasonable excuse to not wear a face covering include—
- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010);
 - (b) where P is undertaking an activity and wearing a face covering during that activity may be considered to be a risk to P's health;
 - (c) where P has to remove the face covering to communicate with a person who has difficulty communicating (in relation to speech, language or otherwise);
 - (d) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to P or others;
 - (e) where P is at the premises to avoid injury, or to escape a risk of harm, and does not have a face covering;
 - (f) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, where reasonably necessary;
 - (g) where P is asked to remove the face covering by an enforcement officer;
 - (h) where P is seated in premises where food or drink is sold, or otherwise provided, for consumption on the premises.

Guidance about requirements to wear face coverings

21.—(1) An operator of a public transport service to which regulation 19 applies must have regard to guidance issued by the Welsh Ministers about—

- (a) the requirement to wear a face covering in accordance with paragraphs (1) to (4) of regulation 19 and the enforcement of that requirement under regulation 32;
- (b) providing information to passengers in accordance with paragraph (5) of regulation 19.

(2) The Welsh Ministers—

- (a) may revise guidance issued under paragraph (1), and
- (b) must publish the guidance (and any revisions).

(3) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).

- (4) Guidance issued by the Welsh Ministers under—
- (a) paragraph (2) of regulation 20 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, or
 - (b) paragraph (2) of regulation 24 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020,

is to be treated as if it were guidance issued under paragraph (1) of this regulation.

PART 6

Provision of education in school

Provision of education in school to certain pupils when school premises are closed

22.—(1) Paragraph (3) applies in relation to a relevant pupil if—

- (a) the premises of the school at which the pupil is registered are closed to that pupil for a period of at least 3 consecutive school days, and
- (b) the closure is a response to a threat to public health posed by the incidence and spread of coronavirus.

(2) For the purposes of paragraph (1), “relevant pupil” means a registered pupil—

- (a) who the local authority which maintains the school at which the pupil is registered considers is the child of a critical worker, or
- (b) who the proprietor of the school at which the pupil is registered considers should attend school by reason of the pupil’s vulnerability.

(3) The proprietor of the school at which the pupil is registered must make arrangements for the pupil to attend the premises of a school for the purpose of the provision of education on the third and each subsequent school day of the period during which the premises of the school at which the pupil is registered are closed.

(4) But paragraph (3) does not apply if, on the school day in question—

- (a) the pupil is required to not leave or be outside of the place where the pupil is living by virtue of regulation 6(2), 7(2), 8(2) or 9(2), or
- (b) the pupil is otherwise isolating having been—
 - (i) notified by means of the NHS Covid 19 smartphone app developed and operated by the Secretary of State, or

- (ii) advised to do so by the proprietor of the school at which the pupil is registered or by a childcare provider.

(5) In determining, for the purposes of paragraph (1)(a), whether the premises of a school are closed to a pupil, the fact that those premises may be open by virtue of paragraph (3) is to be disregarded.

(6) In deciding whether a pupil is the child of a critical worker, the local authority must have regard to any guidance published by the Welsh Ministers about identifying children of critical workers.

Failure to comply with regulation 22

23. Any failure by a proprietor to comply with regulation 22 is enforceable by an application for an injunction by the Welsh Ministers or the local authority which maintains the school to the High Court or County Court, without notice.

Interpretation of this Part

24. In this Part—

- (a) “maintained nursery school” has the meaning given by section 22(9) of the School Standards and Framework Act 1998⁽¹⁾;
- (b) “maintained school” has the meaning given by section 20(7) of the School Standards and Framework Act 1998;
- (c) “proprietor” has the meaning given by section 579(1) of the Education Act 1996⁽²⁾;
- (d) “pupil” has the same meaning as in section 3 of the Education Act 1996;
- (e) “pupil referral unit” has the meaning given by section 19(2) of the Education Act 1996;
- (f) “registered pupil” has the meaning given by section 434(5) of the Education Act 1996;
- (g) “school” means a maintained school, a maintained nursery school or a pupil referral unit;
- (h) “school day” has the meaning given by section 579(1) of the Education Act 1996.

(1) 1998 c. 31.

(2) 1996 c. 56.

PART 7

Enforcement

Enforcement officers

25.—(1) For the purposes of regulation 26 and Schedule 8, an “enforcement officer” means a person designated by a local authority —

- (a) for the purposes of these Regulations,
- (b) under regulation 17(A1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾,
- (c) under regulation 21(1) of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, or
- (d) under regulation 25(1) of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.

(2) For the purposes of regulations 19, 20, 27 to 34, 36 and 47, an “enforcement officer” means—

- (a) a constable,
- (b) a police community support officer,
- (c) a person designated by—
 - (i) the Welsh Ministers, or
 - (ii) a local authority,for the purposes of these Regulations (but see paragraph (3)), or
- (d) a person designated by the Welsh Ministers or a local authority under—
 - (i) regulation 10(11)(c) of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽²⁾ as a relevant person (within the meaning given by that regulation),
 - (ii) regulation 17(1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 for the purposes of those Regulations,
 - (iii) regulation 21(2) of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 for the purposes of those Regulations, or
 - (iv) under regulation 25(2) of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020, (but see paragraph (3)).

(1) S.I. 2020/725 (W. 162).

(2) S.I. 2020/353 (W. 80).

(3) A person designated by a local authority may exercise an enforcement officer's functions only—

- (a) in relation to a contravention (or alleged contravention) of a requirement in—
 - (i) regulation 16(1) or 17(1),
 - (ii) paragraph 7(1) or 8(1) or (2) of Schedule 1,
 - (iii) paragraph 7(1) or 8(1) or (2) of Schedule 2,
 - (iv) paragraph 7(1), 8(1) or (2) or 10(1) of Schedule 3, or
 - (v) paragraph 7(1), 8(1), 9(1) or 10(1) of Schedule 4, or
- (b) under and by virtue of Schedule 8.

Enforcement of requirement to take preventative measures

26. Schedules 8 and 9 make provision for and in connection with conferring functions on enforcement officers for the purpose of enforcing regulations 16(1) and 17(1).

Compliance notices

27.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person is contravening a requirement in—

- (a) regulation 19(5),
- (b) paragraph 7(1) or 8(1) or (2) of Schedule 1,
- (c) paragraph 7(1) or 8(1) or (2) of Schedule 2,
- (d) paragraph 7(1), 8(1) or (2) or 10(1) of Schedule 3, or
- (e) paragraph 7(1), 8(1), 9(1) or 10(1) of Schedule 4.

(2) A compliance notice may specify measures that the person to whom it is given must take as soon as is reasonably practicable so as to prevent that person from continuing to contravene the requirement.

Powers of removal and dispersal: gatherings and being away from home

28.—(1) Paragraph (2) applies where an enforcement officer has reasonable grounds for suspecting that a person is participating in a gathering in a private dwelling in contravention of—

- (a) paragraph 1(1) of Schedule 1,
- (b) paragraph 1(1) of Schedule 2,
- (c) paragraph 1(1) of Schedule 3, or
- (d) paragraph 2(1) of Schedule 4.

(2) The enforcement officer may—

- (a) direct the gathering to disperse;
- (b) if the officer has reasonable grounds to suspect that the person does not live at the dwelling—
 - (i) direct the person to leave the dwelling;
 - (ii) remove the person from the dwelling.

(3) Paragraph (4) applies where an enforcement officer has reasonable grounds for suspecting that a person is participating in a gathering in a place other than a private dwelling in contravention of—

- (a) paragraph 2(1) of Schedule 1,
- (b) paragraph 2(1) or (3) of Schedule 2,
- (c) paragraph 2(1) or (3) of Schedule 3, or
- (d) paragraph 2(1) of Schedule 4.

(4) The enforcement officer may—

- (a) direct the gathering to disperse;
- (b) direct the person to leave the place where the gathering is taking place;
- (c) remove the person from that place.

(5) Where an enforcement officer has reasonable grounds for suspecting that a person is away from the place where the person is living in contravention of paragraph 1(1) of Schedule 4, the officer may—

- (a) direct the person to return to the place where the person is living;
- (b) remove the person to that place.

Powers relating to travel restrictions

29.—(1) Paragraph (2) applies where an enforcement officer has reasonable grounds for suspecting that a person is about to enter an area in contravention of—

- (a) paragraph 6(1) of Schedule 1,
- (b) paragraph 6(1) of Schedule 2,
- (c) paragraph 6(1) of Schedule 3, or
- (d) paragraph 6(1) of Schedule 4.

(2) The enforcement officer may direct the person not to enter the area.

(3) Paragraph (4) applies where an enforcement officer has reasonable grounds for suspecting that a person is in an area in contravention of—

- (a) paragraph 6(1) of Schedule 1,
- (b) paragraph 6(1) of Schedule 2,
- (c) paragraph 6(1) of Schedule 3, or
- (d) paragraph 6(1) of Schedule 4.

(4) The enforcement officer may—

- (a) direct the person to leave the area;
- (b) remove the person from the area.

(5) Paragraph (6) applies where an enforcement officer has reasonable grounds for suspecting that a person is about to leave an area in contravention of—

- (a) paragraph 6(2) of Schedule 1,
- (b) paragraph 6(2) of Schedule 2, or
- (c) paragraph 6(2) of Schedule 3.

(6) The enforcement officer may direct the person not to leave the area.

(7) Paragraph (8) applies where an enforcement officer has reasonable grounds for suspecting that a person has left an area in contravention of—

- (a) paragraph 6(2) of Schedule 1,
- (b) paragraph 6(2) of Schedule 2, or
- (c) paragraph 6(2) of Schedule 3.

(8) The enforcement officer may—

- (a) direct the person to return to the area;
- (b) return the person to the area.

Powers relating to contravention of isolation requirement

30. Where an enforcement officer has reasonable grounds for suspecting that a person is away from the place where they are living in contravention of regulation 6(2), 7(2), 8(2) or 9(2), the officer may—

- (a) direct the person to return to the place where the person is living;
- (b) remove the person to that place.

Powers relating to events

31.—(1) Paragraph (2) applies where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is—

- (a) committing an offence under regulation 39(2);
- (b) involved in organising an event in contravention of (or which the officer considers likely to be in contravention of) paragraph 4 of Schedule 1, paragraph 4 of Schedule 2, paragraph 4 of Schedule 3 or paragraph 4 of Schedule 4.

(2) The enforcement officer may—

- (a) direct P to follow such instructions as the officer considers necessary in order to stop the event;
- (b) remove P from the location of the event;
- (c) direct any person to leave the event;
- (d) remove any person from the event;

- (e) where the event has not started—
 - (i) direct P to follow such instructions as the officer considers necessary in order to stop the event from taking place;
 - (ii) remove P from the proposed location of the event.

(3) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is involved in organising an event authorised under paragraph 5 of Schedule 1, paragraph 5 of Schedule 2, paragraph 5 of Schedule 3 or paragraph 5 of Schedule 4 which the officer considers is being held in contravention of a requirement, restriction or other condition specified in relation to the authorisation, the officer may—

- (a) direct P to follow such instructions as the officer considers necessary in order to secure compliance with the requirement, restriction or other condition;
- (b) direct P to follow such instructions as the officer considers necessary in order to stop the event;
- (c) remove P from the location of the event;
- (d) direct any person to leave the event;
- (e) remove any person from the event.

Enforcement of face covering requirements

32.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person is contravening (or is about to contravene) regulation 19(1), the officer may—

- (a) direct the person not to board the vehicle providing the public transport service in question;
- (b) remove the person from the vehicle.

(2) Where—

- (a) the operator of a public transport service,
- (b) an employee of the operator, or
- (c) a person authorised by the operator,

has reasonable grounds to suspect that a person is about to contravene regulation 19(1), the operator, employee or authorised person may direct the person not to board the vehicle providing the public transport service in question.

(3) Where an enforcement officer has reasonable grounds to suspect that a person is contravening (or is about to contravene) regulation 20(1), the officer may—

- (a) direct the person not to enter the premises;
- (b) remove the person from the premises.

Enforcement: children

33.—(1) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) in respect of whom the officer may exercise a power under this Part is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take such action in respect of P as the officer considers appropriate, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(2) For the purposes of paragraph (1), I has responsibility for a child if I—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child.

Power of entry

34.—(1) An enforcement officer may enter premises, if the officer—

- (a) has reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been or is about to be contravened.

(2) An enforcement officer entering premises in accordance with paragraph (1) may take such other persons, equipment and materials onto the premises as appears to the officer to be appropriate.

(3) An enforcement officer entering premises in accordance with paragraph (1)—

- (a) if asked by a person on the premises, must show evidence of the officer’s identity and outline the purpose for which the power is exercised;
- (b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the officer found them.

(4) An enforcement officer may enter premises which are wholly or mainly used as a private dwelling only if the enforcement officer is a constable.

Power of police to conduct road checks

35.—(1) For the purposes of this regulation, a “road check” means the exercise in a locality of the power conferred by section 163 of the Road Traffic Act

1988(1) in such a way as to stop, during the period for which the exercise of that power in that locality continues, all vehicles or vehicles selected by any criterion.

(2) A constable may conduct a road check for the purpose of ascertaining whether a vehicle is carrying a person who the constable reasonably believes—

- (a) has committed, or
- (b) intends to commit,

an offence under these Regulations.

(3) A road check must be authorised by a constable of the rank of superintendent or above.

(4) But a road check may be authorised by a constable below that rank if the constable considers it necessary as a matter of urgency.

(5) A constable may authorise a road check if the constable has reasonable grounds to believe that a person referred to in paragraph (2) is, or is about to be, in the locality in which vehicles would be stopped.

(6) An authorisation must be in writing and must specify—

- (a) the locality in which vehicles are to be stopped;
- (b) the period, not exceeding 7 days, during which the road check may take place;
- (c) whether the road check is to be conducted—
 - (i) continuously throughout the period, or
 - (ii) at particular times during the period (in which case the authorisation must specify those times);
- (d) the name of the constable giving the authorisation.

(7) Where a road check is authorised under paragraph (4)—

- (a) the period specified in paragraph (6)(b) may not exceed 2 days;
- (b) the constable giving the authorisation must, as soon as is reasonably practicable after giving it, inform a constable of the rank of superintendent or above that it has been given.

(8) A constable of the rank of superintendent or above may give authorisation in writing for a road check to continue for a further period, not exceeding 7 days, beyond the period for which the road check was initially authorised.

(9) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is

(1) 1988 c. 52, as amended by the Road Traffic Act 1991 (c. 40) and the Traffic Management Act 2004 (c. 18).

stopped is entitled to obtain a written statement of the purpose of the road check by applying in writing—

- (a) to the police force responsible for the locality where the road check is conducted, and
- (b) no later than the end of the period of 12 months from the day on which the vehicle was stopped.

Enforcement: supplemental provision

36.—(1) An enforcement officer may take other action to facilitate the exercise of a power conferred on the officer by this Part.

(2) Action taken under paragraph (1) may include—

- (a) requiring a person to give any information or answer any question the officer considers—
 - (i) necessary to enable the officer to determine whether to exercise a power conferred on the officer by this Part, or
 - (ii) is otherwise relevant to the exercise of such a power;
- (b) directing a person to follow such instructions as the officer considers necessary.

(3) A constable may use reasonable force in the exercise of a power under—

- (a) regulation 28(2)(b)(ii), (4)(c) or (5)(b);
- (b) regulation 29(4)(b) or (8)(b);
- (c) regulation 30(b);
- (d) regulation 31(2)(b) (d) or (e)(ii), or (3)(c) or (e);
- (e) regulation 32(1)(b) or (3)(b);
- (f) regulation 34(1).

(4) An enforcement officer may only exercise a power under this Part if the officer considers that it is necessary and proportionate to do so.

(5) In this Part and Part 8 references to a requirement include references to a restriction.

PART 8

Offences and penalties

CHAPTER 1

Offences

Offences relating to gatherings and being away from home

37.—(1) A person who contravenes a requirement in—

- (a) paragraph 1(1) or 2(1) of Schedule 1,

- (b) paragraph 1(1) or 2(1) or (3) of Schedule 2,
- (c) paragraph 1(1) or 2(1) or (3) of Schedule 3, or
- (d) paragraph 1(1) or 2(1) of Schedule 4,

commits an offence.

(2) A person who participates in a gathering—

- (a) which takes place in a private dwelling,
- (b) which consists of more than 15 people, and
- (c) at which people are gathered in contravention of—
 - (i) paragraph 1(1) of Schedule 1,
 - (ii) paragraph 1(1) of Schedule 2,
 - (iii) paragraph 1(1) of Schedule 3, or
 - (iv) paragraph 2(1) of Schedule 4,

commits an offence.

Travel restriction offences

38. A person who contravenes a requirement in—

- (a) paragraph 6(1) or (2) of Schedule 1,
- (b) paragraph 6(1) or (2) of Schedule 2,
- (c) paragraph 6(1) or (2) of Schedule 3, or
- (d) paragraph 6(1) of Schedule 4,

commits an offence.

Offences relating to organising events

39.—(1) A person who contravenes a requirement in—

- (a) paragraph 4 of Schedule 1,
- (b) paragraph 4 of Schedule 2,
- (c) paragraph 4 of Schedule 3, or
- (d) paragraph 4 of Schedule 4,

commits an offence.

(2) A person who, without reasonable excuse, is involved in organising a large unlicensed music event commits an offence.

(3) For the purposes of paragraph (2)—

- (a) “large unlicensed music event” means an event—
 - (i) at which more than 30 people are in attendance,
 - (ii) at which music is played or performed for the purpose, or for purposes which include the purpose, of entertainment, and
 - (iii) where the playing or performance of the music is—

- (aa) a licensable activity (within the meaning of the Licensing Act 2003⁽¹⁾), and
 - (bb) not carried on under and in accordance with an authorisation (within the meaning given by section 136(5) of that Act);
- (b) a person is not involved in organising a large unlicensed music event if the person's only involvement is attending it.

Offences relating to isolation requirements and contact tracing

40.—(1) A person who—

- (a) contravenes a requirement in regulation 6(2), 7(2), 8(2), 9(2) or 12, or
- (b) without reasonable excuse, contravenes a requirement in regulation 6(3), 7(3), 8(3) or 9(3),

commits an offence.

(2) It is an offence for a person (“P”) to give false or misleading information to a contact tracer—

- (a) under regulation 6(3), 7(3), 8(3) or 9(3), or
- (b) about—
 - (i) P's contact information, or
 - (ii) persons with whom P may have had close contact,

where P knows the information is false or misleading, or P is reckless as to whether the information is false or misleading.

(3) In paragraph (2), “close contact” has the same meaning as in Part 3.

Offence of failing to wear a face covering

41. A person who contravenes the requirement in regulation 19(1) or 20(1) commits an offence.

Offences relating to businesses and services

42.—(1) A person who, without reasonable excuse, contravenes a requirement in—

- (a) paragraphs 7(1) or 8(1) or (2) of Schedule 1,
- (b) paragraphs 7(1) or 8(1) or (2) of Schedule 2,
- (c) paragraphs 7(1), 8(1) or (2) or 10(1) of Schedule 3, or
- (d) paragraphs 7(1), 8(1), 9(1) or 10(1) of Schedule 4,

(1) 2003 c. 17.

commits an offence.

(2) An operator of a public transport service who, without reasonable excuse, contravenes the requirement in regulation 19(5) commits an offence.

(3) A person who, without reasonable excuse, fails to take the measures specified in a premises improvement notice issued under paragraph 1(1) of Schedule 8 within the time limit specified in the notice commits an offence.

(4) A person who, without reasonable excuse, contravenes paragraph 3(1) of Schedule 8 commits an offence.

(5) A person who—

- (a) contravenes paragraph 3(2) of Schedule 8, or
- (b) without reasonable excuse, removes, obscures or damages a notice or sign required to be displayed under paragraph 7(2)(a) of that Schedule,

commits an offence.

Obstruction and contravention of directions and compliance notices

43.—(1) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(2) A person who, without reasonable excuse—

- (a) contravenes a direction given—
 - (i) by an enforcement officer under Part 7, or
 - (ii) by the operator of a public transport service, an employee of the operator, or a person authorised by the operator, under regulation 32(2), or
- (b) fails to comply with a compliance notice given by an enforcement officer under regulation 27(1),

commits an offence.

Penalty

44. An offence under these Regulations is punishable on summary conviction by a fine.

Arrest without warrant

45. Section 24 of the Police and Criminal Evidence Act 1984(1) applies in relation to an offence under

(1) 1984 c. 60. Section 24 was substituted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).

these Regulations as if the reasons in subsection (5) included—

- (a) to maintain public health;
- (b) to maintain public order.

Offences committed by bodies corporate etc.

46.—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(2) In paragraph (1), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(3) Proceedings for an offence under these Regulations alleged to have been committed by a partnership may be brought in the name of the partnership instead of in the name of any of the partners.

(4) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated body other than a partnership may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.

(5) Section 33 of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates’ Courts Act 1980⁽²⁾ apply in proceedings for an offence brought against a partnership or an unincorporated body other than a partnership as they apply in relation to a body corporate.

(6) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(7) A fine imposed on an unincorporated body other than a partnership on its conviction for an offence under these Regulations is to be paid out of the funds of the body.

(1) 1925 c. 86.
(2) 1980 c. 43.

CHAPTER 2

Fixed penalties

Fixed penalty notices

47.—(1) An enforcement officer may issue a fixed penalty notice to a person the officer reasonably believes—

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) a local authority, or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,

as the notice may specify.

(3) The Welsh Ministers may designate themselves under paragraph (2)(b).

(4) A person designated by the Welsh Ministers for the purposes of receiving payment under—

- (a) regulation 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
- (b) regulation 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020,
- (c) regulation 31 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, or
- (d) regulation 37 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020

is to be treated as if designated for the purposes of receiving payment under this regulation.

(5) Where a local authority is specified in the notice it must be the authority (or as the case may be, one of the authorities) in whose area the offence is alleged to have been committed.

(6) Where a person is issued with a notice under this regulation in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

Amount of fixed penalty: general

48.—(1) Unless regulation 49, 50, 51 or 52 applies, the amount of a fixed penalty is—

- (a) £60, or
- (b) if £30 is paid before the end of the period of 14 days following the date of the notice, £30.

(2) But if the person to whom such a fixed penalty notice is issued has already received a relevant fixed penalty notice—

- (a) paragraph (1) does not apply, and
- (b) the amount specified as the fixed penalty is—
 - (i) in the case of the second relevant fixed penalty notice received, £120;
 - (ii) in the case of the third relevant fixed penalty notice received, £240;
 - (iii) in the case of the fourth relevant fixed penalty notice received, £480;
 - (iv) in the case of the fifth relevant fixed penalty notice received, £960;
 - (v) in the case of the sixth and any subsequent relevant fixed penalty notice received, £1,920.

(3) In paragraph (2), “relevant fixed penalty notice” means—

- (a) a fixed penalty notice where the amount of fixed penalty is determined under this regulation;
- (b) a fixed penalty notice under—
 - (i) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
 - (ii) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 other than a notice to which regulation 21(7A) of those Regulations applies,
 - (iii) the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 other than a notice to which regulation 31(8) of those Regulations applies,
 - (iv) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 other than a notice to which regulation 39, 40, 41 or 42 of those Regulations applies,
 - (v) the Health Protection (Coronavirus Restrictions) (Functions of Local

Authorities etc.) (Wales) Regulations
2020(1).

Amount of fixed penalty: participating in a large gathering at a private dwelling

49. Where a fixed penalty notice is issued in respect of an alleged offence under regulation 37(2), the amount of the fixed penalty is £60.

Amount of fixed penalty: organising an event

50.—(1) Where a fixed penalty notice is issued in respect of an alleged offence under regulation 39(1), the amount of the fixed penalty is £500.

(2) But if the person to whom a fixed penalty notice is issued in respect of such an alleged offence has already received a relevant fixed penalty notice—

- (a) paragraph (1) does not apply, and
- (b) the amount of the fixed penalty is—
 - (i) in the case of the second such fixed penalty notice received, £1,000;
 - (ii) in the case of the third such fixed penalty notice received, £2,000;
 - (iii) in the case of the fourth and any subsequent such fixed penalty notice received, £4,000.

(3) In paragraph (2), “relevant fixed penalty notice” means—

- (a) a fixed penalty notice where the amount of fixed penalty is determined under this regulation;
- (b) a fixed penalty notice under the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 to which regulation 40 of those Regulations applies.

Amount of fixed penalty: organising an unlicensed music event

51. Where a fixed penalty notice is issued in respect of an alleged offence under regulation 39(2), the amount of the fixed penalty is £10,000.

Amount of fixed penalty: business-related offences

52.—(1) This regulation applies to a fixed penalty notice issued in respect of an alleged offence under regulation 42(1), (2), (3) or (4) (an “alleged business offence”).

(1) S.I. 2020/1011 (W. 225).

(2) Where a fixed penalty notice is issued in respect of an alleged business offence, the amount of the fixed penalty is £1,000.

(3) But if the person to whom a fixed penalty notice is issued in respect of an alleged business offence has already received a relevant fixed penalty notice—

- (a) paragraph (2) does not apply, and
- (b) the amount of the fixed penalty is—
 - (i) in the case of the second such fixed penalty notice received, £2,000;
 - (ii) in the case of the third such fixed penalty notice received, £4,000;
 - (iii) in the case of the fourth and any subsequent such fixed penalty notice received, £10,000.

(4) In paragraph (3), “relevant fixed penalty notice” means—

- (a) a fixed penalty notice issued in respect of an alleged business offence;
- (b) a fixed penalty notice under the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 to which regulation 42 of those Regulations applies.

Fixed penalties: form and procedure

53.—(1) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which (because of regulation 47(6)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty determined under regulation 48, 49, 50, 51 or 52 (as the case may be);
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment.

(2) Whatever other method may be specified under paragraph (1)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (1)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(3) Where a letter is sent as mentioned in paragraph (2), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(4) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of the person with responsibility for the financial affairs of—
 - (i) the local authority, or
 - (ii) the person designated under regulation 47(2)(b),specified in the fixed penalty notice to which the proceedings relate, and
- (b) which states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

Fixed penalty notices: prohibition of double jeopardy

54.—(1) Where the same, or largely the same, act or omission by a person may give rise to a reasonable belief that the person has committed more than one offence under these Regulations, a fixed penalty notice may be issued to the person only in respect of one of the alleged offences.

(2) But a fixed penalty notice may be issued in respect of both an alleged offence under regulation 37(1) and under regulation 37(2) where the same, or largely the same, act by a person gives rise to a reasonable belief that the person has committed both offences.

CHAPTER 3

Proceedings

Self-incrimination

55.—(1) Relevant information may be used in evidence against the person to whom the information relates in criminal proceedings.

(2) Where the information is used in proceedings other than for an offence under these Regulations or section 5 of the Perjury Act 1911(1) (false statements made otherwise than on oath)—

- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
- (b) no question relating to the information may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if, in the proceedings—

(1) 1911 c. 6. Section 5 was amended by section 1(2) of the Criminal Justice Act 1948 (c. 58).

- (a) evidence relating to the information is adduced by or on behalf of the person who provided it, or
- (b) a question relating to the information is asked by or on behalf of that person.

(4) In this regulation, “relevant information” means—

- (a) information which is relevant information for the purposes of regulation 14;
- (b) information, or the answer to a question, given in response to a requirement imposed under regulation 36(1);
- (c) anything contained in a document or electronic records produced in response to a requirement imposed under paragraph 8(1) of Schedule 8.

Prosecutions

56.—(1) No proceedings for an offence under these Regulations may be brought other than by—

- (a) the Director of Public Prosecutions,
- (b) any person designated by the Welsh Ministers, or
- (c) in relation to proceedings for an offence under regulation 42, a local authority.

(2) A person designated by the Welsh Ministers under—

- (a) regulation 14 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
- (b) regulation 22 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020,
- (c) regulation 32 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, or
- (d) regulation 46 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020,

is to be treated as if designated under this regulation.

PART 9

General

Interpretation

57.—(1) In these Regulations—

- (a) “alcohol” has the meaning given by section 191 of the Licensing Act 2003⁽¹⁾;
- (b) “alternative wedding ceremony” means a ceremony—
 - (i) based on a person’s faith or belief or lack of belief, to mark the union of two people, other than a ceremony for the purposes of solemnising a marriage or forming a civil partnership,
 - (ii) held in regulated premises, and
 - (iii) organised by a charitable, benevolent or philanthropic institution;
- (c) “carer” means a person who provides care for the person assisted where—
 - (i) the carer is entitled to an assessment under section 24 of the Social Services and Well-being (Wales) Act 2014⁽²⁾,
 - (ii) the care is part of the provision of community care services under Part 4 of the Social Services and Well-being (Wales) Act 2014, or
 - (iii) the care is provided by a care provider registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾;
- (d) “child” means a person who is aged under 18;
- (e) “contact information”, in relation to a person, means the person’s name and information sufficient to enable the person to be contacted, (including a telephone number, and, in relation to a person at regulated premises, the date and time at which the person was at the premises);
- (f) “contact tracer” means—
 - (i) a person employed or engaged for the purposes of the health service (within the meaning of section 206 of the National Health Service (Wales) Act 2006⁽⁴⁾ or section 108 of the National Health Service (Scotland) Act 1978⁽⁵⁾);
 - (ii) a person employed or engaged by a local authority, designated for the purposes of Part 3 by a Local Health Board, Public Health Wales

(1) Section 191 has been amended by the Policing and Crime Act 2017 (c. 3) and S.I. 2006/2407.
 (2) 2014 anaw 4.
 (3) 2016 anaw 2.
 (4) 2006 c. 42.
 (5) 1978 c. 29.

- National Health Service Trust⁽¹⁾ or a local authority;
- (g) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (h) “elite athlete” means an individual designated as such by the Sports Council for Wales for the purposes of—
- (i) these Regulations,
 - (ii) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
 - (iii) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020,
 - (iv) the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, or
 - (v) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020;
- (i) “elite sporting event” means a sporting event at which only elite athletes are competing;
- (j) “face covering” means a covering of any type which covers a person’s nose and mouth;
- (k) “food and drink business” means—
- (i) bars (including bars in members’ clubs);
 - (ii) public houses;
 - (iii) cafes, canteens and restaurants (including workplace canteens and dining rooms in members’ clubs);
- (l) “holiday site” means any land in Wales on which a mobile home or caravan is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), in respect of which the relevant planning permission or the site licence for the land—
- (i) is expressed to be granted for holiday use only, or
 - (ii) requires that there are times of the year when no mobile home or caravan may be stationed on the site for human habitation;
- (m) “holiday or travel accommodation” means accommodation in—
- (i) camping sites;
 - (ii) holiday sites;
 - (iii) hotels and bed and breakfast accommodation;

(1) Established by S.I. 2009/2058 (W. 177).

- (iv) other holiday accommodation (including holiday apartments, hostels and boarding houses);
- (n) “local authority” means the council of a county or county borough in Wales;
- (o) “parental responsibility” has the same meaning as in the Children Act 1989⁽¹⁾;
- (p) a “person responsible for carrying on a business” includes the owner, proprietor, and manager of that business;
- (q) “premises” includes any building or structure and any land;
- (r) “public transport service” means a service provided to the general public for the carriage of passengers by road, railway, tramway, air or water;
- (s) “regulated premises” has the meaning given by regulation 15(1);
- (t) “restricted UK area” means—
 - (i) an area of England for the time being specified or described in Part 2 of Schedule 4 to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020⁽²⁾ as being within the Tier 3 area;
 - (ii) an area of Scotland for the time being specified in the table in Schedule 6 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020⁽³⁾, where the table indicates it is a Level 3 or Level 4 area;
 - (iii) Northern Ireland;
- (u) “single adult household” means—
 - (i) a household comprising of 1 adult (and any number of children), or
 - (ii) a household comprising of—
 - (aa) 1 adult who has caring responsibilities for 1 or more other adults in the household,
 - (bb) the adult or adults being cared for,
 - (cc) no other adults, and
 - (dd) any number of children;

(1) 1989 c. 41. See Part 1 of the Act, to which there have been various amendments, including by the Human Fertilisation and Embryology Act 2008 (c. 22) and S.I. 2019/1458.

(2) S.I. 2020/1374, as amended by S.I. 2020/1533 and S.I. 2020/1572.

(3) S.S.I. 2020/344, as amended by S.S.I. 2020/347, S.S.I. 2020/374, S.S.I. 2020/389, S.S.I. 2020/392, S.S.I. 2020/400, S.S.I. 2020/415 and S.S.I. 2020/427.

- (v) “vehicle” includes an aircraft, a cable car, a train, a tram and a vessel;
- (w) “vulnerable person” includes—
 - (i) any person aged 70 or older;
 - (ii) any person under 70 who has an underlying health condition;
 - (iii) any person who is pregnant;
 - (iv) any child;
 - (v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

(2) For the purposes of determining whether or not a site is a holiday site in accordance with paragraph (1)(l), any provision of the relevant planning permission or of the site licence which permits the stationing of a mobile home on the land for human habitation all year round is to be ignored if the mobile home is authorised to be occupied by—

- (a) the person who is the owner of the site, or
- (b) a person employed by that person who does not occupy the mobile home under an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013⁽²⁾ applies.

(3) In these Regulations, references to a “private dwelling”—

- (a) include a houseboat and any garden, yard, passage, stair, outhouse or other appurtenance of the dwelling;
- (b) do not include the following—
 - (i) holiday or travel accommodation;
 - (ii) accommodation in a care home service, secure accommodation service or residential family centre service, within the meaning given to those terms by Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾;
 - (iii) criminal justice accommodation.

(4) For the purposes of these Regulations—

- (a) there is a gathering when two or more people are in the same place in order to do something together;
- (b) an event is an occasion—

(1) Section 60 was amended by section 65 of the Protection of Freedoms Act 2012 (c. 9).
 (2) 2013 anaw 6, as amended by the Housing (Wales) Act 2014 (anaw 7).
 (3) 2016 anaw 2.

(i) which is planned or scheduled for a particular purpose, and

(ii) at which any number of people are in the same place for that purpose, whether or not they are participating in a gathering.

(5) For the purposes of these Regulations—

(a) premises are indoors if they are enclosed or substantially enclosed within the meaning given by regulation 2 of the Smoke-free Premises etc. (Wales) Regulations 2007⁽¹⁾;

(b) premises are authorised for the sale or supply of alcohol where the premises have been granted or given an authorisation under the Licensing Act 2003, and “authorisation” has the meaning given by section 136(5) of that Act.

(6) For the purposes of these Regulations, the premises of a cinema or theatre is a drive-in cinema or theatre if—

(a) the premises are outdoors, and

(b) persons attending the showing of a film or performance at the premises—

(i) may only do so in an enclosed vehicle, and

(ii) may not, in so far as is reasonably practicable, leave the vehicle while at the premises.

(7) For the purposes of these Regulations, an activity is “organised” if—

(a) it is organised by—

(i) a business,

(ii) a public body or a charitable, benevolent, educational or philanthropic institution,

(iii) a club or political organisation, or

(iv) the national governing body of a sport or other activity, and

(b) the person organising it has—

(i) carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999⁽²⁾, whether or not the person is subject to those Regulations, and

(ii) complied with the requirements of regulations 16 and 18(1).

(8) For the purposes of paragraph (7)(b)—

(1) S.I. 2007/787 (W. 68).

(2) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

- (a) regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies as if the activity were an undertaking conducted by the person organising it;
- (b) regulation 16 of these Regulations applies as if—
 - (i) the place where the activity takes place were regulated premises for the purposes of that regulation, and
 - (ii) the person organising the activity were the responsible person in relation to those regulated premises.

Revocation

58. The following Regulations are revoked—

- (a) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020, other than regulation 48;
- (b) regulation 4 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020⁽¹⁾;
- (c) regulation 6 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020⁽²⁾.

Consequential amendment

59. In regulation 19(10) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, after subparagraph (d) insert—

- “(e) the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 if regulation 48 of those Regulations applies to the notice.”

Mark Drakeford

First Minister, one of the Welsh Ministers

At 5.45 p.m. on 18 December 2020

(1) S.I. 2020/1237 (W. 279) as amended by S.I. 2020/1288 (W. 286).

(2) S.I. 2020/1288 (W. 286).

SCHEDULE 1

Regulation 4(2)

Alert Level 1 Restrictions

PART 1

Restrictions on gathering

Restriction on gatherings in private dwellings

1.—(1) No person may, without a reasonable excuse, participate in a gathering in a private dwelling which consists of more than 6 people unless all the persons participating in the gathering are members of the same household or extended household.

(2) In determining, for the purposes of sub-paragraph (1), the number of persons participating in a gathering no account is to be taken of—

- (a) any children under the age of 11, or
- (b) the carer of a person who is participating in the gathering.

(3) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but

who has parental responsibility for, or who has care of, the child;

- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving educational services.

(5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm.

(6) This paragraph does not apply to a person who is homeless.

Restriction on gatherings in public places

2.—(1) No person may, without a reasonable excuse, participate in a gathering which takes place other than in a private dwelling—

- (a) indoors, or outdoors in regulated premises, which consists of more than 6 people unless all the persons participating in the gathering are members of the same household;
- (b) outdoors in premises that are not regulated premises, which consists of more than 30 people unless all the persons participating in the gathering are members of the same household or extended household.

(2) In determining, for the purposes of sub-paragraph (1), the number of persons participating in a gathering no account is to be taken of—

- (a) any children under the age of 11, or
- (b) the carer of a person who is participating in the gathering.

(3) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;

- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
 - (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
 - (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
 - (f) moving home;
 - (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
 - (h) accessing or receiving public services;
 - (i) accessing or receiving educational services.
- (5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—
- (a) providing or receiving emergency assistance;
 - (b) avoiding illness, injury or other risk of harm;
 - (c) attending a solemnisation of a marriage, formation of a civil partnership or an alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
 - (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
 - (e) participating in a gathering of no more than 50 people at regulated premises, not counting persons under the age of 11 or persons working at the premises, to—
 - (i) celebrate a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony that takes place on or after 22 August 2020;

- (ii) celebrate the life of a deceased person whose funeral is held on or after 22 August 2020;
- (f) attending a place of worship;
- (g) an elite athlete and is training or competing;
- (h) providing coaching or other support to an elite athlete, or providing support at an elite sporting event;
- (i) participating in or facilitating an indoor organised activity at which—
 - (i) no more than 50 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (j) participating in or facilitating an outdoor organised activity at which—
 - (i) no more than 100 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (k) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);
- (l) attending or facilitating an event authorised by the Welsh Ministers in accordance with paragraph 5.

Extended households

3.—(1) Up to 3 households may agree to be treated as an extended household.

(2) In addition to the up to 3 households who may agree to be treated as an extended household under sub-paragraph (1), 1 single adult household may also agree to be treated as part of that extended household.

(3) To agree to be treated as an extended household, all of the adult members of the households must agree.

(4) A household may only agree to be treated as being in 1 extended household.

(5) Where households have agreed to be treated as an extended household under—

- (a) paragraph 3 of Schedule 2,
- (b) paragraph 3 of Schedule 3, or
- (c) paragraph 3 of Schedule 4,

those households are to be treated as having agreed to be treated as an extended household under this paragraph.

(6) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(7) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(8) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

PART 2

Restrictions on organising events

Prohibition on organising events

4.—(1) No person may, without a reasonable excuse, be involved in organising—

- (a) an event held wholly or mainly indoors at which more than 50 people are in attendance, or
- (b) an event held wholly or mainly outdoors at which more than 100 people are in attendance,

not counting persons under the age of 11 or persons working, or providing voluntary services, at the event.

(2) Sub-paragraph (1) does not apply to a person involved in organising an event authorised by the Welsh Ministers under paragraph 5.

(3) For the purposes of sub-paragraph (1)—

- (a) a person is not involved in organising an event if the person's only involvement is attending it;
- (b) a reasonable excuse includes where the person has taken all reasonable measures to ensure that no more than 50 or 100 people are in attendance, as the case may be;
- (c) the following are not to be treated as events—
 - (i) the showing of a film;
 - (ii) a performance at a theatre;
 - (iii) a market;
 - (iv) a religious service;
 - (v) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event.

Authorised events

5.—(1) The Welsh Ministers may give authorisation in writing for an event to be held—

- (a) at which more than 50 people are in attendance where the event takes place wholly or mainly indoors, or
- (b) at which more than 100 people are in attendance where the event takes place wholly or mainly outdoors;

(2) References in sub-paragraph (1) to numbers of people do not include persons under the age of 11 or persons working, or providing voluntary services, at the event.

(3) An authorisation may be given under sub-paragraph (1) in relation to a particular event or a particular description of events.

(4) An authorisation under sub-paragraph (1)—

- (a) must be given to a person the Welsh Ministers consider is responsible for organising the event, and
- (b) may require the event to be held in accordance with any requirements, restrictions or other conditions as may be specified by the Welsh Ministers.

(5) The Welsh Ministers must publish—

- (a) an authorisation given under sub-paragraph (1), and
- (b) details of any requirements, restrictions or other conditions specified by the Welsh Ministers in relation to an event to be held under the authorisation.

(6) The Welsh Ministers may withdraw an authorisation at any time by giving notice in writing to the person to whom the authorisation was given.

(7) An authorisation may be withdrawn under sub-paragraph (6) only if the Welsh Ministers —

- (a) have reasonable grounds to believe that the event will not be held, or is not being held, in accordance with a requirement, restriction or other condition specified by them, or
- (b) consider that it is necessary and proportionate to withdraw the authorisation for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus.

PART 3

Restrictions on travelling

Restriction on travel to and from Alert Level 1 area

6.—(1) No person living in—

- (a) a restricted UK area, or
- (b) an Alert Level 3 or Alert Level 4 area,

may enter or remain in an Alert Level 1 area without a reasonable excuse.

(2) No person living in an Alert Level 1 area may, without a reasonable excuse, leave the area for the purposes of entering or remaining in—

- (a) a restricted UK area;
- (b) an Alert Level 3 or Alert Level 4 area.

(3) For the purposes of sub-paragraphs (1) and (2), a person has a reasonable excuse if—

- (a) the person enters or leaves the area for a purpose that is reasonably necessary and there is no reasonably practicable alternative;
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to enter or leave the area include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or participating in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;

- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing or receiving educational services;
- (j) obtaining—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (k) obtaining money from or depositing money with any business or service listed in paragraph 39(g) of Schedule 7;
- (l) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).

(5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) attending a solemnization of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (e) an elite athlete and is and is travelling for the purposes of training or competition;
- (f) providing coaching or other support to an elite athlete, or providing support at—
 - (i) an elite sporting event, or
 - (ii) a sporting event taking place outside Wales;
- (g) travelling to vote in an election;
- (h) travelling on a journey which—

- (i) in relation to the restriction in sub-paragraph (1), begins and ends outside the area, or
 - (ii) in relation to the restriction in sub-paragraph (2), ends in an area which the person is not prohibited from entering or remaining in under that sub-paragraph,
- provided that the person takes all reasonably practicable measures to minimise any stops during the journey;
- (i) travelling to participate in a gathering with the person's extended household in accordance with any restrictions on gatherings applicable where the gathering takes place.

PART 4

Restrictions on certain businesses and services

Closure of premises used by certain businesses and services

7.—(1) A person responsible for carrying on or providing a business or service listed in paragraph 9 or 10 must—

- (a) close to members of the public any premises operated as part of the business or service, and
- (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.

(2) Sub-paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast) or to rehearse for such a broadcast;
- (d) the use of premises for the provision of services or information (including the sale, hire or delivery of goods or services)—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

Restrictions on licensed premises

8.—(1) A person responsible for premises which are authorised for the sale or supply of alcohol may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(2) Where the premises are authorised for the sale or supply of alcohol for consumption on the premises, the person responsible for the premises—

- (a) must close the premises (to customers) at or before 10.20 p.m. each day, and
- (b) may not open the premises before 6.00 a.m. each day.

(3) Despite sub-paragraph (2), a cinema or theatre may close later than 10.20 p.m. but only for the purpose of concluding—

- (a) the showing of a film, or
- (b) a performance,

which begins before 10.00 p.m.

(4) Sub-paragraph (2) does not apply to—

- (a) premises located in—
 - (i) a sea port;
 - (ii) an airport;
 - (iii) an educational establishment;
- (b) workplace canteens.

(5) In its application to the premises of holiday or travel accommodation, sub-paragraph (2) applies only to those parts of the premises in which alcohol is sold or supplied for consumption on the premises.

(6) Sub-paragraphs (1) and (2) do not allow the premises to be open, or alcohol to be sold or supplied, in contravention of an authorisation granted or given in respect of the premises.

(7) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, sub-paragraphs (2) to (4) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

Businesses or services whose premises must be closed

9. Nightclubs, discotheques, dance halls or other venues authorised for the sale or supply of alcohol where live or recorded music is provided for members of the public or members of the venue to dance.

10. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982⁽¹⁾).

(1) 1982 c. 30. Paragraph 2A of Schedule 3 was inserted by section 27(3) of the Policing and Crime Act 2009 (c. 26).

SCHEDULE 2

Regulation 4(3)

Alert Level 2 Restrictions

PART 1

Restrictions on gathering

Restriction on gatherings in private dwellings

1.—(1) No person may, without a reasonable excuse, participate in a gathering in a private dwelling—

- (a) indoors, with any other person apart from members of their household or extended household
- (b) outdoors, which consists of more than 4 people unless all the persons participating in the gathering are members of the same household or extended household.

(2) In determining, for the purposes of sub-paragraph (1)(b), the number of persons participating in a gathering no account is to be taken of—

- (a) any children under the age of 11, or
- (b) the carer of a person who is participating in the gathering.

(3) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;

- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving educational services.

(5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) participating in a gathering of no more than 4 people where all the persons in the gathering—
 - (i) live in the same premises, and
 - (ii) share toilet, washing, dining or cooking facilities with each other.

(6) This paragraph does not apply to a person who is homeless.

Restriction on gatherings in public places

2.—(1) No person may, without a reasonable excuse, participate in a gathering which—

- (a) takes place anywhere other than—
 - (i) in a private dwelling, or
 - (ii) in holiday or travel accommodation, and
- (b) consists of more than 4 people, not including—
 - (i) any children under the age of 11, or
 - (ii) the carer of a person who is participating in the gathering.

(2) But a person may participate in such a gathering which—

- (a) takes place indoors or in any part of regulated premises that is outdoors, if all the persons participating in the gathering are members of the same household, or
- (b) takes place outdoors other than in regulated premises, if all the persons participating in the gathering are—
 - (i) members of the same household, or

(ii) members of the same extended household.

(3) No person may, without a reasonable excuse, participate in a gathering which takes place in holiday or travel accommodation unless all the persons participating in the gathering are members of the same household.

(4) For the purposes of sub-paragraphs (1) and (3), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (6) applies.

(5) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing or receiving educational services.

(6) The circumstances referred to in sub-paragraph (4)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;

- (c) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (e) participating in a gathering of no more than 15 people at regulated premises, not counting persons under the age of 11 or persons working at the premises, to—
 - (i) celebrate a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony that takes place on or after 22 August 2020;
 - (ii) celebrate the life of a deceased person whose funeral is held on or after 22 August 2020;
- (f) attending a place of worship;
- (g) an elite athlete and is training or competing;
- (h) providing coaching or other support to an elite athlete, or providing support at an elite sporting event;
- (i) participating in or facilitating an indoor organised activity at which—
 - (i) no more than 15 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (j) participating in or facilitating an outdoor organised activity at which—
 - (i) no more than 30 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (k) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);

- (1) attending or facilitating an event authorised by the Welsh Ministers in accordance with paragraph 5.

(7) This paragraph does not apply to a person who is homeless.

Extended households

3.—(1) 2 households may agree to be treated as an extended household.

(2) In addition to the 2 households who may agree to be treated as an extended household under subparagraph (1), 1 single adult household may also agree to be treated as part of that extended household.

(3) To agree to be treated as an extended household, all of the adult members of the 2 households must agree.

(4) A household may only agree to be treated as being in 1 extended household.

(5) Where households have agreed to be treated as an extended household under paragraph 3 of Schedule 1 an agreement under this paragraph may be made only between those households.

(6) Where households have agreed to be treated as an extended household under—

- (a) paragraph 3 of Schedule 3, or
- (b) paragraph 3 of Schedule 4,

those households are to be treated as having agreed to be treated as an extended household under this paragraph.

(7) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(8) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(9) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

PART 2

Restrictions on organising events

Prohibition on organising events

4.—(1) No person may, without a reasonable excuse, be involved in organising—

(a) an event held wholly or mainly indoors at which more than 15 people are in attendance, or

(b) an event held wholly or mainly outdoors at which more than 30 people are in attendance,

not counting persons under the age of 11 or persons working, or providing voluntary services, at the event.

(2) Sub-paragraph (1) does not apply to a person involved in organising an event authorised by the Welsh Ministers under paragraph 5.

(3) For the purposes of sub-paragraph (1)—

(a) a person is not involved in organising an event if the person's only involvement is attending it;

(b) a reasonable excuse includes where the person has taken all reasonable measures to ensure that no more than 15 or 30 people are in attendance, as the case may be;

(c) the following are not to be treated as events—

(i) the showing of a film;

(ii) a performance at a theatre;

(iii) a market;

(iv) a religious service;

(v) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event.

Authorised events

5.—(1) The Welsh Ministers may give authorisation in writing for an event to be held—

(a) at which more than 15 people are in attendance where the event takes place wholly or mainly indoors, or

(b) at which more than 30 people are in attendance where the event takes place wholly or mainly outdoors;

(2) References in sub-paragraph (1) to numbers of people do not include persons under the age of 11 or persons working, or providing voluntary services, at the event.

(3) An authorisation may be given under sub-paragraph (1) in relation to a particular event or a particular description of events.

(4) An authorisation under sub-paragraph (1)—

(a) must be given to a person the Welsh Ministers consider is responsible for organising the event, and

(b) may require the event to be held in accordance with any requirements, restrictions

or other conditions as may be specified by the Welsh Ministers.

(5) The Welsh Ministers must publish—

- (a) an authorisation given under sub-paragraph (1), and
- (b) details of any requirements, restrictions or other conditions specified by the Welsh Ministers in relation to an event to be held under the authorisation.

(6) The Welsh Ministers may withdraw an authorisation at any time by giving notice in writing to the person to whom the authorisation was given.

(7) An authorisation may be withdrawn under sub-paragraph (6) only if the Welsh Ministers —

- (a) have reasonable grounds to believe that the event will not be held, or is not being held, in accordance with a requirement, restriction or other condition specified by them, or
- (b) consider that it is necessary and proportionate to withdraw the authorisation for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus.

PART 3

Restrictions on travelling

Restriction on travel to and from Alert Level 2 area

6.—(1) No person living in—

- (a) a restricted UK area, or
- (b) an Alert Level 3 or Alert Level 4 area,

may enter or remain in an Alert Level 2 area without a reasonable excuse.

(2) No person living in an Alert Level 2 area may, without a reasonable excuse, leave the area for the purposes of entering or remaining in—

- (a) a restricted UK area;
- (b) an Alert Level 3 or Alert Level 4 area.

(3) For the purposes of sub-paragraphs (1) and (2), a person has a reasonable excuse if—

- (a) the person enters or leaves the area for a purpose that is reasonably necessary and there is no reasonably practicable alternative;
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to enter or leave the area include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
 - (b) working or providing voluntary or charitable services;
 - (c) meeting a legal obligation, including attending court or satisfying bail conditions, or participating in legal proceedings;
 - (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
 - (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
 - (f) moving home;
 - (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
 - (h) accessing or receiving public services;
 - (i) accessing or receiving educational services;
 - (j) obtaining—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
 - (k) obtaining money from or depositing money with any business or service listed in paragraph 39(g) of Schedule 7;
 - (l) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).
- (5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—
- (a) providing or receiving emergency assistance;
 - (b) avoiding illness, injury or other risk of harm;

- (c) attending a solemnization of a marriage, formation of a civil partnership or alternative wedding ceremony —
 - (i) as a party to the marriage, civil partnership or wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (e) an elite athlete and is and is travelling for the purposes of training or competition;
- (f) providing coaching or other support to an elite athlete, or providing support at—
 - (i) an elite sporting event, or
 - (ii) a sporting event taking place outside Wales;
- (g) travelling to vote in an election;
- (h) travelling on a journey which—
 - (i) in relation to the restriction in sub-paragraph (1), begins and ends outside the area, or
 - (ii) in relation to the restriction in sub-paragraph (2), ends in an area which the person is not prohibited from entering or remaining in under that sub-paragraph,
provided that the person takes all reasonably practicable measures to minimise any stops during the journey;
- (i) travelling to participate in a gathering with the person's extended household in accordance with any restrictions on gatherings applicable where the gathering takes place.

PART 4

Restrictions on certain businesses and services

Closure of premises used by certain businesses and services

7.—(1) A person responsible for carrying on or providing a business or service listed in paragraph 9 or 10 must—

- (a) close to members of the public any premises operated as part of the business or service, and

- (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.

(2) Sub-paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast) or to rehearse for such a broadcast;
- (d) the use of premises for the provision of services or information (including the sale, hire or delivery of goods or services)—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

Restrictions on licensed premises

8.—(1) A person responsible for premises which are authorised for the sale or supply of alcohol may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(2) Where the premises are authorised for the sale or supply of alcohol for consumption on the premises, the person responsible for the premises—

- (a) may only sell or supply alcohol for consumption on the premises as part of a table meal such as might be expected to be served as breakfast, the main midday or main evening meal, or served as a main course at such a meal,
- (b) must close the premises (to customers) at or before 10.20 p.m. each day, and

(c) may not open the premises before 6.00 a.m. each day.

(3) Despite sub-paragraph (2), a cinema or theatre may close later than 10.20 p.m. but only for the purpose of concluding—

- (a) the showing of a film, or
- (b) a performance,

which begins before 10.00 p.m.

(4) Sub-paragraph (2)(b) and (c) does not apply to—

- (a) premises located in—
 - (i) a sea port;
 - (ii) an airport;
 - (iii) an educational establishment;
- (b) workplace canteens.

(5) In its application to the premises of holiday or travel accommodation, sub-paragraph (2) applies only to those parts of the premises in which alcohol is sold or supplied for consumption on the premises.

(6) Sub-paragraphs (1) and (2) do not allow the premises to be open, or alcohol to be sold or supplied, in contravention of an authorisation granted or given in respect of the premises.

(7) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, sub-paragraphs (2) to (4) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

Businesses or services whose premises must be closed

9. Nightclubs, discotheques, dance halls or other venues authorised for the sale or supply of alcohol where live or recorded music is provided for members of the public or members of the venue to dance.

10. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982).

SCHEDULE 3

Regulation 4(4)

Alert Level 3 Restrictions

PART 1

Restrictions on gathering

Restriction on gatherings in private dwellings

1.—(1) No person may, without a reasonable excuse, participate in a gathering in a private dwelling with any other person apart from members of their household or extended household.

(2) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (4) applies.

(3) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;

(h) accessing or receiving educational services.

(4) The circumstances referred to in sub-paragraph (2)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) participating in a gathering of no more than 4 people where all the persons in the gathering—
 - (i) live in the same premises, and
 - (ii) share toilet, washing, dining or cooking facilities with each other.

(5) This paragraph does not apply to a person who is homeless.

Restriction on gatherings in public places

2.—(1) No person may, without a reasonable excuse, participate in a gathering which—

- (a) takes place anywhere other than—
 - (i) in a private dwelling, or
 - (ii) in holiday or travel accommodation, and
- (b) consists of more than 4 people, not including—
 - (i) any children under the age of 11, or
 - (ii) the carer of a person who is participating in the gathering.

(2) But a person may participate in such a gathering which—

- (a) takes place indoors or in any part of regulated premises that is outdoors, if all the persons participating in the gathering are members of the same household, or
- (b) takes place outdoors other than in regulated premises, if all the persons participating in the gathering are—
 - (i) members of the same household, or
 - (ii) members of the same extended household.

(3) No person may, without a reasonable excuse, participate in a gathering which takes place in holiday or travel accommodation unless all the persons participating in the gathering are members of the same household.

(4) For the purposes of sub-paragraphs (1) and (3), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or

- (b) one of the circumstances in sub-paragraph (6) applies.

(5) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing or receiving educational services.

(6) The circumstances referred to in sub-paragraph (4)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or

- (iii) as the carer of a person attending;
- (e) participating in a gathering of no more than 15 people at regulated premises, not counting persons under the age of 11 or persons working at the premises, to—
 - (i) celebrate a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony that takes place on or after 22 August 2020;
 - (ii) celebrate the life of a deceased person whose funeral is held on or after 22 August 2020;
- (f) attending a place of worship;
- (g) an elite athlete and is training or competing;
- (h) providing coaching or other support to an elite athlete, or providing support at an elite sporting event;
- (i) participating in or facilitating an indoor organised activity at which—
 - (i) no more than 15 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (j) participating in or facilitating an outdoor organised activity at which—
 - (i) no more than 30 people are in attendance, not counting persons under the age of 11 or persons working, or providing voluntary services, as part of the activity, and
 - (ii) no alcohol is consumed;
- (k) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).

(7) This paragraph does not apply to a person who is homeless.

Extended households

3.—(1) 2 households may agree to be treated as an extended household.

(2) In addition to the 2 households who may agree to be treated as an extended household under subparagraph (1), 1 single adult household may also agree to be treated as part of that extended household.

(3) To agree to be treated as an extended household, all of the adult members of the 2 households must agree.

(4) A household may only agree to be treated as being in 1 extended household.

(5) Where households have agreed to be treated as an extended household under paragraph 3 of Schedule 1 an agreement under this paragraph may be made only between those households.

(6) Where households have agreed to be treated as an extended household under—

- (a) paragraph 3 of Schedule 2, or
- (b) paragraph 3 of Schedule 4,

those households are to be treated as having agreed to be treated as an extended household under this paragraph.

(7) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(8) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(9) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

PART 2

Restrictions on organising events

Prohibition on organising events

4.—(1) No person may, without a reasonable excuse, be involved in organising—

- (a) an event held wholly or mainly indoors at which more than 15 people are in attendance, or
- (b) an event held wholly or mainly outdoors at which more than 30 people are in attendance,

not counting persons under the age of 11 or persons working, or providing voluntary services, at the event.

(2) Sub-paragraph (1) does not apply to a person involved in organising an elite sporting event authorised by the Welsh Ministers under paragraph 5.

(3) For the purposes of sub-paragraph (1)—

- (a) a person is not involved in organising an event if the person's only involvement is attending it;

- (b) a reasonable excuse includes where the person has taken all reasonable measures to ensure that no more than 15 or 30 people are in attendance, as the case may be;
- (c) the following are not to be treated as events—
 - (i) the showing of a film at a drive-in cinema;
 - (ii) a performance at a drive-in theatre;
 - (iii) a market;
 - (iv) a religious service.

Authorised elite sporting events

5.—(1) The Welsh Ministers may give authorisation in writing for an elite sporting event to be held.

(2) An authorisation under sub-paragraph (1)—

- (a) must be given to a person the Welsh Ministers consider is responsible for organising the event, and
- (b) may require the event to be held in accordance with any requirements, restrictions or other conditions as may be specified by the Welsh Ministers.

(3) The Welsh Ministers must publish—

- (a) an authorisation given under sub-paragraph (1), and
- (b) details of any requirements, restrictions or other conditions specified by the Welsh Ministers in relation to the event.

(4) The Welsh Ministers may withdraw an authorisation at any time by giving notice in writing to the person to whom the authorisation was given.

(5) An authorisation may be withdrawn under sub-paragraph (4) only if the Welsh Ministers —

- (a) have reasonable grounds to believe that the event will not be held, or is not being held, in accordance with a requirement, restriction or other condition specified by them, or
- (b) consider that it is necessary and proportionate to withdraw the authorisation for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus.

PART 3

Restrictions on travelling

Restriction on travel to and from Alert Level 3 area

6.—(1) No person living in—

- (a) a restricted UK area, or
- (b) another area of Wales,

may enter or remain in an Alert Level 3 area without a reasonable excuse.

(2) No person living in an Alert Level 3 area may, without a reasonable excuse, leave the area for the purposes of entering or remaining in—

- (a) a restricted UK area, or
- (b) another area of Wales.

(3) For the purposes of sub-paragraphs (1) and (2), a person has a reasonable excuse if—

- (a) the person enters or leaves the area for a purpose that is reasonably necessary and there is no reasonably practicable alternative;
- (b) one of the circumstances in sub-paragraph (5) applies.

(4) Examples of purposes for which it may be reasonably necessary for a person to enter or leave the area include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or participating in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;

- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
 - (h) accessing or receiving public services;
 - (i) accessing or receiving educational services;
 - (j) obtaining—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
 - (k) obtaining money from or depositing money with any business or service listed in paragraph 39(g) of Schedule 7;
 - (l) participating in or facilitating an organised activity for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays).
- (5) The circumstances referred to in sub-paragraph (3)(b) are that the person is—
- (a) providing or receiving emergency assistance;
 - (b) avoiding illness, injury or other risk of harm;
 - (c) attending a solemnization of a marriage, formation of a civil partnership or alternative wedding ceremony —
 - (i) as a party to the marriage, civil partnership or wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
 - (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
 - (e) an elite athlete and is and is travelling for the purposes of training or competition;
 - (f) providing coaching or other support to an elite athlete, or providing support at—
 - (i) an elite sporting event, or
 - (ii) a sporting event taking place outside Wales;
 - (g) travelling to vote in an election;
 - (h) travelling on a journey which—

- (i) in relation to the restriction in sub-paragraph (1), begins and ends outside the area, or
 - (ii) in relation to the restriction in sub-paragraph (2), ends in an area which the person is not prohibited from entering or remaining in under that sub-paragraph,
- provided that the person takes all reasonably practicable measures to minimise any stops during the journey;
- (i) travelling to participate in a gathering with the person's extended household in accordance with any restrictions on gatherings applicable where the gathering takes place.

PART 4

Restrictions on certain businesses and services

CHAPTER 1

Businesses or services whose premises are required to be closed

Closure of businesses and services

7.—(1) A person responsible for carrying on a business or providing a service which is listed in paragraphs 11 to 26 must—

- (a) close to members of the public any premises operated as part of the business or service, and
 - (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.
- (2) Sub-paragraph (1) does not prevent—
- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
 - (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
 - (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast) or to rehearse for such a broadcast;
 - (d) the use of premises for the provision of goods or services (including their sale, hire, collection or delivery) in response to an order or enquiry made—
 - (i) through a website, or otherwise by on-line communication,

- (ii) by telephone, including by text message, or
- (iii) by post;
- (e) the use of premises for the provision of information—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

CHAPTER 2

Restrictions on food and drink businesses and licensed premises

Restrictions on food and drink businesses

8.—(1) A person responsible for carrying on a food and drink business—

- (a) may not open its premises to customers before 6.00 a.m. each day;
- (b) must close the premises to customers at or before 6.00 p.m. each day.

(2) The person responsible for carrying on a food and drink business or any other business or service whose premises are authorised for the sale or supply of alcohol may not—

- (a) sell or supply alcohol for consumption on its premises;
- (b) permit the consumption of alcohol on the premises.

(3) For the purposes of this paragraph, an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

(4) Where—

- (a) a person responsible for carrying on a food and drink business (“business A”) is subject to a requirement or restriction under this paragraph, and

- (b) business A forms part of a larger business (“business B”),

the requirement or restriction is complied with if the person responsible for carrying on business B complies with the requirement or restriction.

Restrictions on food and drink businesses: exceptions

9.—(1) Paragraph 8(1) does not apply to—

- (a) premises located in—
 - (i) a sea port;
 - (ii) an airport;
 - (iii) an educational establishment;
 - (iv) a hospital or care home;
- (b) workplace canteens, where there is no practical alternative for people at that workplace to obtain food or drink between 6.00 p.m. and 6.00 a.m.;
- (c) premises used for the provision of food or drink to homeless people.

(2) Paragraph 8(1) does not prevent premises being used to sell or supply food or drink for consumption off the premises.

(3) If—

- (a) the celebration of a marriage, formation of a civil partnership or alternative wedding is being held on premises to which paragraph 8 applies, and
- (b) the celebration was booked more than a week before this paragraph most recently began to apply to the area in which the premises are located,

the premises may, despite paragraph 8(1)(b), remain open until 10.00 p.m. for the purposes of holding the celebration.

(4) Sub-paragraphs (5) and (6) apply where premises of a food and drink business (“the restricted premises”) form part of the premises of holiday or travel accommodation.

(5) Paragraph 8(1) does not—

- (a) require the restricted premises to be closed to the residents of the holiday or travel accommodation;
- (b) prevent the sale of food or drink to residents—
 - (i) as part of room service, or
 - (ii) between 6.00 a.m. and 10.00 p.m. in any part of the premises of the holiday or travel accommodation.

(6) Neither paragraph 8(1) nor (2)—

- (a) prevents residents from consuming food or drink (including alcohol) at any time in their private room;
- (b) prevents the sale of alcohol to residents as part of room service (but see paragraph 10).

Restrictions on licensed premises

10.—(1) A person responsible for premises which are authorised for the sale or supply of alcohol may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(2) Sub-paragraph (1) does not allow alcohol to be sold or supplied in contravention of an authorisation granted or given in respect of the premises.

CHAPTER 3

List of closed premises

Businesses or services whose premises must be closed

11. Nightclubs, discotheques, dance halls or other venues authorised for the sale or supply of alcohol where live or recorded music is provided for members of the public or members of the venue to dance.

12. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982).

13. Cinemas, other than drive in cinemas.

14. Concert halls and theatres, other than drive-in theatres.

15. Casinos.

16. Bingo halls.

17. Amusement arcades.

18. Bowling alleys.

19. Indoor play centres or areas.

20. Funfairs, amusement parks and theme parks.

21. Museums and galleries.

22. Skating rinks.

23. Trampoline parks and centres.

24. Indoor skate parks and centres

25. Spas.

26. Visitor attractions.

SCHEDULE 4

Regulation 4(5)

Alert Level 4 Restrictions

PART 1

Restrictions on movement and gathering with others

Requirement to stay at home

1.—(1) No person may, without a reasonable excuse, leave the place where they are living or remain away from that place.

(2) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person leaves or remains away from the place where they are living for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (4) applies.

(3) Examples of purposes for which it may be reasonably necessary for a person to leave or remain away from the place where they are living include—

- (a) obtaining supplies from a business or service listed in paragraphs 55 to 66 , including—
 - (i) food and medical supplies for those in the same household or extended household (including animals in the household or extended household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household or extended household, or the household of a vulnerable person;
- (b) obtaining or providing medical assistance, or accessing veterinary services;
- (c) working or providing voluntary or charitable services;
- (d) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (e) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;

- (f) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
 - (g) moving home;
 - (h) obtaining money from or depositing money with any business or service listed in paragraph 39(g) of Schedule 7;
 - (i) viewing a property in connection with the purchase, sale, letting or rental of the property;
 - (j) undertaking activities in connection with the purchase, sale, letting or rental of residential property;
 - (k) accessing or receiving public services;
 - (l) accessing or receiving educational services.
- (4) The circumstances referred to in sub-paragraph (2)(b) are that the person is—
- (a) providing or receiving emergency assistance;
 - (b) avoiding illness, injury or other risk of harm;
 - (c) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony —
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
 - (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
 - (e) attending a place of worship;
 - (f) exercising, either—
 - (i) alone,
 - (ii) with other members of the person’s household or extended household, or
 - (iii) with the person’s carer;
 - (g) an elite athlete and is training or competing;
 - (h) providing coaching or other support to an elite athlete, or providing support at—
 - (i) an elite sporting event, or

- (ii) a sporting event taking place outside Wales;
 - (i) travelling to vote in an election;
 - (j) travelling to or from, or is present at, a place where a member of their extended household is living.
- (5) In sub-paragraph (4)(f)—
- (a) exercise must start and finish at the place where the person is living or where a member of the person's extended household is living, or
 - (b) where, for reasons of physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010), the person needs to exercise in another place, exercise must take place in an area local to the place where the person is living.
- (6) This paragraph does not apply to a person who is homeless.

Requirement not to gather with other people

2.—(1) No person may, without a reasonable excuse, gather with any other person apart from—

- (a) members of their household,
- (b) their carer, or
- (c) a person they are providing care to.

(2) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is gathering with other people for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (4) applies.

(3) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;

- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this sub-paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
 - (f) moving home;
 - (g) viewing a property in connection with the purchase, sale, letting or rental of the property;
 - (h) undertaking activities in connection with the purchase, sale, letting or rental of residential property;
 - (i) accessing or receiving public services;
 - (j) accessing or receiving educational services;
 - (k) avoiding illness, injury or other risk of harm.
- (4) The circumstances referred to in sub-paragraph (2)(b) are that the person is—
- (a) providing or receiving emergency assistance;
 - (b) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
 - (c) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
 - (d) attending a place of worship;
 - (e) an elite athlete and is training or competing;
 - (f) providing coaching or other support to an elite athlete, or providing support at an elite sporting event;
 - (g) participating in a gathering with members of their extended household at a place where members of the extended household are living;
 - (h) participating in a gathering of no more than 4 people where all the persons in the gathering—
 - (i) live in the same premises, and
 - (ii) share toilet, washing, dining or cooking facilities with each other.

(5) This paragraph does not apply to a person who is homeless.

Extended households

3.—(1) A single adult household and another household may agree to be treated as an extended household.

(2) To agree to be treated as an extended household, all of the adult members of the 2 households must agree.

(3) A household may only agree to be treated as being in 1 extended household.

(4) Where a single adult household has agreed to be treated as an extended household with up to—

- (a) 3 other households under paragraph 3 of Schedule 1, or
- (b) 2 other households under—
 - (i) paragraph 3 of Schedule 2, or
 - (ii) paragraph 3 of Schedule 3,

an agreement under this paragraph may be made only between the single adult household and 1 of those other households.

(5) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(6) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(7) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

PART 2

Restrictions on organising events

Prohibition on organising events

4.—(1) No person may, without a reasonable excuse, be involved in organising—

- (a) an event held wholly or mainly indoors at which more than 15 people are in attendance, or
- (b) an event held wholly or mainly outdoors at which more than 30 people are in attendance,

not counting persons under the age of 11 or persons working, or providing voluntary services, at the event.

(2) Sub-paragraph (1) does not apply to a person involved in organising an elite sporting event authorised by the Welsh Ministers under paragraph 5.

(3) For the purposes of sub-paragraph (1)—

- (a) a person is not involved in organising an event if the person's only involvement is attending it;
- (b) a reasonable excuse includes where the person has taken all reasonable measures to ensure that no more than 15 or 30 people are in attendance, as the case may be;
- (c) the following are not to be treated as events—
 - (i) a market;
 - (ii) a religious service.

Authorised elite sporting events

5.—(1) The Welsh Ministers may give authorisation in writing for an elite sporting event to be held.

(2) An authorisation under sub-paragraph (1)—

- (a) must be given to a person the Welsh Ministers consider is responsible for organising the event, and
- (b) may require the event to be held in accordance with any requirements, restrictions or other conditions as may be specified by the Welsh Ministers.

(3) The Welsh Ministers must publish—

- (a) an authorisation given under sub-paragraph (1), and
- (b) details of any requirements, restrictions or other conditions specified by the Welsh Ministers in relation to the event.

(4) The Welsh Ministers may withdraw an authorisation at any time by giving notice in writing to the person to whom the authorisation was given.

(5) An authorisation may be withdrawn under sub-paragraph (4) only if the Welsh Ministers —

- (a) have reasonable grounds to believe that the event will not be held, or is not being held, in accordance with a requirement, restriction or other condition specified by them, or
- (b) consider that it is necessary and proportionate to withdraw the authorisation for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus.

PART 3

Restrictions on travel

Restriction on travel to Alert Level 4 area

6.—(1) No person living in—

- (a) a restricted UK area, or
- (b) another area of Wales,

may enter or remain in an Alert Level 4 area without a reasonable excuse.

(2) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person enters the area for a purpose that is reasonably necessary and there is no reasonably practicable alternative;
- (b) one of the circumstances in sub-paragraph (4) applies.

(3) Examples of purposes for which it may be reasonably necessary for a person to enter the area include—

- (a) obtaining supplies from a business or service listed in paragraphs 55 to 66, including—
 - (i) food and medical supplies for those in the same household or extended household (including animals in the household or extended household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household or extended household, or the household of a vulnerable person;
- (b) obtaining or providing medical assistance, or accessing veterinary services;
- (c) working or providing voluntary or charitable services;
- (d) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (e) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (f) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes

a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;

- (g) viewing a property in connection with the purchase, sale, letting or rental of the property;
- (h) moving home;
- (i) obtaining money from or depositing money with any business or service listed in paragraph 39(g) of Schedule 7;
- (j) accessing or receiving public services;
- (k) accessing or receiving educational services.

(4) The circumstances referred to in sub-paragraph (2)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (c) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (d) an elite athlete and is travelling for the purposes of training or competition;
- (e) providing coaching or other support to an elite athlete, or providing support at—
 - (i) an elite sporting event, or
 - (ii) a sporting event taking place outside Wales;
- (f) travelling to vote in an election;
- (g) travelling on a journey which ends outside the area, provided that the person takes all reasonably practicable measures to minimise any stops during the journey;
- (h) travelling to participate in a gathering with the person's extended household in accordance with any restrictions on gatherings applicable where the gathering takes place.

PART 4

Restrictions on certain businesses and services

CHAPTER 1

Business and services whose premises must be closed
but to which limited access may be allowed

Closure of food and drink businesses

7.—(1) A person responsible for carrying on a business which is listed in paragraphs 12 to 14 (food and drink businesses) must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this paragraph.

(2) Sub-paragraph (1) does not prevent—

- (a) the use of premises for—
 - (i) the sale of food and drink for consumption off the premises, or
 - (ii) services providing food or drink to homeless people;
- (b) the provision of room service at a hotel or other accommodation (where the hotel or other accommodation continues to operate in accordance with the exceptions allowed by paragraph 8);
- (c) a workplace canteen from being open where there is no practical alternative for staff at that workplace to obtain food or drink;
- (d) the carrying out of maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises.

(3) For the purposes of sub-paragraph (1), an indoor area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

(4) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

Closure of holiday or travel accommodation

8.—(1) A person responsible for carrying on a business which is listed in paragraphs 15 to 18 (holiday or travel accommodation) must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this regulation.

(2) Sub-paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the provision of accommodation for any persons staying in that accommodation when this paragraph most recently began to apply to the area in which the accommodation is situated and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;
- (d) the use of premises to carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

Closure of community centres and crematoriums

9.—(1) A person responsible for premises that are of a kind listed in paragraphs 19 and 20 must ensure that the premises are closed to members of the public, except for the uses permitted by sub-paragraphs (2) and (3).

(2) A community centre may be open—

- (a) to provide essential voluntary services, or
- (b) to provide public services upon the request of the Welsh Ministers or a local authority.

(3) A crematorium may open to members of the public for funerals or burials (and to broadcast a funeral or burial whether over the internet or otherwise).

(4) Sub-paragraph (1) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.

(5) In this paragraph, “public services” includes the provision of food banks or other support for homeless or vulnerable people, childcare, blood donation sessions or support in an emergency.

CHAPTER 2

Businesses or services whose premises are required to be closed

Closure of businesses and services

10.—(1) A person responsible for carrying on a business or providing a service which is listed in paragraphs 21 to 48 must—

- (a) close to members of the public any premises operated as part of the business or service, and
- (b) not carry on the business or service at such premises otherwise than in accordance with this paragraph.

(2) Sub-paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast) or to rehearse for such a broadcast;
- (d) the use of premises for the provision of goods or services (including their sale, hire, collection or delivery) in response to an order or enquiry made—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or

- (iii) by post;
- (e) the use of premises for the provision of information—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.
- (3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

CHAPTER 3

Business and services whose premises are exempt from the requirement to close

Exemption from the requirement to be closed

11.—(1) Despite the preceding provisions of this Part, premises operated by businesses or services listed in paragraphs 49 to 66 may continue to be open.

(2) And shopping centres, shopping arcades and markets may be open to the public to the extent that this is required for access to a business or service listed in paragraphs 49 to 66.

(3) A person responsible for premises authorised for the sale or supply of alcohol for consumption off the premises may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(4) Sub-paragraph (3) does not allow the person responsible for the premises to sell or supply alcohol in contravention of an authorisation granted or given in respect of the premises.

CHAPTER 4

List of closed premises

Closed premises

Food and drink businesses

12. Bars (including bars in members’ clubs).

13. Public houses.

14. Cafes, canteens and restaurants (including workplace canteens and dining rooms in members' clubs).

Holiday or travel accommodation

15. Camping sites.

16. Holiday sites.

17. Hotels and bed and breakfast accommodation;

18. Other holiday accommodation (including holiday apartments, hostels and boarding houses).

Public services etc.

19. Community centres.

20. Crematoriums.

21. Libraries and archive services.

Personal services etc.

22. Hair salons and barbers.

23. Nail and beauty salons including tanning and electrolysis services.

24. Body piercings and tattooing services.

Leisure and social etc.

25. Nightclubs, discotheques, dance halls or other venues authorised for the sale or supply of alcohol where live or recorded music is provided for members of the public or members of the venue to dance.

26. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982).

27. Cinemas.

28. Concert halls and theatres.

29. Casinos.

30. Bingo halls.

31. Amusement arcades.

32. Bowling alleys.

33. Indoor play centres or areas.

34. Funfairs, amusement parks and theme parks.

35. Holiday, leisure activity or events businesses.

36. Museums and galleries.

37. Skating rinks.

38. Trampoline parks and centres.

39. Enclosed or indoor skate parks and centres.

40. Spas.

41. Venues for events or conferences (including venues for weddings).

42. Visitor attractions.

Sports and exercise.

43. Sports or exercise facilities, including indoor fitness studios and gyms.

44. Swimming pools.

45. Sports courts, bowling greens, golf courses and enclosed sports grounds or pitches (whether outdoors or indoors).

Retail etc.

46. Any business offering goods or services for sale or hire in retail premises.

47. Shopping centres and shopping arcades.

48. Estate or letting agents, developer sales offices and show homes.

Exempt premises

Public services etc.

49. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths, physiotherapy services, acupuncture services and other medical or health services, including services relating to mental health.

50. Hospital libraries and libraries at educational establishments.

51. Funeral directors.

52. Veterinary surgeons.

Food and drink businesses

53. Cafés and canteens at a hospital, care home, school or within accommodation provided for students.

54. Canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence.

Retail etc.

55. Businesses offering the following goods for sale or hire in a shop—

- (a) food or drink for consumption off the premises (including food for pets and other domestic animals);
- (b) products essential for the storage, preparation or consumption of food or drink;
- (c) products for the essential upkeep, maintenance or functioning of the home or a workplace;
- (d) pharmaceutical products, health and personal care products, baby products (including clothing), toiletries and cosmetics;
- (e) newspapers and magazines;
- (f) bicycles and products essential for the use and maintenance of bicycles,

but only for the purposes of selling or hiring those goods.

56. Food markets, convenience stores, corner shops, pet shops, off licences and petrol stations.

57. Supermarkets and other shops that sell multiple types of goods but only for the purposes of—

- (a) selling the goods listed in paragraph 55;
- (b) selling goods of a type ordinarily sold by any of the businesses listed in paragraph 56;
- (c) selling other goods—
 - (i) where it is not reasonably practicable to separate or demarcate those areas of a shop that ordinarily displays such goods from those areas that display the goods mentioned in paragraphs (a) and (b);
 - (ii) on an exceptional basis where the goods are required in an emergency or on compassionate grounds.

58. Shops offering maintenance or repair services for telecommunications or information technology devices.

59. Building supplies and hardware stores.

60. Banks, building societies and other financial services providers.

61. Post offices.

62. Car repair and MOT services.

63. Livestock markets or auctions.

64. Laundrettes and dry cleaners.

65. Taxi or vehicle hire businesses.

66. Agricultural or aquacultural supplies shops.

SCHEDULE 5

Regulation 4(8)

Areas

1. This is the table referred to in regulation 4(8)—

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	<i>Area</i>	<i>Alert Level of Area</i>
1	The whole of Wales	3 until 6.00 p.m. on 25 December 2020
		4 from 6.00 p.m. on 25 December 2020

SCHEDULE 6

Regulation 4(7)

Temporary modifications for Christmas: extended households and travel

Christmas: temporary modifications to restrictions on gatherings in private dwellings and restrictions on travelling

1. During the period beginning with 22 December 2020 and ending with 28 December 2020 these Regulations apply subject to the modifications in this Schedule.

Definition of “Christmas period”

2. In regulation 57(1) after paragraph (d) insert—

“(da) “Christmas period” means the period beginning with 23 December 2020 and ending with 27 December 2020 (but see paragraph 3A of Schedule 3 and paragraph 3A of Schedule 4).”

Extended households during Christmas period

3.—(1) Schedule 3 is modified as follows.

(2) For paragraph 3 substitute—

“Christmas: extended household

3.—(1) A household may agree to be treated as an extended household with another household during the Christmas period.

(2) In addition to the 2 households who have agreed to be treated as an extended household under sub-paragraph (1), 1 single adult household may also agree to be treated as part of that extended household.

(3) To agree to be treated as an extended household, all of the adult members of the households must agree (but see sub-paragraph (4)).

(4) An adult member of a household (an “original household”) may agree to be treated as being part of an extended household that another adult member of the original household has not agreed to be part of.

(5) Where sub-paragraph (4) applies—

(a) the original household is to be treated for the purposes of this paragraph and paragraphs 1, 2 and 3A as 2 (or more) separate households,

(b) the adult members of the original household must determine which of those separate households includes any member of the original household who is—

(i) a child, or

(ii) an adult for whom another adult in the household has caring responsibilities, and

(c) the adult members of the original household are to revert be treated as a single household when they are no longer part of an extended household.

(6) A household may only agree to be treated as being in 1 extended household.

(7) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(8) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(9) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

**Modification of “Christmas period”:
households living in Northern Ireland**

3A.—(1) This paragraph applies where a household which forms part of an extended household is a household living in Northern Ireland.

(2) The reference in paragraph 3(1) to the “Christmas period” is to be read as a reference to the period beginning with 22 December 2020 and ending with 28 December 2020.”

4.—(1) Schedule 4 is modified as follows.

(2) For paragraph 3 (extended households) substitute—

“Christmas: extended household

3.—(1) A household may agree to be treated as an extended household with another household during the Christmas period.

(2) In addition to the 2 households who have agreed to be treated as an extended household under sub-paragraph (1), 1 single adult household may also agree to be treated as part of that extended household.

(3) To agree to be treated as an extended household, all of the adult members of the households must agree (but see sub-paragraph (4)).

(4) An adult member of a household (an “original household”) may agree to be treated as being part of an extended household that another adult member of the original household has not agreed to be part of.

(5) Where sub-paragraph (4) applies—

(a) the original household is to be treated for the purposes of this paragraph and paragraphs 1, 2 and 3A as 2 (or more) separate households,

(b) the adult members of the original household must determine which of those separate households includes any member of the original household who is—

(i) a child, or

(ii) an adult for whom another adult in the household has caring responsibilities, and

(c) the adult members of the original household are to revert to be treated as a single household when they are no longer part of an extended household.

(6) A household may only agree to be treated as being in 1 extended household.

(7) A household ceases to be treated as being in an extended household if any adult member of the household ceases to agree to be treated as being in the extended household.

(8) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(9) In this Schedule, references to an extended household are references to an extended household formed under or by virtue of this paragraph.

**Modification of “Christmas period”:
households living in Northern Ireland**

3A.—(1) This paragraph applies where a household which forms part of an extended household is a household living in Northern Ireland.

(2) The reference in paragraph 3(1) to the “Christmas period” is to be read as a reference to the period beginning with 22 December 2020 and ending with 28 December 2020.”

(3) In paragraph 7—

- (a) in sub-paragraph (2)(b), omit “(where the hotel or other accommodation continues to operate in accordance with the exceptions allowed by paragraph 8)”;
 - (b) after sub-paragraph (4) insert—

“(5) Sub-paragraphs (6) and (7) apply where premises of a food and drink business (“the restricted premises”) form part of the premises of holiday or travel accommodation.
 - (6) Sub-paragraph (1) does not—
 - (a) require the restricted premises to be closed to the residents of the holiday or travel accommodation;
 - (b) prevent the sale of food or drink to residents—
 - (i) as part of room service (but see paragraph 11(3)), or
 - (ii) between 6.00 a.m. and 10.00 p.m. in any part of the premises of the holiday or travel accommodation.”
- (4) For paragraph 8 substitute—

“Hotels and travel accommodation: requirements relating to residents

8.—(1) A person responsible for carrying on a business which is listed in paragraph 15 to 18 (holiday or travel accommodation) must, by the end of the day on 27 December 2020—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this paragraph.

(2) Sub-paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when sub-paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the provision of accommodation for any persons staying in that accommodation when these Regulations come into force and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;

- (d) the provision of accommodation for any persons staying in that accommodation who are travelling to Northern Ireland on 28 December 2020;
- (e) the use of premises to carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post.

(3) Where—

- (a) a person responsible for carrying on a business (“business A”) is required by virtue of this paragraph to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in this paragraph is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.”

Transitional provision about extended households

5.—(1) This paragraph applies where a household—

- (a) is part of an extended household during the Christmas period by virtue of the modifications made in paragraph 3 or 4 of this Schedule (a “Christmas extended household”), and
- (b) immediately before the Christmas period, was part of an extended household formed under or by virtue of paragraph 3 of Schedule 3 (a “pre-Christmas extended household”) as it applies without the modifications made in paragraph 3.

(2) For the purposes of these Regulations as modified by this Schedule—

- (a) the pre-Christmas extended household is to be treated as if it no longer exists, and
- (b) the household is to be treated as if it had not agreed to be treated as an extended household prior to agreeing to form part of the Christmas extended household.

(3) Immediately upon the end of the Christmas period, the household is to be treated, for the purposes of these Regulations, as if it had made no previous agreement to be treated as part of an extended household.

(4) In this paragraph “Christmas period” in relation to a household means—

(a) the period beginning with 23 December 2020 and ending with 27 December 2020, or

(b) where the household—

(i) is living in Northern Ireland, or

(ii) is part of a Christmas extended household with a household living in Northern Ireland,

the period beginning with 22 December 2020 and ending with 28 December 2020.

SCHEDULE 7

Regulation 15

Regulated premises

Food and drink businesses

1. Bars (including bars in members' clubs).
2. Public houses.
3. Cafes, canteens and restaurants (including workplace canteens and dining rooms in members' clubs).

Holiday and travel accommodation

4. Camping sites.
5. Holiday sites.
6. Hotels and bed and breakfast accommodation.
7. Other holiday accommodation (including holiday apartments, hostels and boarding houses).

Public services etc.

8. Medical or health services.
9. Recycling and waste centres.
10. Community centres.
11. Libraries and archive services.
12. Places of worship.
13. Funeral directors.
14. Crematoriums.
15. Veterinary surgeons.

Personal services etc.

16. Hair salons and barbers.
17. Nail and beauty salons including tanning and electrolysis services.
18. Body piercings and tattooing services.

Leisure and social etc.

19. Cinemas.
20. Concert halls and theatres.
21. Casinos.

22. Bingo halls.
23. Amusement arcades.
24. Bowling alleys.
25. Indoor play centres or areas.
26. Playgrounds.
27. Funfairs, amusement parks and theme parks.
28. Holiday, leisure activity or events businesses.
29. Museums and galleries.
30. Skating rinks.
31. Trampoline parks and centres.
32. Indoor skate parks and centres.
33. Spas.
34. Venues for events or conferences (including venues for weddings).
35. Visitor attractions.

Sports and exercise

36. Sports or exercise facilities, including indoor fitness studios and gyms.
37. Swimming pools.
38. Sports courts, bowling greens, golf courses and enclosed sports grounds or pitches (whether outdoors or indoors).

Retail etc.

39. Any business offering goods or services for sale or hire in retail premises, including—
 - (a) auction houses;
 - (b) car dealerships;
 - (c) markets;
 - (d) betting shops;
 - (e) garden centres and plant nurseries;
 - (f) pharmacies (including non-dispensing pharmacies) and chemists;
 - (g) banks, building societies and other financial services providers;
 - (h) post offices;
 - (i) car repair and MOT services;
 - (j) livestock markets or auctions;
 - (k) laundrettes and dry cleaners;
 - (l) petrol stations;

(m) taxi or vehicle hire businesses.

40. Shopping centres and shopping arcades.

41. Storage and distribution facilities, including delivery drop off points.

42. Estate or letting agents, developer sales offices and show homes.

SCHEDULE 8

Regulation 26

**Enforcement of requirement to take
preventative measures on regulated
premises**

Premises improvement notice

1.—(1) An enforcement officer may issue a notice (a “premises improvement notice”) to a responsible person if the officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 16 or 17, and
- (b) the measures specified in the notice are necessary and proportionate in order to ensure that the person complies with those obligations.

(2) A premises improvement notice must—

- (a) specify the premises to which it relates;
- (b) specify the measures it requires to be taken in order to ensure that the person complies with the obligations imposed by regulation 16 or 17;
- (c) specify a time limit within which the measures must be taken (which must not be less than 48 hours beginning with the time the notice is issued);
- (d) give details of the right of appeal conferred by paragraph 5.

(3) In this Schedule, “responsible person” has the meaning given by regulation 15(2).

Premises closure notice

2.—(1) If either condition 1 or condition 2 is satisfied, an enforcement officer may issue a notice (a “premises closure notice”) to a responsible person requiring the premises, or part of the premises, to be closed.

(2) Condition 1 is—

- (a) a premises improvement notice has been issued to the person,
- (b) the enforcement officer considers that the person has failed to take the measures specified in the premises improvement notice within the specified time limit, and
- (c) the officer considers that the closure of the premises, or part of the premises, is necessary and proportionate for the purpose of

minimising the risk of exposure to coronavirus.

(3) Condition 2 is that the enforcement officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 16 or 17, and
- (b) the closure of the premises, or part of the premises, (without a premises improvement notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(4) A premises closure notice must—

- (a) contain a description of the premises to be closed,
- (b) where a premises improvement notice has been issued, set out the measures that the enforcement officer considers—
 - (i) have not been taken, and
 - (ii) must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 16 or 17,
- (c) where a premises improvement notice has not been issued, set out the reasons why the enforcement officer considers that the person is not complying with the obligations imposed by regulation 16 or 17,
- (d) in either case, set out the reasons why the enforcement officer considers that closure of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus,
- (e) specify the period for which the notice has effect, and
- (f) give details of the right of appeal conferred by paragraph 5.

(5) The period specified under sub-paragraph (4)(e) may not be more than 672 hours (28 days) beginning with the time the notice is issued.

(6) A premises closure notice has effect from the time at which it is issued or from a later time specified in the notice.

(7) A premises closure notice may not be issued in relation to premises which form part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services.

(8) Where—

- (a) an enforcement officer considers that a responsible person has failed to take the measures specified in a premises

improvement notice within the specified time limit, and

(b) either—

- (i) a fixed penalty notice has been issued, or
- (ii) proceedings have been brought for an offence,

in relation to that failure,

the enforcement officer may nevertheless issue a premises closure notice under sub-paragraph (1).

Effect of premises closure notice

3.—(1) As soon as is reasonably practicable after a premises closure notice takes effect, the person to whom it is issued must ensure that—

- (a) the premises to which the notice relates are closed, and
- (b) no business is carried on or service is provided on, or from, the premises.

(2) No person may enter, or be on, premises closed under sub-paragraph (1) without a reasonable excuse.

(3) For the purposes of sub-paragraph (2), the circumstances in which a person has a reasonable excuse include where—

- (a) the person lives on the premises;
- (b) the person is carrying out essential maintenance or repairs;
- (c) the person is doing things necessary to ensure that regulation 16 and, where relevant, regulation 17 can be complied with when the premises are allowed to be open;
- (d) the person is an enforcement officer or a person assisting an enforcement officer;
- (e) it is necessary for the person to be on the premises to avoid injury or illness or escape a risk of harm.

Termination of premises improvement or closure notice

4.—(1) An enforcement officer may issue a notice terminating a premises improvement notice or a premises closure notice if satisfied that—

- (a) the measures specified in the premises improvement notice (if one was issued) have been taken, or
- (b) other measures have been taken to ensure that regulation 16 and, where relevant, regulation 17 can be complied with at the premises in question.

(2) A premises improvement notice or premises closure notice ceases to have effect at the time notice of the termination is issued.

Appeals

5.—(1) A person to whom a premises improvement notice or premises closure notice is issued may appeal to a magistrates' court against the notice.

(2) An appeal must be made—

- (a) by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980, and
- (b) within 7 days after the day the notice is issued.

(3) But a magistrates' court may allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2)(b) if satisfied that there is a good reason for the failure to appeal before the expiry of that period (and for any delay in applying for permission to appeal out of time).

(4) A magistrates' court may suspend the effect of a premises improvement notice or premises closure notice pending the determination of an appeal.

(5) On an appeal against a premises improvement notice or premises closure notice, a magistrates' court may—

- (a) confirm the decision to issue the notice;
- (b) direct that the notice is to cease to have effect;
- (c) modify the notice;
- (d) make such other order as the court considers appropriate.

(6) If the magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to pay compensation for loss suffered as the result of the issue of the notice.

(7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.

(8) On an appeal to the Crown Court, the Court may—

- (a) confirm, vary or reverse the decision of the magistrates court;
- (b) remit the case to the magistrates' court to dispose of in accordance with directions given by the Crown Court.

Issuing premises improvement and closure notices and terminations

6.—(1) A premises improvement notice, premises closure notice or a termination of either of those types of notice is issued to a person by giving a copy of it in writing to that person.

(2) But where the person responsible for the premises to which the notice or termination relates is not on the premises when it is to be issued, the notice is to be treated as having been issued to that person if—

- (a) a copy of it is given to any other person on the premises who appears to be responsible for any business or service being carried out on the premises, or
- (b) if there is no such person on the premises when the notice is to be issued, a copy of the notice is placed in a conspicuous position on the premises.

Publicising premises improvement and closure notices

7.—(1) This regulation applies where an enforcement officer has issued a premises improvement notice or a premises closure notice.

(2) As soon as reasonably practicable after issuing the notice, the enforcement officer must—

- (a) display a copy of the notice, and a sign in the form set out in Schedule 9, in a prominent place near every entrance to the premises;
- (b) arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

(3) A notice or sign displayed under sub-paragraph (2)(a) must be at least A4 size.

(4) A notice required to be displayed and published under sub-paragraph (2) must continue to be displayed and published, and a sign required to be displayed under that sub-paragraph must continue to be displayed, for as long as the notice has effect.

Production of documents etc.

8.—(1) An enforcement officer may, to facilitate the exercise of a power conferred on the officer by this Schedule, require the production of, inspect and take copies of, any documents or electronic records.

(2) A person may not be required under sub-paragraph (1) to provide a document, record or other information in respect of which a claim for legal professional privilege could be maintained in legal proceedings.

SCHEDULE 9




Regulation 26

Form of sign to accompany premises improvement notice or premises closure notice

Sign to be displayed with premises improvement notice

1.—(1) A sign displayed with a premises improvement notice under paragraph 7(2)(a) of Schedule 8 must be in the form set out below.




(2) The colours used in the sign must be white, black and amber C0 M60 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>		<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>	
<p>ANGEN GWELLA</p>			
<p>IMPROVEMENT NEEDED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>		<p>Together we'll keep Wales safe</p>	
<p><small>CC1. Hawffraint y Goron 2020. Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government. WG41123</small></p>			

Sign to be displayed with premises closure notice

2.—(1) A sign displayed with a premises closure notice under paragraph 7(2)(a) of Schedule 8 must be in the form set out below.

(2) The colours used in the sign must be white, black and red C15 M100 Y100 K0.

 <p>GIG CYMRU NHS WALES</p>	<p>Iechyd Cyhoeddus Cymru Public Health Wales</p>	 <p>DIOGELU CYMRU KEEP WALES SAFE</p>	 <p>Llywodraeth Cymru Welsh Government</p>
<p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p>		<p>PUBLIC HEALTH CORONAVIRUS</p> <p>Requirement to minimise risk of exposure to coronavirus on premises:</p>	
<p>CAEYD Y FANGRE HON</p>			
<p>PREMISES CLOSED</p>			
<p>Diogelu Cymru gyda'n gilydd</p>		<p>Together we'll keep Wales safe</p>	
<p><small>oel Hawffrwynt y Goron 2020, Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government WG41123</small></p>			

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (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) (No. 5) (Wales) Regulations 2020.

Mark Drakeford
First Minister

18 December 2020

1. Description

The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus, and revoke the current Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 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 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

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). The implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. 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 45B, 45C(1) and (3), 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, here after referred to as the “No. 5 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”.

The current Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 put in place the restrictions and requirements necessary after the firebreak between 23 October and 8 November. The No. 5 Regulations will revoke the current Regulations and will:

- a) set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels set out in the updated [Coronavirus Control Plan](#)
- b) move Wales into Alert Level Four on Christmas Day in view of the high prevalence of Covid-19 in Wales
- c) provide for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December), but restrict the numbers of households who may form an extended household during this period to two (plus one single adult household);
- d) increase the initial Fixed Penalty Notice for those organising events such as house parties where more than 15 people gather indoors or 30 outdoors, from £200 to £500.

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

The Regulations set out restrictions and requirements applicable under four different Alert Levels, aligned with the measures the Government is putting in place to control the spread of the virus and protect people's health, depending on the state of coronavirus across Wales and other key indicators. The Coronavirus Control Plan sets out how and when there will be movement between these Alert Levels for Wales or areas within Wales as the case may be. This approach is aimed at providing greater certainty for people and businesses across Wales about what legal restrictions are in place, depending on the level of risk, helping them to plan for the future. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government's [Technical Advisory Cell](#) and available on the gov.wales website. The latest briefing, dated 11 December, sets out the seriousness of the public health position.

The Chief Medical Officer recommends that an appropriate response to the public health situation is that Wales move to Alert Level 4 and reduce the number of households that can agree to form an extended household over the Christmas period.

In recognition of this, the Welsh Ministers have decided that Wales should move to Alert Level 4 at 6.00 p.m. on 25 December and limit the number of households that can meet over the Christmas period (23-27 December) to two instead of three as had been agreed by the four UK Governments.

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.

Part 1 of the Regulations provides that the new provisions come into force at the beginning of Monday 21 December (with the exception of Part 6 (provision of school education)). As with the earlier Coronavirus Restrictions Regulations, there is a statutory requirement to review the Regulations, under which they must be reviewed by 7 January 2021 and at least every 21 days after that. The Regulations will expire at the end of the day on 31 March 2021 unless they are revoked before then.

Part 2 of the Regulations makes provision for the different restrictions that apply in relation to people gathering or travelling, organising events and the use of premises ordinarily open to the public depending on the "Alert Level" that applies. These levels are based on what the Welsh Ministers consider to be the appropriate and proportionate response to the incidence and spread of coronavirus. The restrictions and requirements specific to Alert Levels 1 to 4 are set out in Schedules 1 to 4 respectively. Part 2 and Schedule 5 also sets out which Alert Level applies to an area. An "area" may be part of Wales or the whole of Wales, meaning that the same grade of restrictions may apply across Wales or they may differ on a regional or local basis. When the strictest **Alert Level 4** restrictions apply to an area:

- there is an overarching requirement to stay at home and not to travel;
- most premises ordinarily open to the public are required to be closed.

As an exception, Part 2 and Schedule 6 make specific provision modifying the restrictions relating to extended households (and travelling to meet members of an extended household) for the period between 23 and 27 December 2020 (with an

additional day allowed before and after this period in the case of persons travelling to and from Northern Ireland). This will allow two households to come together to form an exclusive bubble. Given the decision to enter Alert Level 4 on 25 December this part also provides for holiday accommodation to remain open until the end of the Christmas period (as they would otherwise have to close under Alert Level 4).

Parts 3 to 5 impose further restrictions and requirements which generally apply at all Alert Levels and which maintain the previous provisions on face coverings and on reasonable measures. These restrictions and requirements are applicable irrespective of the Alert Level in force at any given time.

Part 3 imposes requirements on people who have tested positive for coronavirus and those notified by contact tracers that they have been in close contact with someone with coronavirus to self-isolate.

Part 4 retains the requirement for those responsible for regulated premises and for work undertaken in premises to take all reasonable measures for the purpose of minimising risk of exposure to, or spread of, coronavirus.

Part 5 provides that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 6 provides for local authorities to ensure the provision of school education to vulnerable children and the children of key workers when schools are closed

Part 7 relates to the enforcement of the restrictions and requirements.

Part 8 makes provision about offences and penalties.

Part 9 contains defined terms (regulation 57), revokes previous Regulations and makes a consequential amendment.

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

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.

A summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

18 December 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 under sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 21 December 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.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 4 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee has established a timetable for the responsible committee or committees to report on 11 January 2021, ahead of the debate already scheduled for these Regulations in Plenary on 12 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Introduction of the Health Protection (Coronavirus Restriction) (No.5) (Wales) Regulations 2020

DATE 18 December 2020

BY Mark Drakeford MS, First Minister

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Those regulations required a review by 17 December, which has led to the replacement of the regulations with the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020.

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 provide for the introduction of a new system of alert levels in Wales, as set out in the Welsh Government's updated *Coronavirus Control Plan*. These new regulations will be made today and will come into effect on 21 December.

The alert level approach is designed to provide a predictable framework of measures within each level of restrictions. These are set out in the new regulations. The plan also sets out the indicators, which will be considered when deciding on escalating or de-escalating between those levels.

These regulations will – at all alert levels – impose restrictions on gatherings and the movement of people as well as on the operation of businesses, including closures, to help reduce and control the spread of the virus and protect people's health.

Alert levels will initially be applied at an all-Wales level, but with flexibility to adopt different approaches. Experience tells us national measures are more effective, simpler and better understood by the public. However, should there be clear and reliable evidence of sustained regional variations, then the regulations provide restrictions can be provided at a regional or local level.

Despite strengthening national measures over recent weeks, the number of cases of coronavirus across Wales are continuing to rise every day. The number of people in hospital with coronavirus symptoms has reached record levels at more than 2,200 – equivalent to five general hospitals. One in five tests carried out are positive for the virus.

This week, I met the First Ministers of Scotland and Northern Ireland and the Chancellor of the Duchy of Lancaster from the UK Government to discuss the common arrangements over the five-day Christmas period, between 23 and 27 December (22 and 28 December for those travelling to and from Northern Ireland). In the few weeks since we agreed these arrangements, the situation has deteriorated significantly as coronavirus has gripped the UK once again.

As a result, here in Wales the regulations will make clear only two households (with the option of including an additional single-person household) can form an exclusive Christmas bubble during this five-day Christmas period. This is more restrictive than the three household arrangements we had initially hoped to have but it reflects the seriousness of the situation in Wales. The fewer people we mix with in our homes, the less chance we have of catching or spreading the virus over the festive period.

The regulations will therefore provide that Wales will move to alert level four – the highest level – at 6pm on Christmas Day. This means all hospitality, non-essential retail, close contact services and all leisure and fitness centres must close.

Tighter restrictions on travel, household mixing, requirements to stay-at-home, and holiday accommodation will apply from 28 December, after the five-day Christmas period.

We have already made £340m available to support hospitality, leisure and tourism businesses affected by restrictions into the New Year. A further £110m of support will be available to help businesses affected by the new restrictions.

The regulations require the restrictions must be reviewed regularly to ensure they are proportionate, necessary and effective. Reviews will take place every three weeks, with the first taking place by 7 January.

The Chief Medical Officer for Wales has provided targeted advice for people who were previously shielding about mixing over Christmas.

The *Coronavirus Control Plan: Alert Levels in Wales* is available at: <https://gov.wales/coronavirus-control-plan-alert-levels-wales>

I take no pleasure in introducing these tighter restrictions over this important time of year. I know they will cause many people to have to change their plans. The priority

of the Welsh Government however remains to protect the NHS and save lives. We must all continue to Keep Wales Safe this Christmas and into the New Year.

Agenda Item 3.9

SL(5)708 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to commence those Regulations at the beginning of 20 December 2020 (with the exception of Part 6) and to move Wales into Tier 4 from the same date.

These Regulations also make changes to Schedule 6 to the principal Regulations in respect of arrangements for forming extended households over the Christmas period.

Procedure

Made Affirmative.

The 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 dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 2(5)(d) makes amendments to paragraph 4 of Schedule 6 to the principal Regulations (which in turn makes modifications to paragraph 3 of Schedule 4 to those regulations) so that restrictions that were initially applicable over the “Christmas period” now only apply on 25 December.

Regulation 2(5)(d)(ii) of these Regulations removes paragraph 3A of Schedule 4 to the principal Regulations. However, a reference to paragraph 3A remains in paragraph 3(5)(a) of Schedule 4.

We consider that the amendments made by regulation 2(5)(d) of these regulations should include a deletion of the reference to paragraph 3A contained in paragraph 3(5)(a) of Schedule 4 of the principal Regulations, as the reference is redundant.



2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Welsh text, in the paragraph inserted by regulation 2(5)(g)(ii) of these Regulations, the word “cyn” is missing from the part of the sentence “yn union 25 Rhagfyr 2020”. We consider that it should read “yn union cyn 25 Rhagfyr 2020” [*emphasis added*].

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 or public policy likely to be of interest to the Senedd

We note the Regulations came into force before being laid before the Senedd. The First Minister notified the Llywydd of this in a letter dated 19 December 2020. In particular, we note the following in the letter:

“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease.”

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

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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. The changes to the extended household provisions, in particular engage, Article 8.

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). The implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. 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. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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."

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared for the principal Regulations and will be published on the gov.wales website:

<https://gov.wales/impact-assessments-coronavirus>.

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

We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

"The principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated Coronavirus Control Plan, placed Wales into Alert Level Four on Christmas Day and provided for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December).

Since making those Regulations, the Chief Medical Officer recommended that an appropriate response to the public health situation was that Wales moved to Alert Level 4 from the beginning of 20 December. This was in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease, in particular as a result of a new variant of the virus.



For the same reasons, the Welsh Ministers have also decided that the exceptions to the restrictions provided for in Schedule 6 relating to Christmas should now only apply to 25 December 2020."

Welsh Government response

A Welsh Government response is required in relation to the technical reporting points raised.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

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Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1610 (W. 336)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales. The Regulations impose requirements and restrictions on individuals, businesses and others.

These Regulations make amendments to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (the “principal Regulations”) to—

- (a) bring the principal Regulations (apart from Part 6) into force on 20 December 2020;
- (b) include the proposed Tier 4 area of England in the definition of “restricted UK area”, meaning that no person living in a Tier 4 area may enter Wales without a reasonable excuse;
- (c) provide that Alert Level 4 applies to Wales from 20 December 2020 onwards;

- (d) limit the modifications made in Schedule 6 to the principal Regulations to the restrictions applicable over the Christmas period so that they apply only on 25 December 2020.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1610 (W. 336)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) Regulations 2020**

Made at 9.12 p.m. on 19 December 2020

*Coming into force at 11.59 p.m. on 19
December 2020*

Laid before Senedd Cymru 21 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

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

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force at 11.59 p.m. on 19 December 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 1(3), for “21 December 2020” substitute “20 December 2020”.

(3) In regulation 57(1)(t)(i), at the end insert “, any Tier 4 area or any other area in which restrictions are imposed that are stricter than those applicable in the Tier 3 area”.

(4) In Column 3 of the table in Schedule 5, for the text after “Alert Level of Area” substitute “4”.

(5) In Schedule 6—

- (a) in paragraph 1, for “During the period beginning with 22 December 2020 and ending with 28 December 2020” substitute “On 25 December 2020”;
- (b) omit paragraph 2;
- (c) omit paragraph 3;
- (d) in paragraph 4(2), in the text modifying paragraph 3 of Schedule 4—
 - (i) in paragraph 3(1) for “during the Christmas period” substitute “on 25 December 2020”;
 - (ii) omit paragraph 3A;
- (e) omit paragraph 4(3);
- (f) omit paragraph 4(4);
- (g) in paragraph 5—
 - (i) in sub-paragraph (1)(a), for “during the Christmas period by virtue of the modifications made in paragraph 3 or 4” substitute “on 25 December 2020 by

(1) S.I. 2020/1609 (W. 335).

virtue of the modifications made in paragraph 4”;

(ii) for sub-paragraph (1)(b) substitute—

“(b) immediately before 25 December 2020, was part of an extended household formed under or by virtue of paragraph 3 of Schedule 4 (a “pre-Christmas extended household”) as it applies without the modifications made in paragraph 4.”;

(iii) in sub-paragraph (3), for “Christmas period” substitute “day on 25 December 2020”;

(iv) omit sub-paragraph (4).

Mark Drakeford

First Minister, one of the Welsh Ministers

At 9.12 p.m. on 19 December 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) 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) (No. 5) (Wales) (Amendment) Regulations 2020.

Mark Drakeford
First Minister

21 December 2020

1. Description

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to commence those Regulations at the beginning of 20 December 2020 (with the exception of Part 6) and to move Wales into Tier 4 from the same date. The Regulations also make changes to Schedule 6 to the principal Regulations in respect of arrangements for forming extended households over the Christmas period.

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

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. The changes to the extended household provisions, in particular engage, Article 8.

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). The implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. 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.

Coming into force

These Regulations came into force at the beginning of 20 December, which is before they could be laid before the Senedd. The Llywydd has been notified of this, in accordance with section 4 of the Statutory Instruments Act 1946.

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. These Regulations are made under sections 45B, 45C(1) and (3), 45F(2) and 45P of the 1984 Act. Further information on these powers is set out in the Explanatory Memorandum to the principal Regulations.

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”.

The principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated [Coronavirus Control Plan](#), placed Wales into Alert Level Four on Christmas Day and provided for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December).

Since making those Regulations, the Chief Medical Officer recommended that an appropriate response to the public health situation was that Wales moved to Alert Level 4 from the beginning of 20 December. This was in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease, in particular as a result of a new variant of the virus.

For the same reasons, the Welsh Ministers have also decided that the exceptions to the restrictions provided for in Schedule 6 relating to Christmas should now only apply to 25 December 2020.

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.

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.

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.

The summary integrated impact assessment for the principal Regulations will be updated and published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.



Elin Jones, MS
Llywydd

llywydd@senedd.wales

19 December 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020 under sections 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 11.59 pm today. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on Monday 21 December.

In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 5 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 12 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Alert level four restrictions**

DATE **19 December 2020**

BY **First Minister Mark Drakeford MS**

Today, I met the First Ministers of Scotland and Northern Ireland, and the Chancellor of the Duchy of Lancaster to discuss the very latest information about a new strain of coronavirus.

We now know that this new strain is significantly more infectious and spreads more quickly than the original one.

The Prime Minister this afternoon set out the pattern of transmission in London and the South East of England, which has been linked to this new variant of coronavirus.

This is remarkably consistent with the rapid acceleration of transmission in Wales and the high rates of cases we have seen in recent weeks. The latest evidence suggests this new strain is present throughout Wales.

Throughout the public health emergency, we have had to respond quickly to the rapid changes, which have been so typical of coronavirus. Today this new information has required an immediate response.

This afternoon, the Cabinet met to discuss this worrying new development in the pandemic and to hear the latest advice from our senior medical and scientific advisers, including the impact on our NHS.

The situation is incredibly serious. We have therefore reached the difficult decision to bring forward the alert level four restrictions for Wales, in line with the action being taken in London and the South East of England.

These new restrictions will come into effect from midnight tonight instead of during the Christmas period.

This will mean non-essential retail, close contact services, gyms and leisure centres, hospitality and accommodation will close at the end of trading today.

Stay-at-home restrictions will also come into effect from midnight.

For people currently staying in holiday accommodation in Wales, they should make arrangements to leave and return home at the earliest opportunity.

Unfortunately, we must also look again at the arrangements for Christmas – we cannot expose people to the risk of this new, more virulent strain of coronavirus.

We will therefore change the current rules, which allow two households to come together to form a Christmas bubble over a five-day period, so that they will apply on Christmas Day only.

Throughout the alert level four period, a single person household will be able to join with one other household.

While we all want to avoid further disruption to businesses and plans for Christmas, our overriding duty is to protect lives here in Wales.

Yesterday, we announced a further £110m to support businesses affected by the alert level four restrictions. This is in addition to the £340m Restrictions Business Fund and targeted hospitality fund. We will do all we can to make sure this support is available as quickly as possible to those businesses which need it.

And if there is further funding available to Wales – as a result of decisions made by the UK Government to support businesses in London and the South East during the lockdown period – we will pass it on.

This new strain of the virus is another dreadful surprise in this long-running pandemic.

We now have a pandemic within a pandemic, a crisis within a crisis.

It is another challenge we must overcome. But one we will overcome together.

We will continue to protect ourselves and our loved ones and together, we will keep Wales safe.

Agenda Item 3.10

SL(5)711 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to introduce an offence in Alert Level 4 of failing to comply with the requirement for those responsible for premises with a licence to sell or supply alcohol for consumption off the premises to not sell or supply alcohol after 10 p.m. or before 6.00 a.m.

The amendment to the principal Regulations also enables local authorities to designate enforcement officers to enforce this requirement and issue compliance notices in relation to non-compliance.

Procedure

Made Affirmative.

The 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 dissolved or 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 or public policy likely to be of interest to the Senedd

We note the Regulations came into force before being laid before the Senedd. The First Minister notified the Llywydd of this in a letter dated 21 December 2020. In particular, we note the following in the letter:

“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately as they make a



technical amendment which ensures the enforcement regime continues to operate as it did under the regime which preceded the current principal Regulations. These Regulations have been published on the Welsh Government Covid-19 pages and at legislation.gov.uk before they come into force."

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

There is an additional sentence at the end of the second paragraph of the Explanatory Note in the Welsh text which does not appear in the English text.

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these 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 the principal 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). The implementation of new restrictions and requirements under the Regulations is a proportionate response to the increasing spread of the coronavirus. 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."

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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:



"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."

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared for the principal Regulations and will be published on the gov.wales website:

<https://gov.wales/impact-assessments-coronavirus>.

Welsh Government response

Merits Scrutiny point 2: additional sentence in the Welsh text of the Explanatory Note

The Government is grateful for the notice of the issue. The sentence in question was included in the Welsh text of the Explanatory Note in error, but does not affect the interpretation of the Regulations.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1623 (W. 340)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 2) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) to make it an offence in an Alert Level 4 area for the person responsible for a business which is licensed for the sale or supply of alcohol for consumption off the premises to sell or supply alcohol between the hours of 10.00 p.m. and 6.00 a.m., and to make consequential amendments relating to the enforcement of that offence.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1623 (W. 340)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 2) Regulations
2020**

Made *21 December 2020*

*Coming into force at 12.01 a.m. on 22
December 2020*

Laid *before* *Senedd*
Cymru *at 10.00 a.m. on 22 December 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

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) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020.

(2) These Regulations come into force at 12.01 a.m. on 22 December 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 25(3)(a)(v), for “or 10(1)” substitute “, 10(1) or 11(3)”.

(3) In regulation 27(1)(e), for “or 10(1)” substitute “, 10(1) or 11(3)”.

(4) In regulation 42(1)(d), for “or 10(1)” substitute “, 10(1) or 11(3)”.

Mark Drakeford

First Minister, one of the Welsh Ministers
21 December 2020

(1) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) 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) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020.

Mark Drakeford
First Minister

22 December 2020

1. Description

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to introduce an offence in Alert Level 4 of failing to comply with the requirement for those responsible for premises with a licence to sell or supply alcohol for consumption off the premises to not sell or supply alcohol after 10 p.m. or before 6.00 a.m. The amendment also enables local authorities to designate enforcement officers to enforce this requirement and issue compliance notices in relation to non-compliance. .

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

Whilst the principal Regulations, as amended by these 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 the principal 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). The implementation of new restrictions and requirements under the Regulations is a proportionate response to the increasing spread of the coronavirus. 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.

Coming into force

These Regulations come into force at 12.01 am on 22 December, which is before they could be laid before the Senedd. The Llywydd has been notified of this, in accordance with section 4 of the Statutory Instruments Act 1946.

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. These Regulations are made under sections 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memorandum to the principal Regulations.

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”.

The principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated [Coronavirus Control Plan](#). Wales has been in Alert Level Four since the beginning of the day on 20 December.

These Regulations amend the principal Regulations to provide that it is an offence to fail to comply with the Alert Level 4 requirement for licensed premises to not sell alcohol after 10 p.m. or before 6.00 a.m. This restriction applies at all Alert Levels under the principal Regulations and was part of the regime which preceded the current principal Regulations. In the course of drafting the principal Regulations the cross-referencing required to ensure that breach of this restriction in an Alert Level 4 area was an offence and was accompanied by appropriate enforcement powers was omitted in error. These Regulations simply correct that omission.

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.

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.

The summary integrated impact assessment for the principal Regulations will be updated and published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.



Elin Jones, MS
Llywydd

Llywydd@senedd.wales

21 December 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020 under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 12.01 a.m. on 22 December. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on Tuesday 22 December.

In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately as they make a technical amendment which ensures the enforcement regime continues to operate as it did under the regime which preceded the current principal Regulations. These Regulations have been published on the Welsh Government Covid-19 pages and at legislation.gov.uk before they come into force.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 7 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 12 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Amendment to the Health Protection (Coronavirus Restrictions)
(No.5) (Wales) Regulations 2020**

DATE **22 December 2020**

BY **Mark Drakeford MS, First Minister**

An amendment has been made to The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 to ensure selling alcohol after 10pm remains an offence in Alert Level 4 restrictions.

The amendment also enables local authorities to designate enforcement officers to enforce this requirement and issue compliance notices in relation to non-compliance.

SL(5)709 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2021 in Wales.

The rates from 1 April 2021 are as follows:

- The standard rate is **£96.70** per tonne (increased from £94.15 per tonne)
- The lower rate is **£3.10** per tonne (increased from £3.00 per tonne)
- The unauthorised disposals rate is **£145.05** per tonne (increased from £141.20 per tonne).

Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020.

Procedure

Made Affirmative.

The 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 dissolved or 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 point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(i) - that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh



Consolidated Fund. These Regulations prescribe the three rates of landfill disposals tax in Wales.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

Regulations laid before Senedd Cymru under section 95 of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days⁽¹⁾.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1614 (W. 338)

LANDFILL TAX, WALES

The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No. 2) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax chargeable on taxable disposals (within the meaning of Part 2 of the Landfill Disposals Tax (Wales) Act 2017) made on or after 1 April 2021.

The standard rate is £96.70 per tonne, the lower rate is £3.10 per tonne and the unauthorised disposals rate is £145.05 per tonne.

Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 (S.I. 2020/95 (W. 16)) as a result of the amendment made by regulation 4 of these Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at www.gov.wales.

(1) The reference in section 95 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Regulations laid before Senedd Cymru under section 95 of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days(1).

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1614 (W. 338)

LANDFILL TAX, WALES

The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No. 2) Regulations 2020

Made at 9:57 a.m. on 21 December 2020

Laid before Senedd Cymru at 5.00 p.m. on 21 December 2020

Coming into force 1 April 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 14(3) and (6), 46(4) and 94(1) of the Landfill Disposals Tax (Wales) Act 2017(2).

Title and commencement

1. The title of these Regulations is the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No. 2) Regulations 2020 and they come into force on 1 April 2021.

Application

2. These Regulations have effect in relation to a taxable disposal (within the meaning of Part 2 of the Landfill Disposals Tax (Wales) Act 2017) made on or after 1 April 2021.

(1) The reference in section 95 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(2) 2017 anaw 3.

Rates of landfill disposals tax

3. The following rates are prescribed in accordance with sections 14(3) and (6), and 46(4) of the Landfill Disposals Tax (Wales) Act 2017 respectively—

- (a) the standard rate is £96.70 per tonne;
- (b) the lower rate is £3.10 per tonne; and
- (c) the unauthorised disposals rate is £145.05 per tonne.

Amendment of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020

4. In regulation 2 of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020⁽¹⁾, after “1 April 2020” insert “but before 1 April 2021”.

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh Ministers

At 9.57 a.m. on 21 December 2020

(1) S.I. 2020/95 (W. 16.).

Explanatory Memorandum to the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No.2) Regulations 2020

This Explanatory Memorandum has been prepared by Welsh Treasury: Tax Policy, Strategy and Engagement Division and is laid before the 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 Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Trefnydd
Y Gweinidog Cyllid a'r Trefnydd
21 December 2020

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)¹. The LDT Act establishes and sets out the framework and operational arrangements for landfill disposals tax which replaced UK landfill tax in Wales when it was devolved in April 2018.
- 1.2. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2021 in Wales. Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 as a result of the amendment made by regulation 4 of these regulations.
- 1.3. Subject to the will of the Senedd, the regulations will come into force on 1 April 2021.

2. Matters of special interest to the Legislation, Justice and Constitution Committee (LJCC)

- 2.1. None

3. Legislative background

- 3.1. The regulations are being made pursuant to sections 14 and 46 of the LDT Act:
 - Section 14 gives the Welsh Ministers powers to make regulations to prescribe the standard rate and the lower rate; and
 - Section 46 gives the Welsh Ministers powers to make regulations to prescribe the unauthorised disposals rate.
- 3.2. Section 95 of LDT Act requires the regulations varying the rates of landfill disposals tax to be (i) laid before the Senedd, and (ii) must be approved by the Senedd within 28 days of being laid, not counting any period during which the Senedd is dissolved or in recess for more than 4 days. This is known as the “provisional” or “made” affirmative procedure.

¹ <http://www.legislation.gov.uk/anaw/2017/3/contents/enacted>

4. Purpose and intended effect of the regulation

Summary

- 4.1. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2021 in Wales. Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020.

Policy aims and tax principles

- 4.2. In developing landfill disposals tax for Wales, including the regulations, the Welsh Government has applied its five principles for the development of devolved tax policy and legislation to:
- raise revenue to support public services as fairly as possible;
 - help deliver wider fiscal and policy objectives, including jobs and economic growth;
 - be simple, clear and stable;
 - engage with taxpayers and wider stakeholders;
 - contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.3. In September 2017, the Welsh Government published its national strategy *Prosperity for All*². One of its four key themes is 'Prosperous and Secure'; a key objective of which is to drive sustainable growth and combat climate change.
- 4.4. The supporting Economic Action Plan³ puts decarbonisation as a central pillar for future prosperity and highlights the Welsh Government's continued drive to deliver policies for reducing waste and moving towards a circular economy. It includes reference to Wales' new fiscal responsibilities and how these will be used to deliver on wider policy objectives in line with the Tax Policy Framework.
- 4.5. In March 2019, the Welsh Government published its plan "Prosperity for All: A Low Carbon Wales"⁴. It set out the Welsh Government's approach to cut emissions and increase efficiency in a way that maximises wider benefits for Wales, ensuring a fairer and healthier society.
- 4.6. The Welsh Government "Beyond Recycling – Making the Circular

² <https://gov.wales/prosperity-all-national-strategy>

³ <https://gov.wales/sites/default/files/publications/2019-02/prosperity-for-all-economic-action-plan.pdf>

⁴ https://gov.wales/sites/default/files/publications/2019-06/low-carbon-delivery-plan_1.pdf

Economy a Reality in Wales” consultation⁵ closed earlier this year and a summary of responses⁶ was published in September 2020. A circular economy is one where resources are valued and kept in use and waste avoided - a key strategic aim of which will be to reduce the amount of materials sent to landfill and incineration. Other proposed actions include phasing out single use plastic and in doing this, making Wales among the first countries to send zero plastic to landfill. This consultation sits alongside other environmental policies and reforms such as introducing Extended Producer Responsibility for packaging, a Deposit Return Scheme for drinks containers, applying bans or restrictions to phase out the use of unnecessary, highly littered, single use plastic.

- 4.7. At Budget 2018, the UK Government announced that from April 2022, it will introduce a plastic packaging tax⁷. The tax will encourage the use of recycled rather than new plastic within plastic packaging. It will create greater demand for recycled plastic, and in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.
- 4.8. New resource efficiency and circular economy legislation mandating business recycling⁸ in Wales is being developed - the primary aim of which is to increase recycling and collect valuable resources from non-domestic premises such as businesses and the public sector in Wales.
- 4.9. The introduction of landfill disposals tax legislation, including these regulations, contributes towards these wider green objectives and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy. This builds on Wales’ success in recycling and reducing the environmental impacts of production and consumption.
- 4.10. Section 91 of the LDT Act places a duty on the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act. In developing the regulations, consideration has been given to how the rates support the objective of reducing waste to landfill and the Welsh Government’s ambitions for a zero waste Wales.
- 4.11. In order to provide stability, the approach taken to setting the rates has been that the devolved tax rates should only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities.
- 4.12. The revenue from landfill disposals tax will be used to directly fund public services in Wales, replacing part of the funding the Welsh

⁵ https://gov.wales/sites/default/files/consultations/2020-03/consultation-circular-economy-strategy_1.pdf

⁶ https://gov.wales/sites/default/files/consultations/2020-09/beyond-recycling-summary-of-responses_1.pdf

⁷ <https://www.gov.uk/government/publications/introduction-of-plastic-packaging-tax/plastic-packaging-tax>

⁸ <https://gov.wales/increasing-recycling-businesses>

Government receives from the UK Government⁹. The principle that there should be no less revenue available to fund public services has also been applied.

Current position

- 4.13. There are two rates of UK landfill tax; a lower rate for materials specified in the list of qualifying materials (and meeting certain requirements) and a standard rate for all other materials. The UK Government does not have a separate rate for unauthorised disposals - the standard rate applies to all disposals made at an unauthorised sites. The standard rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery¹⁰.
- 4.14. Since 2014, the UK Government's approach has been to maintain the standard and lower tax rates in real terms (by the rate of inflation as measured by the Retail Price Index (RPI)). The UK Budget in March 2020 set out the UK Government's plans for the landfill tax rates for 2021-22 - to increase the standard and lower rates of landfill tax in line with RPI, rounded to the nearest 5 pence. The change will have effect on and after 1 April 2021¹¹.
- 4.15. To date, landfill disposals tax rates have matched UK landfill tax rates, delivering a commitment made by the First Minister in his previous position as Cabinet Secretary for Finance to match landfill tax rates for the first two years following landfill disposals tax going live in 2018 (2018-19 and 2019-20). The landfill disposals tax rates for 2020-21 were again set to match UK landfill tax rates and were approved by the Senedd in January 2020.

Purpose and intended effect of the regulation

- 4.16. Alongside the publication of the draft budget in December 2020, the Minister for Finance and Trefnydd announced the landfill disposals tax rates for 2021-22 will increase as follows:
- i. The standard rate will increase from £94.15 per tonne to **£96.70** per tonne;
 - ii. The lower rate will increase from £3.00 per tonne to **£3.10** per tonne; and
 - iii. The unauthorised rate would increase from £141.20 per tonne to **£145.05** per tonne.

⁹ <http://gov.wales/funding/?lang=en>

¹⁰ Since the introduction of UK landfill tax in 1996, the standard rate has risen from £7 to £21 per tonne in 2006, then to £72 in 2013 and £94.15 in 2020. In contrast, the lower rate has risen from £2 per tonne in 1996 to £2.50 in 2013 and £3 in 2020.

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872423/Overview_of_Tax_Legislation_and_Rates_2020.pdf

4.20 The approach to setting tax rates has been guided by the tax principles and the objective to reduce landfill disposals in Wales, as required by section 91 of the LDT Act. Delivering stability and certainty for taxpayers and the wider waste industry has also been a key factor in setting the rates. The approach for tax rates to only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities and the principle there should be no less revenue available to fund public services has also been applied.

4.21 On this basis, the proposed standard and lower rates of landfill disposal tax are consistent with UK landfill tax rates to provide stability and certainty to those stakeholders impacted by the tax. The unauthorised disposals rate, is set higher than the standard rate (standard rate + 150%), creating an additional financial deterrent for people seeking to avoid their environmental obligations and dispose of waste illegally. Setting the rate higher than the standard rate takes account of the increased negative impact on the environment of unauthorised disposals of waste. The rate also recognises that administrative costs incurred by legitimate operators will have been avoided and better reflects the enforcement costs of the Welsh Revenue Authority (WRA).

4.22 Regulation 3 provides the rates for 2021-22:

Rate	2021-22
Standard rate	£96.70 per tonne
Lower rate	£3.10 per tonne
Unauthorised disposals rate	£145.05 per tonne

5. Consultation

5.1. There is a no statutory duty to consult on these regulations and the proposed rates were announced by the Minister for Finance and Trefnydd alongside the publication of the Welsh Government's draft budget in December 2020. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. *Impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018*

Options

- 6.1. In relation to setting the **lower and standard rates**, two options have been considered; to:
- Option 1a) - be consistent with UK landfill tax rates
 - Option 1b) - set 'Welsh specific' rates which are different from the UK rates
- 6.2. In relation to the **unauthorised disposals rate**, two options have been considered; to:
- Option 2a) - maintain the unauthorised disposals rate at 150% of the new proposed standard rate
 - Option 2b) - change the unauthorised disposals rate as a % of the new proposed standard rate
- 6.3. A brief description of each option and their anticipated impact is outlined below followed by an analysis of the costs and benefits at section 7.

Lower and standard rates

Option 1a): be consistent with UK landfill tax rates

- 6.4. This option would introduce regulations which are consistent with UK landfill tax rates, with the standard and lower rate of landfill disposals tax increasing in line with inflation (as measured by the Retail Price Index, RPI) in April 2021.
- 6.5. On introducing landfill disposals tax, a clear message from stakeholders was the need for consistency, certainty and stability for businesses. Replicating the UK landfill tax rates could achieve this. Industry experts have also consistently highlighted concerns about waste tourism across the England-Wales border and a consistent rate with the UK landfill tax would address this possible risk.
- 6.6. Furthermore, stability over rates may benefit businesses given the current economic uncertainty generated by the pandemic and the UK's departure from the European Union.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

- 6.7. This option would introduce regulations that set the standard and/or lower rates specific to Wales at different rates from the UK rates. In one direction, this could help to support Welsh Government priorities and policies, including the ambitious goal of zero waste by encouraging greater recycling, recovery and re-use of waste and efforts to reduce carbon emissions and tackle climate change. An alternative approach could increase revenue to invest in public services in Wales.

Unauthorised disposals rate

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

- 6.8 This option would maintain the unauthorised disposals rate at 150% of the new proposed standard rate of tax. This would ensure that those disposing of waste illegally pay a greater amount of tax compared to the amount they would have paid if they had taken it to an authorised landfill site.
- 6.9 As there is a proposal to increase the standard rate in line with inflation, this will therefore increase the unauthorised disposals rate from £141.20 to £145.05.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

- 6.10 The unauthorised disposals rate is intended to create another deterrent for those seeking to avoid landfill disposals tax and their environmental duties by disposing of waste illegally. While the Covid-19 pandemic has impacted on the WRA's ability to begin testing its powers operationally, it has been working throughout with partners such as Natural Resources Wales to better understand the scale and nature of unauthorised disposals in Wales. This is informing how to make best use of tax and environmental powers, respectively, to tackle this activity. As the WRA continues to develop its approach, it does not yet have evidence to suggest varying the unauthorised disposals rate would lead to a further behavioural change.

7. Costs and Benefits

- 7.1. The costs and benefits associated with each option have been produced using the best available information at the time.
- 7.2. The preferred option is for the Welsh Government to be consistent with UK landfill tax for the standard and lower rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

- 7.3. The WRA has delegated compliance and enforcement functions (including tackling unauthorised disposals) to NRW, who have existing relationships with the landfill site operators and extensive knowledge of the waste industry. Compliance will be undertaken on a risk basis as is currently the case with UK landfill tax.

Lower and standard rate

Option 1a): be consistent with UK landfill rates

- 7.4. A key priority for the Welsh Government was a smooth transition to landfill disposals tax in 2018-19. Any changes to tax rates can be expected to have behavioural effects.
- 7.5. A reduction in landfill disposals tax rates may encourage greater landfill disposals in Wales, which is not consistent with the Welsh Government's wider waste policy agenda. An increase in waste being disposed of in Wales would also have wellbeing and environmental impacts for communities. For example, it would:
- Increase waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas;
 - Increase disruption for residents near landfill sites and waste transfer stations;
 - Increase the carbon footprint of waste disposal;
 - Increase pressure on existing landfill capacity, with potential calls for new landfill sites to be developed.
- 7.6. Conversely, an increase in landfill disposals tax rates may encourage less waste to be disposed of to landfill in Wales than if landfill tax were to continue to apply, reducing the amount of revenue collected. This is inconsistent with our principle that there should be no less revenue available to fund public services. Further, an increase in landfill disposals tax rates may encourage unauthorised waste disposals in Wales.
- 7.7. Stakeholders have suggested that the standard rate has reached its optimum level where landfilling these materials is the most expensive, and therefore least attractive, means of waste disposal. Furthermore, adjusting the rates in line with inflation each year has created a big gap between where the lower and standard rates sit. If the rates are consistently raised in line with inflation, this could continue to grow the gap between the standard rate and lower rate, creating a higher tax gap, driving potentially more mis-descriptions (e.g. where companies mis-describe the waste to avoid higher rates of tax). When UK landfill

tax was first introduced, the difference between the lower and standard rates was much smaller¹².

- 7.8. Some stakeholders have also made the case for increasing the lower rate to encourage greater recycling, re-use and recovery of these materials but the majority wanted consistency with UK rates to minimise the risk of waste tourism, including, at least initially, for the lower rate.
- 7.9. By setting rates that are consistent with UK landfill tax, public services in Wales will continue to benefit from tax revenue, while ensuring the risk of the movement of waste across borders is reduced. Furthermore, stability over rates may benefit businesses given the current economic uncertainty generated by the pandemic and the UK's departure from the European Union.

Costs

- 7.10. Under this option, the lower and standard landfill disposals tax rates would increase in line with inflation as measured by RPI. This means the standard rate of landfill disposals tax would be £96.70 per tonne and the lower rate would be £3.10 per tonne in 2021-22.
- 7.11. As the proposed tax rates are consistent with the UK landfill tax, there is not expected to be any significant change in the amount of waste landfilled compared with the rest of the UK. Table 1 shows that overall revenue generated from landfill disposals tax in 2020-21 and 2021-22 is forecast to be £27m and £32m respectively. The large reduction in 2020-21 occurs due to lockdowns in response to Covid-19. This also has an impact on revenues in 2021-22. Forecasts for the rest of the UK are similarly affected.
- 7.12. Despite the increase in tax rates, revenue is expected to fall slightly over the forecast period as an increasing amount of waste is diverted away from landfill. The forecasts in Table 1 do not include the tax revenue from unauthorised disposals.

Table 1: Landfill disposals tax revenues forecast (£ million)

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26
Landfill Disposals Tax (£m)	37	27	32	33	33	33	32

Source – OBR November 2020 forecast¹³

¹² Since the introduction of Landfill Tax in 1996, the standard rate has risen from £7 per tonne to £21 per tonne in 2006, then to £72 per tonne in 2013 and £94.15 per tonne in 2020. In contrast, the lower rate has risen from £2 per tonne in 1996 to £2.50 per tonne in 2013 and £3 per tonne in 2020.

¹³ <https://obr.uk/efo/economic-and-fiscal-outlook-november-2020/>. An updated forecast will be published alongside the draft budget on 21st December

7.13. Further, as this option is to be consistent with UK landfill tax, there will not be any changes that incur an additional cost to landfill site operators, waste businesses or WRA.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

7.14. Wales is at the forefront of waste policy and landfill disposals tax is a useful additional lever to support Welsh Government waste policies and achieve our ambitious goal of a zero waste Wales.

7.15. This option has the potential to increase the incentive to separate and sort waste for disposal in order to secure the lower rate of tax which can have added benefits of enabling more waste to be recovered, re-used and recycled and reduce the amount of waste going to landfill.

7.16. However, if the rates vary from UK rates, there is the possibility we will see some waste tourism – this was previously discussed in the Landfill Disposals Tax Explanatory Memorandum and Regulatory Impact Assessment¹⁴. Before landfill tax was devolved to Scotland, a study also was undertaken to understand the policy options for a Scottish specific landfill tax and this also discussed the potential for waste tourism¹⁵. Given that the landfill disposals tax rates have yet to be differentiated between the UK landfill tax rates, it is difficult to predict behaviour and would depend on the rate change. For example, even though there are examples of English waste being transported to Wales, there is no difference in the rates at present so it could be determined that this is not driving behaviour. The factors that could influence waste tourism would need to be carefully considered.

7.17. For example, an increase in landfill disposals tax rates may encourage less waste to be disposed of to landfill in Wales, reducing the amount of revenue collected. This approach may also increase levels of waste tourism from Wales to England. However, evidence¹⁶ suggests that a marginal difference in rates could be tolerated by the market without waste tourism in particular becoming a concern.

7.18. More detailed research is needed to establish the scale of impact setting different rates to the UK would have on waste tourism, unauthorised disposals, the rate of recycling and reuse and tax revenues.

7.19. Therefore, at this stage, the costs, benefits and risks of setting Welsh specific tax rates which are different to the UK rates are unknown.

¹⁴ <https://senedd.wales/laid%20documents/pri-ld10839-em-r/pri-ld10839-em-r-e.pdf>

¹⁵ <https://www.zerowastescotland.org.uk/sites/default/files/Scottish%20Landfill%20Tax%20Study%20Report.pdf>

¹⁶ <https://documents.hf.wales.gov.uk/id:A10928403/document/versions/published>

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

- 7.20. Maintaining the unauthorised disposal rate at the 150% of the new proposed standard rate ensures a level of fairness, proportionality, and transparency. Setting the rate at this level acts as an additional deterrent for those seeking to avoid landfill disposals tax and their environmental duties by disposing of waste illegally. It also recognises the increased negative impact on the environment of unauthorised disposals of waste and that in normal circumstances registered landfill site operators incur administrative costs relating to registration, filing, paying and record-keeping and these would have been avoided along with penalties and interest, which would have been applied to a registered landfill site operator for failure to do these. Setting the rate at 150% of the new proposed standard rate keeps it in line with the standard rate increase which is in line with the retail price index and therefore helps to create a level playing field for legitimate waste businesses.
- 7.21. Consistent with the purpose of the tax as a lever to influence positive environmental behaviours this approach seeks to encourage individuals to make efforts to take up sustainable methods of waste disposal or, as a minimum, to take waste to a registered landfill site and pay a fair share of tax and thus protect revenue for investment in public services in Wales. Our approach further aims to bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future.

Costs

- 7.22. The introduction of a separate tax rate for unauthorised disposals came into force in Wales on 1 April 2018 and was aimed primarily at deterring unauthorised disposals rather than raising tax revenue. The WRA are responsible for determining the level of compliance and enforcement activity it undertakes in relation to unauthorised disposals. It is expected that its approach will be proportionate and cost-effective and be considered in the context of the wider initiatives being taking forward by the Welsh Government, NRW and local authorities to ensure that those dumping waste bear the cost of their actions.
- 7.23. An industry report in 2015¹⁷ highlighted that every £1 spent on waste crime enforcement is expected to return between £3.60 and £5.60 to government. This clearly makes the enforcement of these powers a valuable tool and one which could be a worthwhile investment in the long term.
- 7.24. Tax collected from unauthorised disposals will support the delivery of public services in Wales, with some revenue allocated to NRW and

¹⁷http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

local authorities where they have been instrumental in assisting the investigation and pursuit of tax and to incentivise future action.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

7.25. As mentioned above in paragraph 6.10, there is no evidence available to suggest whether the rate should increase or decrease.

Summary of the preferred option

7.26. In view of the unprecedented circumstances presented by the Covid-19 pandemic, and the resulting impact on the waste sector, it is not considered timely or appropriate to undergo changes to existing processes at this stage. However, there is opportunity to review this approach as part of the established year on year review of the rates, or as part of the requirement to independently review the landfill disposals tax legislation by 2023, committed to during the passage of the Bill.

7.27. The preferred option is for the Welsh Government to be consistent with the options used to set the rates in 2020-21 being the same as the UK landfill tax for the lower and standard rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

7.28. The key benefit is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is charged in England and Wales and the risk of cross border movement of waste is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

7.29. The standard rate in particular is widely considered by stakeholders to be set at a level which reflects its environmental cost and promotes a more sustainable approach to waste management. This will help deliver wider benefits including supporting the delivery of the Welsh Government's wider waste and environment policies. In particular, continuing to enable the development of the "Beyond Recycling – Making the Circular Economy a Reality in Wales" Strategy and helping to deliver the goals set out in the Environment (Wales) Act 2016¹⁸ and the *Climate Change Strategy for Wales*¹⁹.

7.30. The unauthorised disposals rate seeks to support our policy ambition to deter unauthorised disposals which blight our communities. It will ensure that the increased negative impact of unauthorised disposals is recognised, it will support the creation of a level playing field for

¹⁸ <https://gov.wales/environment-wales-act-2016-factsheets>

¹⁹ <https://gov.wales/sites/default/files/publications/2019-04/climate-change-research-emission-reduction-scenarios.pdf>

legitimate operators and it better reflects the enforcement costs of WRA. It is hoped the proposed rates will encourage illegal operators to manage their waste more sustainably and as a minimum take it to an authorised landfill site and pay a fair share of tax which supports public services in Wales.

8. Competition assessment

- 8.1. See **Appendix A**
- 8.2. At present there are 17 landfill site operators²⁰ covering 23 sites in the market.
- 8.3. These Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms, as a percentage uplift in rates will affect every operator similarly in percentage terms.

9. Post implementation review

- 9.1. The effect of the LDT Act and these regulations will be assessed in a number of ways, including:
 - A review of the LDT Act and regulations will be completed within six years of the tax being devolved to Wales (more information below at para 9.3);
 - Data will be collected as part of landfill disposals tax returns and these will provide an evidence base from which evaluation of a number of Welsh Government policies can be undertaken. The data will include information on landfill disposals tax revenue and the tax base directly, for example, the tonnage of standard and lower rate materials sent to landfill in Wales or the amount of tax raised at the unauthorised disposals tax rate.
 - A programme of monitoring activity will be developed to correspond with key activities including enforcement activity on unauthorised disposals.
- 9.2. Any post implementation assessment of more qualitative aspects of landfill disposals tax will require the collection of further data. For example, direct engagement with landfill site operators (meetings/surveys etc.). Assessing the impact of operational matters is the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.

Review of Landfill Disposal Tax legislation in 2023

- 9.3. A commitment was made during the passage of the LDT Bill, by the then Cabinet Secretary for Finance, for an independent review of landfill disposals tax legislation to be carried out, alongside similar timings for a review of land transaction tax legislation. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act

²⁰ <https://beta.gov.wales/welsh-revenue-authority-list-landfill-site-operators>

2017 Act requires an independent review of land transaction tax to be published 6 years from the date after the day the Act received Royal Assent.

- 9.4. The requirement of independently reviewing the landfill disposals tax legislation provides an opportunity to take stock, to consider revenue and behavioural impacts to date and explore further data gathering opportunities.
- 9.5. There are many factors that could form part of the review. For example, an assessment of the range of options and instruments available to advance environmental objectives e.g. design of the tax (reliefs etc.), introducing different rates for different materials, assessing existing market conditions, assessing levels of criminal activity and alignment with wider environmental policies. Any assessment would also need to take into consideration waste levels in response to Covid-19, in recognition of the instability this has created for the sector as well as the uncertainty on longer term impact.
- 9.6. Any consideration of approaches that differ from usual processes would need to undergo extensive feasibility testing, impact assessment and consultation with key stakeholders.

APPENDIX A

The Competition Assessment

There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. The results of the competition filter are presented in the table below:

The competition filter test for landfill site operators	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or	No

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/3681/20

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1NA

21 December 2020

Dear Llywydd,

Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No.2) Regulations 2020

I have today made the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No.2) Regulations 2020 under sections 14(3) and (6), 46(4), 94(1) and 95 of the Landfill Disposals Tax (Wales) Act 2017 which comes into force on 1 April 2021. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in section 95 of the Landfill Disposals Tax (Wales) Act 2017, this instrument must be approved by the Senedd by 7 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the Plenary debate for this item of subordinate legislation on 2 February 2021.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Llyr Gruffydd MS, Chair of the Finance Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Rebecca Evans MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(5)710 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 so as to insert revised tax bands and percentage tax rates for higher rates residential property transactions, non-residential property transactions and chargeable consideration which consists of rent.

The tables below set out the previous rates/bands and the new rates/bands.

Higher rates residential property transactions		<i>Previous Percentage tax rate</i>	<i>New Percentage tax rate</i>
<i>Tax band</i>	<i>Relevant consideration</i>		
First tax band	Not more than £180,000	3%	4%
Second tax band	More than £180,000 but not more than £250,000	6.5%	7.5%
Third tax band	More than £250,000 but not more than £400,000	8%	9%
Fourth tax band	More than £400,000 but not more than £750,000	10.5%	11.5%
Fifth tax band	More than £750,000 but not more than 1,500,000	13%	14%
Sixth tax band	More than £1,500,000	15%	16%



Non-residential property transactions <i>Tax band</i>	<i>Previous Relevant consideration</i>	<i>New Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £150,000	Not more than £225,000	0%
First tax band	More than £150,000 but not more than £250,000	More than £225,000 but not more than £250,000	1%
Second tax band	More than £250,000 but not more than £1,000,000	More than £250,000 but not more than £1,000,000	5%
Third tax band	More than £1,000,000	More than £1,000,000	6%

Chargeable consideration which consists of rent <i>Tax band</i>	<i>Previous Relevant consideration</i>	<i>New Relevant consideration</i>	<i>Percentage tax rate</i>
NRL Zero rate band	Not more than £150,000	Not more than £225,000	0%
First tax band	More than £150,000 but not more than £2,000,000	More than £225,000 but not more than £2,000,000	1%
Second tax band	More than £2,000,000	More than £2,000,000	2%

Procedure

Made Affirmative.

The 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

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.



1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires

Paragraph 28(1) of Schedule 6 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 confers a power on the Welsh Ministers to specify the tax bands and the percentage rates in the case of chargeable consideration which consists of rent (in cases of the acquisition of a non-residential lease or mixed lease). This provision is not cited as an enabling power in the preamble to these Regulations.

We refer to paragraph 21 of the decision of the Court of Appeal in Vibixa Ltd and another v Komori UK Ltd and others¹ which states:

Until the contrary is shown, the court must proceed on the basis that the preamble to an S.I. sets out all the statutory enabling powers that are necessary for its validity.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulations 4 and 5 cross-refer to regulation 3(1), however there is no regulation 3(1) in these Regulations. We assume the references should be to regulation 3(a).

3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

The numbering in regulation 2 is not consistent between the English and Welsh texts.

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

The changes made by these Regulations were announced by the Minister for Finance and Trefnydd on 21 December 2020 in the draft Budget, and these Regulations came into force the next day. There have been a number of reports in the media criticising the short notice and highlighting the impact on solicitors and their clients.

David Greene, President of the Law Society of England and Wales, is quoted in [Legal News Wales](#) as saying:

“Solicitors in Wales and their counterparts in England who have clients purchasing homes in Wales are dismayed by the combination of the timing of today’s Welsh Government announcement of changes to the land transaction tax (LTT) and the short notice of those changes, which will commence tomorrow (22 December).”

¹ [2006] EWCA Civ 536



“These last-minute changes come at a time when solicitors are under enormous pressure, facing the challenge of operating in a pandemic – with Wales just having adopted stricter measures – and working all hours dealing with the usual Christmas rush, clients wishing to move before the 31 March LTT holiday deadline and record numbers of transactions, which are being hit by delays in searches.”

“They now have clients who face paying thousands of pounds more if they are unable to proceed with their transaction within the very short notice period given.”

2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund. These Regulations revise tax bands and percentage tax rates for certain transactions subject to land transaction tax collected by the WRA.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to all points except the second merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2021



Regulations laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1618 (W. 339)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax (Tax
Bands and Tax Rates) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128) (“the 2018 Regulations”) so as to insert revised tax bands and percentage tax rates for higher rates residential property transactions, non-residential property transactions and chargeable consideration which consists of rent.

Regulation 3 applies the revised tax bands and percentage tax rates to the aforementioned land transactions where the effective date of the transaction falls on or after 22 December 2020.

Regulation 4 goes on to set out exceptions to the general application of the revised tax bands and percentage tax rates in respect of higher rates residential property transactions only. Where the effective date for such transactions falls on or after 22 December 2020, but where contracts were exchanged or the substantial performance of that contract took place prior to 22 December 2020, the previous tax bands and percentage tax rates will continue to apply, unless one of the exclusions set out in regulation 5 applies.

Regulation 6 sets out the revised tax bands and percentage tax rates that are to apply to the transactions specified in regulation 3.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at www.gov.wales.

Regulations laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1618 (W. 339)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax (Tax
Bands and Tax Rates) (Wales)
(Amendment) Regulations 2020**

Made at 10.20 a.m. on 21 December 2020

*Laid before Senedd
Cymru at 5.00 p.m. on 21 December 2020*

Coming into force 22 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 24(1) and 78(1) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017(1).

Title and commencement

1. The title of these Regulations is the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020 and they come into force on 22nd December 2020.

Interpretation

2. In these Regulations,—

(1) 2017 anaw 1.

- (a) “the 2018 Regulations” means the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018⁽¹⁾.
- (b) Words and expressions used in these Regulations have the same meaning as they have in the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017.

Application

3. Subject to regulation 4, these Regulations have effect in relation to the following land transactions with an effective date on or after 22 December 2020—

- (a) higher rates residential property transactions to which Table 2 of the Schedule to the 2018 Regulations applies;
- (b) non-residential property transactions to which Table 3 of the Schedule to the 2018 Regulations applies; and
- (c) chargeable consideration which consists of rent to which Table 4 of the Schedule to the 2018 Regulations applies.

4. These Regulations do not have effect in relation to any transaction specified in regulation 3(1) (higher rates residential property transactions) which is—

- (a) effected in pursuance of a contract entered into and substantially performed before 22 December 2020; or
- (b) effected in pursuance of a contract entered into before 22 December 2020 and not excluded by regulation 5.

5. A transaction is excluded by this regulation if it is a transaction specified in regulation 3(1) which is effected in pursuance of a contract entered into before 22 December 2020 and where—

- (a) there is any variation of the contract, or assignment of rights under the contract, on or after 22 December 2020;
- (b) the transaction is effected in consequence of the exercise on or after 22 December 2020 of any option, right of pre-emption or similar right; or
- (c) on or after 22 December 2020 there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the

(1) S.I. 2018/128 (W. 32), as amended by S.I. 2020/794 (W. 174).

contract becomes entitled to call for a conveyance.

Amendment of the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

6.—(1) The Schedule to the 2018 Regulations is amended as follows—

(2) For Table 2 substitute—

“Table 2: Higher rates residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
First tax band	Not more than £180,000	4%
Second tax band	More than £180,000 but not more than £250,000	7.5%
Third tax band	More than £250,000 but not more than £400,000	9%
Fourth tax band	More than £400,000 but not more than £750,000	11.5%
Fifth tax band	More than £750,000 but not more than £1,500,000	14%
Sixth tax band	More than £1,500,000	16%

“;

(3) For Table 3 substitute—

“Table 3: Non-residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £225,000	0%
First tax band	More than £225,000 but not more than £250,000	1%
Second tax band	More than £250,000 but not more than £1,000,000	5%
Third tax band	More than £1,000,000	6%

“; and

(4) For table 4 substitute—

“Table 4: Chargeable consideration which consists of rent

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
NRL zero rate band	Not more than £225,000	0%
First tax band	More than £225,000 but not more than £2,000,000	1%
Second tax band	More than £2,000,000	2%

“.

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh Ministers

At 10.20 a.m. on 21 December 2020

Explanatory Memorandum to

The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group of the Welsh Government and is laid before the 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 Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020. I am satisfied that the benefits justify the likely costs. These changes will commence on 22 December 2020.

Rebecca Evans MS
Minister for Finance and Trefnydd
21 December 2020

1. Description

- 1.1 The purpose of this instrument is to specify a change to the land transaction tax (“LTT”) percentage tax rates for higher rates residential property transactions, non-residential property transactions and chargeable consideration which consists of rent.

2. Matters of special interest to the Legislation, Justice and Constitution Committee.

- 2.1 This instrument contains regulations made under the provisional affirmative procedure set out in section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the 2017 Act”). These Regulations are therefore made without a draft having been laid before, and approved by, the Senedd. Further details about this procedure can be found in paragraph 3.2, below.
- 2.2 This instrument also contains regulations made under section 78(1) of the 2017 Act to make transitional provision in connection with certain transactions where substantial performance, or contracts for the sale and purchase of the property are exchanged before 22 December 2020, but completion takes place on or after that date. Section 79(3) of the 2017 Act provides that regulations made under section 78(1) are subject to the negative procedure, unless the Welsh Ministers consider the regulations have the effect of imposing or increasing liability to tax. In this instance, the tax liability is increased with regards to the higher residential rates but decreased with regards to the non-residential rates and chargeable consideration which consists of rent. The transitional rule made under section 78(1) has the effect of protecting those taxpayers who have exchanged contracts before 22 December from paying more tax than they expected when they exchanged contracts. They will therefore only apply in relation to those transactions where there is an increase in liability, in this case, the higher residential property transaction alone. As a result of section 40 of the Legislation (Wales) Act 2019, the regulations are subject to the provisional affirmative procedure.

3. Legislative background

- 3.1 Section 24 of the 2017 Act provides the Welsh Ministers with powers to vary the tax rates and tax bands for LTT through regulations.
- 3.2 Regulations made under this section are subject to a provisional affirmative procedure, which means the regulations are made (signed) by the Ministers and can come into force immediately. Once the Regulations have been made, they must be laid before the Senedd and will have temporary effect until they are voted on by the Senedd. That vote must happen within 28 calendar days of the regulations being made, not counting days when the Senedd is in recess. If the vote does not occur, or is lost, the former tax rates and tax bands again apply and any taxpayer who paid a higher amount of tax under the regulations that failed to achieve Senedd approval can reclaim the difference between that payable under those regulations and the rates previously in force. This means that the risk of the regulations failing to achieve Senedd approval will rest with the Welsh Government and not Welsh taxpayers.
- 3.3 As the Regulations have been made when the Senedd is in recess, the 28 day period commences on 11 January 2021 and the vote to approve the Regulations must occur by 8 February 2021.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of these Regulations is to change the percentage tax rates of LTT used to calculate liabilities for higher rates residential property transactions. The regulations also change the non-residential property transaction zero rate band and the chargeable consideration which consists of rent non-residential leases ('NRL') zero rate band both of which are used to calculate a taxpayers liabilities. These changes apply to transactions which have an effective date¹ on or after 22 December 2020 and were announced by the Minister for Finance and Trefnydd in the draft Budget on 21 December 2020. These Regulations make no changes to the main residential rates of LTT which, broadly, apply to residential properties purchased as a primary residence.
- 4.2 The effect of these Regulations is to increase the higher rates of LTT applied to relevant residential property transactions by 1 percentage point in each tax band (i.e. the first tax band is increased from 3% to 4%, the second tax band increases from 6.5% to 7.5% etc.) This change will increase tax for around 14,000 taxable higher rates residential transactions per year by an average of around £1,600.
- 4.3 The effect of the Regulations on the zero rate tax bands applying to non-residential property transactions and the chargeable consideration which consist of rent is to decrease the amount of the LTT liable per transaction by taxpayers compared to the rates in force before 22 December 2020 by increasing the zero rate tax bands. In relation to the non-residential rates applicable to non-residential property transactions, the Regulations amend the first tax band so that it increases the threshold of the zero rate tax band from £150,000 to £225,000, and amends the first tax band so that it covers transactions of 'more than £225,000 but not more than £250,000'. There is no amendment to the rate in the first tax band which remains at 1% and the second and third tax bands are unchanged. In relation to the chargeable consideration which consists of rent, the NRL zero tax band is increased from £150,000 to £225,000 and the first tax band is amended so that it covers transactions of 'more than £225,000 but not more than £2,000,000'. The second tax band is unchanged.
- 4.4 These Regulations do not make any changes to the tax bands and percentage tax rates applicable to the main rates residential property transactions. Temporary changes to the main rates of LTT applicable to residential property transactions were made by the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020² ("the 2020 temporary LTT Regulations"). Those Regulations increased the residential main rates threshold from £180,000 to £250,000 for the period 27 July 2020 until 31 March 2021 inclusive. On 1 April 2021 the threshold to the main residential rates zero rate band will revert back to £180,000 as provided for in The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018³ ("the 2018 LTT Regulations").
- 4.5 The effect of these Regulations will provide additional revenue to Welsh Government to finance public spending, through the increases in the rates of tax applied to higher rates residential property transactions. At the same time supporting business, predominantly small and medium sized enterprises, by reducing the costs when acquiring non-residential property, transferring or taking out new leases, depending on the cost. This approach

¹ The 'effective date' is the date of completion of the contract to purchase the property. See section 71 of the 2017 Act.

² The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 (S.I. 2020/794 (W.174)).

³ The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) makes provision as to the rates and bands of LTT applicable to residential property transactions, higher rates residential property transactions, non-residential property transactions, and transactions where chargeable consideration consists of rent.

provides for a more progressive tax regime for LTT which recognises that the support required for economic recovery from the COVID-19 pandemic will require long-term investment.

- 4.6 Separate draft affirmative regulations that will make changes to the specified amount of relevant rent will be laid shortly. The relevant rent amount applies to non-residential transactions where the buyer is granted a lease and pays both rent and consideration other than rent (for example a premium). It is intended that the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020 and the Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) (Amendment) Regulations 2021 will be debated in the Senedd on the same day. The intended effect and purpose of those Regulations are set out in their accompanying Explanatory Memorandum.
- 4.7 The LTT residential property higher rates will, for transactions completed on or after 22 December 2020 be:

Table 1: Residential Property Transactions - Rates and Bands from 22 December 2020

Higher rates residential property transactions		
<u>Tax band</u>	<u>Relevant consideration</u>	<u>Percentage tax rate</u>
First tax band	Not more than £180,000	4%
Second tax band	More than £180,000 but not more than £250,000	7.5%
Third tax band	More than £250,000 but not more than £400,000	9%
Fourth tax band	More than £400,000 but not more than £750,000	11.5%
Fifth tax band	More than £750,000 but not more than 1,500,000	14%
Sixth tax band	More than £1,500,000	16%

4.8 The LTT non-residential property rates will, for transactions completed on or after 22 December 2020, be:

Table 2: Non-Residential Property Transactions - Rates and Bands from 22 December 2020

Non-residential property transactions		
<u>Tax band</u>	<u>Relevant consideration</u>	<u>Percentage tax rate</u>
Zero rate band	Not more than £225,000	0%
First tax band	More than £225,000 but not more than £250,000	1%
Second tax band	More than £250,000 but not more than £1,000,000	5%
Third tax band	More than £1,000,000	6%

4.9 The LTT rates applicable to the chargeable consideration which consists of rent will, for transactions completed on or after 22 December 2020, be:

Table 3: Chargeable consideration which consists of rent - Rates and Bands from 22 December 2020

Chargeable consideration which consists of rent		
<u>Tax band</u>	<u>Relevant consideration</u>	<u>Percentage tax rate</u>
NRL Zero rate band	Not more than £225,000	0%
First tax band	More than £225,000 but not more than £2,000,000	1%
Second tax band	More than £2,000,000	2%

5. Consultation

- 5.1 There is no statutory requirement to consult on this instrument. The changes to the percentage tax rates and tax bands for higher rates residential property transactions, non-residential property transactions and chargeable consideration which consists of rent were announced by the Minister for Finance and Trefnydd on 21 December 2020 in the draft Budget. The approach taken follows the Welsh Government's tax policy principles for a progressive regime by providing a tax saving to some non-residential transactions as businesses seek to recover from the impact of the COVID-19 pandemic, as well as increasing LTT revenues overall to provide additional revenue to finance Welsh Government policy priorities. The setting of rates and thresholds for taxes is not an area of policy where consultation is generally undertaken, as any such consultation with a 'live' tax is highly likely to have a distortive effect on behaviours and, in relation to transaction taxes, the timing of those transactions.

6. Regulatory Impact Assessment

- 6.1 The revenue impact of these changes are provided alongside the Welsh Government's draft Budget published on 21 December 2020. The costing of the policy has been included in the Office for Budget Responsibility's forecasts of land transaction tax (LTT) for the Welsh Government's draft Budget.
- 6.2 The Welsh Government considered a number of options for changes to land transaction tax rates and thresholds. This assessment covers a no change option and the policy within these regulations.
- 6.3 When setting rates and tax bands there are many possible options, especially when the changes affect more than one table of tax bands and tax rates. This regulatory impact assessment provides details of a no change and options selected only. The option selected included two changes, firstly, an increase to the tax charged on higher residential rates property transaction of one percentage point for each tax band. The decision to increase the tax charged on these property transactions was made to provide an increase in the resources available to the Welsh Government to spend on essential public services and spending plans.
- 6.4 Some of those additional revenues have been used to offset the costs of the second change, an increase in the non-residential tax bands applied to consideration paid for non-residential property transactions and to chargeable consideration which consists of rent. The decision was to provide buyers of non-residential property with, generally, a maximum LTT reduction of £750 to the cost of their non-residential transaction. It is designed in the simplest way possible and proportionally will have greatest impact on small and medium enterprises, including those in the foundational economy. Those businesses buying non-residential properties costing between £150,000 and £225,000 should, in the main, no longer have a tax liability (previously those buying property costing up to £150,000 did not pay LTT). The changes should help businesses reshape their property assets as we emerge from the pandemic to fit their requirements, be that to expand, or to reduce, the property assets used in the business.

No change

- 6.5 The no change option would have left all rates and thresholds for the residential and non-residential taxes as they have been since 1 April 2018 when LTT first applied in Wales, with the exception of the temporary variation to the residential main rates provided for in the 2020 temporary LTT Regulations. The temporary variation to the residential main rates of LTT

remain in effect until 31 March 2021 and on 1 April 2021, the main residential rates and thresholds revert to those set out in 2018 LTT Regulations.

Increase the higher residential rates of LTT by 1 percentage point in each tax band

- 6.6 This option will increase the tax paid on residential property transactions subject to the higher rates. The higher residential rates apply to companies buying any dwellings and to individuals, broadly, who are buying residential properties when they, or an individual they are buying with, already own an interest in another dwelling. This is most likely to apply to the purchases of second homes and buy-to-let properties. The tax change effectively increases the additional tax these properties pay from 3% to 4% relative to a main rates residential property.
- 6.7 There are no changes to the main residential rates of LTT in this option; however, the end of the temporary variation period and return to the rates and thresholds provided for in the 2018 LTT Regulations, as described at paragraph 6.5, will occur.
- 6.8 This option ensures the increase in tax burden is restricted to those with the resources to purchase additional residential properties and therefore provides for a more progressive regime, in line with the Welsh Government's tax policy principles. Purchasers who pay the higher residential rates account for around 25% of all residential purchases each year, although some may subsequently be entitled to a refund of the higher residential rates with their transaction then subject to the main residential rates. Such repayments can be made by, for example, people 'bridging' between one main residence and their new one.
- 6.9 Based on 2019-20 data, around 14,000 residential property transactions are initially subject to the higher residential rates. Using the same data, the change increases tax by an average of around £1,600 per transaction. The changes are anticipated to provide an increase in LTT revenues in 2021-22 of £14million. This revenue estimate includes the latest economic forecasts for the property market published by the Office for Budget Responsibility in their Economic and Fiscal Outlook (November 2020), anticipated refunds from the higher rates and expected behavioural effects in response to the measure. The behavioural effects expected with this option are likely to slightly reduce the prices and transaction numbers for properties subject to the higher residential rates as well as having a small effect on reducing house prices more generally. These all act to reduce the expected revenue from the measure and are included in the estimate. Many factors affect property transaction numbers and prices over and above the tax charged on purchases. The full effect is difficult to estimate for these multiple factors and, in particular, the short and medium-term impact of the COVID-19 pandemic on the property market and the wider economy is highly uncertain. The scale of the behavioural effects are also relatively uncertain. In addition, as some additional properties may also be buy-to-lets, this measure may also slightly increase residential rents.
- 6.10 This option increases the tax difference between different types of residential purchases in Wales. The relative reduction in tax for home buyers compared to second home and buy-to-let purchases may also change the composition of residential transactions. This may slightly increase the share of homebuyer transactions in Wales.

Increase the threshold to the zero rate tax band for the non-residential rates of LTT and the zero rate tax band on the chargeable consideration which consists of rent

- 6.11 This option will reduce LTT charged for certain non-residential transactions. It increases the zero rate band for lease premiums and assignments, and property transfers from £150,000 to £225,000. This provides a tax saving of up to £750 compared to the system between 1 April 2018 and 21 December 2020. The change also increases the zero rate band of the tax charged on the rent element of non-residential leases (measured by the net present value of the rents payable on the granting of a lease) from £150,000 to £225,000. This ensures

consistency in the treatment of the consideration given for a freehold or a premium on the granting or assigning of a lease with the consideration given in the form of rent. This measure also provides a tax saving of up to £750 for certain newly granted non-residential leasehold transactions.

- 6.12 This option will reduce tax for just under 1,500 non-residential transactions per year which involve a freehold transfer, or the granting or assignment of a lease. It is also estimated, the non-residential rent zero rate band change would reduce tax for just under 1,000 transactions per year for transactions involving rent on the grant of a lease, some of which may benefit from the both measures. These measures are more likely to benefit small and medium sized businesses (SMEs), whilst also providing the same maximum tax reduction for some larger non-residential transactions. These changes may slightly increase commercial property prices and transactions. The changes are forecast to reduce LTT revenues in 2021-22 by £1million.

Summary

- 6.13 When taken together, the changes represent a measured tax increase in Wales for certain residential property transactions whilst providing a modest tax reduction to non-residential transactions. The effect combined will increase overall LTT revenues increasing the resources available to the Welsh Government to finance policy priorities and reduce the expenditure required by businesses to invest in commercial property.
- 6.14 There will be little additional administrative cost to the Welsh Revenue Authority ('WRA') as a result of updating its online tax calculators and responding to taxpayer queries about the change. These costs will be met within its current budget. Businesses involved in the various stages of house purchases, especially estate agents and conveyancers and solicitors have dealt with many rate (and method of calculation) changes before when SDLT operated in Wales and with the introduction of LTT in Wales. A Written Statement and press notices have been published and provided and the Welsh Government has engaged with professional bodies to help communicate these changes to Welsh taxpayers. The WRA has updated its guidance and provided a revised LTT calculator to establish liability. The additional administrative costs to businesses should therefore be minimal.
- 6.15 These regulations are not expected to impact on competition or the competitiveness of Welsh businesses.

7. Post Implementation review

- 7.1 Section 77 of the 2017 Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within six years of the day after the day of the 2017 Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the 2017 Act.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/4406/20

Elin Jones MS
Llywydd
Senedd Cymru

21 December 2020

Dear Llywydd,

The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

I have today made The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020 under sections 24(1) and 78(1) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 which come into force on 22 December 2020. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered later this afternoon.

In accordance with the procedure set out in section 25(2) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017, this instrument must be approved by the Senedd by Monday 8 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on Tuesday 2 February 2021.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Llyr Gruffydd MS, Chair of the Finance Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Rebecca Evans MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(5)689 – The Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020

Background and Purpose

The Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020 (“the Regulations”) amend the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (“the 2017 Regulations”), which implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011, as amended by Directive 2014/52/EU (“the EIA Directive”), on the assessment of the effects of certain public and private projects on the environment, in relation to two types of project in paragraph 1 of Annex II to that Directive: projects for the restructuring of rural land holdings and projects for the use of uncultivated land or seminatural areas for intensive agricultural purposes.

The Explanatory Memorandum states that the Regulations amend the 2017 Regulations to remove the exemption for applications for restricted works on common land under section 38 of the Commons Act 2006, to ensure the EIA Directive is sufficiently complied with.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee
18 December 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1448 (W. 312)

AGRICULTURE, WALES

The Environmental Impact
Assessment (Agriculture) (Wales)
(Amendment) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (“the 2017 Regulations”) which primarily implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (OJ No L 26, 28.1.2012, p. 1) on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) in relation to two types of project in paragraph 1 of Annex II to that Directive: projects for the restructuring of rural land holdings and projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes. The 2017 Regulations make provision for the amendments to the EIA Directive effected by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ No L 124, 25.4.2014, p. 1).

Regulation 2 amends regulation 3 of the 2017 Regulations, which sets out the types of projects that are excluded from the scope of those Regulations. The amendment removes the exemption for restricted works on common land in regulation 3(2)(f) of the 2017 Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely cost and benefit of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

2020 No. 1448 (W. 312)

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. (W.)

AGRICULTURE, WALES

**The Environmental Impact
Assessment (Agriculture) (Wales)
(Amendment) Regulations 2020**

Made 4 December 2020

Laid before Senedd Cymru 8 December 2020

Coming into force 31 December 2020

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment(2).

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of that Act.

(1) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(2) S.I. 2001/2555 in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, which is prospectively revoked by S.I. 2018/1011 from IP completion day.

Title and commencement

1.—(1) The title of these Regulations is the Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 31 December 2020.

Amendment of the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017

2. In the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017(1), omit regulation 3(2)(f).

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

4 December 2020

(1) S.I. 2017/565 (W. 134), to which there are amendments not relevant to these Regulations.

Explanatory Memorandum to the Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Environment, Energy and Rural Affairs 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 Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020. I am satisfied the benefits justify the likely costs.

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

8 December 2020

1 Description

The Environmental Impact Assessment (Agriculture) (Wales) (Amendment) Regulations 2020 (“the Regulations”) amend the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (“the 2017 Regulations”), which implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011, as amended by Directive 2014/52/EU (“the EIA Directive”), on the assessment of the effects of certain public and private projects on the environment.

The 2017 Regulations require those wishing to carry out certain agricultural projects on uncultivated or semi-natural areas and/or large scale restructuring projects on rural land holdings to apply to the Welsh Government for a decision on whether the project is likely to have a significant effect on the environment. This is known as a screening decision. EIA consent is required where the screening decision identifies significant effects.

The Welsh Government seeks to protect common land as part of its strategic objectives in relation to biodiversity and the sustainable use of natural resources to improve the benefits to local communities, the economy and the environment. To protect common land, any application for restricted works must be approved by the Welsh Ministers under section 38 of the Commons Act 2006 (“the 2006 Act”). Applications are considered by Planning Inspectorate Wales on behalf of the Welsh Ministers.

Restricted works are any that prevent or impede access to or over the land, and also include resurfacing works, such as a new car park or access road. Some restricted works on common land also fall within the definition of restructuring projects in the 2017 Regulations e.g. fencing.

In order to prevent certain restricted works on common land being caught by the requirements of both consenting regimes, applications made under section 38 of the 2006 Act are currently exempt from the 2017 Regulations by virtue of regulation 3(2)(f). This gives rise to the expectation the section 38 process itself will deliver an EIA-compliant regime.

The Regulations remove this exemption to ensure sufficient implementation of the EIA Directive.

2 Matters of special interest to the Legislation, Justice and Constitution Committee

None.

4 Legislative background

The EIA Directive establishes the rules on the assessment of the effects of certain public and private projects on the environment. The 2017 Regulations primarily

transpose the EIA Directive into domestic legislation, for the purposes of agricultural improvement projects on uncultivated or semi-natural land.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 (“the 1972 Act”) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment by virtue of the European Communities (Designation) (No. 2) Order 2001.

The Regulations are being made by the Welsh Ministers in exercise of the powers conferred by section 2(2) of the 1972 Act. That Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) with effect from 31 January 2020. Section 2(2) of the 1972 Act is saved by section 1A of the 2018 Act until the end of the implementation period (31 December 2020), after which that power will no longer be available. The Welsh Ministers are under an obligation to comply with EU law during the implementation period.

The Regulations amend the 2017 Regulations to remove the exemption for applications for restricted works on common land under section 38 of the 2006 Act, to ensure the EIA Directive is sufficiently complied with.

5 Purpose & intended effect of the legislation

The 2017 Regulations primarily implement the EIA Directive. They require farmers to apply for screening decisions where they wish to undertake certain agricultural projects on semi-natural areas and/or large scale restructuring projects on rural land holdings. Screening allows any significant environmental effects of a proposal to be identified at an early stage.

Schedule 1 to the 2017 Regulations sets out the following thresholds over which EIA screening is required (thresholds are halved for projects in sensitive areas e.g. National Park, Areas of Outstanding Natural Beauty):

- Boundary restructuring project - 4km
- Area restructuring project - 100 hectares
- Volume restructuring project - 10,000 cubic metres

Applications made under section 38 of the 2006 Act are currently exempt from the requirements of the 2017 Regulations by virtue of regulation 3(2)(f).

The exemption in regulation 3(2)(f) of the 2017 Regulations gives rise to the expectation the section 38 process itself will deliver an EIA-compliant regime. However, the 2006 Act does not require an assessment as to whether the project is likely to have a significant effect on the environment, nor does it require projects which are likely to have such an effect to be subject to an assessment with regard to their effects on the environment. Therefore the consenting regime for certain restricted works on common land under the 2006 Act does not fulfil all the requirements of the EIA Directive.

The changes remove the exemption in regulation 3(2)(f) of the 2017 Regulations, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The amendment is of a corrective nature to properly implement the EIA Directive.

As a result, certain restricted works on common land will require an EIA screening decision and EIA consent (where needed) as well as obtaining section 38 consent under the 2006 Act.

6 Consultation

Consultation has not been undertaken as the amendment proposed is of a corrective nature to properly implement the EIA Directive.

Regulatory Impact Assessment

Summary of Policy Options

Option 1 – Do Nothing:

Not making this change will expose Welsh Government to legal challenge and potential infraction proceedings as the consenting regime for restricted works on common land under the 2006 Act does not fulfil all the requirements of the EIA Directive.

Challenge by way of judicial review could be detrimental, both financially and in terms of staff resources. If the High Court challenge was found in favour of the appellant, Welsh Government would likely have to bring about legislative change in order to comply with the decision.

Infraction proceedings from the European Commission (EC), could result in significant financial penalties for continued non-compliance from the time the 2017 Regulations were implemented to the current day they remain non-compliant with the EIA Directive.

The Welsh Government has no contingency budget in place to deal with infraction penalties. It is UK Government policy that any non-compliance issue which fall under Wales' responsibility would need to be paid by the Welsh Government.

Example of infraction penalties applied:

Case C-304/02, Commission v French Republic. In this judgment of 12 July 2005, the European Court of Justice ordered a Member State to pay both a periodic

penalty payment and a lump sum fine for a serious and persistent failure to comply with Community law.

The case concerned compliance by France with Community measures for fisheries conservation. France had infringed Community law by letting undersized fish be offered for sale. Following inspection at certain French ports in the course of 11 years, the Commission took the view that France was still not yet complying fully with its obligations. Undersized fish were still offered for sale, and the French authorities maintained a lax attitude in enforcing EC rules.

In failing to comply with the pre-litigation procedure, the ECJ ordered France to pay a penalty payment of EUR 57 761 250 for each period of six months, from the 12 July 2005 onwards, taking into account the duration and the seriousness of the infringement and its ability to pay, and a lump sum of EUR 20 000 000. With this amount, the ECJ took into account the persistence of the breach of obligations and the public and private interests at issue.

Option 2 – Change the Legislation:

Amending the legislation will give proper effect to the EIA Directive. It will also provide for a consistent approach to rural restructuring projects, whether on enclosed or common land, and ensure any significant environmental effects are identified and mitigated against at an early stage.

The amendment will result in two related, but separate consenting regimes. Those wishing to undertake certain restricted works on common land will have to apply for EIA screening and EIA consent (where needed) as well as obtaining section 38 consent. This will increase the time and effort it takes to obtain consent for such works and may lead to some increased costs.

However, it is anticipated Welsh Government will continue to carry the administrative and financial burden of processing EIA screening applications.

Based on the scale and nature of section 38 applications processed by Planning Inspectorate Wales to date it is expected this will only increase Welsh Government's caseload by two applications per year.

The resource required by Welsh Government to process the additional workload is estimated to be within the region of 0.6 full-time equivalent (FTE) at Higher Executive Officer grade. This equates to an annual cost of approximately £29,200.

Where a screening decision cannot be made based on the information provided by the applicant, Welsh Ministers may request additional information under section 6(2) of the 2017 Regulations.

In such circumstances we anticipate the cost to the applicant to be within the region of £290 - £3,126. Estimates are based on the following assumptions and figures from the Regulatory Impact Assessment accompanying the Environmental Impact

Assessment (Agriculture) (England) (No. 2) (Amendment) Regulations 2017 and adjusted for Wales:

- It will take a land manager / agent 1 day FTE to complete the initial screening application if existing survey data is found.
- If existing survey data is not found it will take a land manager / agent 0.5 day FTE to complete the application
- Average daily wages costs are estimated to be £179 for land managers and £852 for land agents. In both cases, gross wage rates are uplifted by 30% to account for non-wage costs.
- Local Biodiversity Records Centre search fee of £200
- Biodiversity record access fee of £306
- Historic environment record access fee of £129
- In certain circumstances a field survey carried out by a qualified agent or consultant may be required at an estimated cost of £2,500.

There is a risk the requirements may deter those planning to undertake such works from obtaining consent, leading to an increase in permitted works. However, based on the anticipated number of applications, the risk is deemed to be low.

There is also a risk consent could be granted through section 38 but significant environmental impacts identified at EIA screening. In this instance, the applicant would be required to abort the works or amend them and then reapply for EIA screening and EIA consent (if needed) and subsequently section 38 consent.

To prevent the scenario outlined above, existing EIA guidance will be revised, advising those wishing to undertake certain restricted works on common land to first seek an EIA screening decision from Welsh Government and EIA consent (where needed) before applying for consent under section 38 of the Commons Act 2006.

It is estimated it will take up to 90 hours to revise the guidance, at a cost of £3,600 to Welsh Government.

6. Conclusions

In conclusion, Option 2 offers more benefits compared to the status quo and reduces the risk of legal challenge. It will create two consenting regimes for certain restricted works on common land. This will increase the time and effort it takes to obtain consent for these works. It may also lead to some increased costs for applicants and additional costs to Welsh Government. This may deter those wanting to carry out restricted works on common land from applying, leading to an increase in unpermitted works. However, this risk is considered to be low given the small number of projects which will be effected.

7. Sector Impacts

Impact on Local Government

There is no immediate impact identified on Local Government. However each Local Authority will have Commons Officers who will need to familiarise themselves with the legislative changes. The total cost of this across Wales is not expected to

exceed £1,000. This is calculated on the basis of familiarisation taking no more than one hour of an officer's time in each LA.

Impact on Voluntary Sector

There is no identified impact on the Voluntary Sector.

Impact on Small Businesses

There is likely to be some impact for those wishing to undertake restricted works on common land. It will increase the time and effort it takes to obtain consent for such works and may lead to some increased costs. It is anticipated the change will only effect a small number of section 38 applications.

8. Duties

Equality

Equality has been considered in relation to this regulatory change. There is no impact identified which may impede on equality issues.

Welsh Language

No impact has been identified on the Welsh language in carrying out the Regulatory Impact Assessment.

Sustainable Development

The regulatory changes are likely to have a positive impact on the Welsh Government's sustainable development agenda. There is a direct benefit to the outcomes of the Wellbeing of Future Generations Act 2015 and the Environment Act 2016, in that the change will protect the natural environment and landscape of common land for our own and future generations.

9. Consultation

The amendment is corrective in nature, therefore consultation has not been undertaken.

10. Competition Assessment

Please see Annex A

11. Post Implementation Review

The Welsh Government will monitor the impact of the Regulations and will continue to gather data regarding EIA screening and consent on common land. The Welsh Government will also continue to have a dialogue with key stakeholders, including farming organisations and environmental bodies, in order to collate feedback on the

impact of the amending regulations and consider future legislative change. Amendment to the policy and legislation will be considered following the UK's exit from the European Union.

Revised EIA guidance will be issued once the new regulations come into force. Welsh Government officials will continue to advise and assist applicants navigate the EIA process.

Annex A

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

SL(5)685 – The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

Background and Purpose

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”).

Amendments to the Principal Regulations

The principal Regulations 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. (though this restriction is subject to specific exceptions in new regulation 19B, including in relation to holiday or travel accommodation and for wedding or civil partnership receptions booked before these Regulations come into force);
- prevent any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses (though this does not prevent alcohol being sold to residents in holiday or travel accommodation as part of room service (subject to requirements in regulation 20), or prevent residents from drinking alcohol in their private rooms);
- 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 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 day. 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.



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 a cross reference; and
- 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).

Despite the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, these regulations clarify that penalty notices issued under those Regulations must be taken into account in determining the amount of a fixed penalty notice to be issued under regulation 19 of the functions of local authorities Regulations;

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.

Procedure

Made affirmative.

The 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 dissolved or 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 or public policy likely to be of interest to the Senedd.

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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.”



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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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.”

It has been well documented in the media that these Regulations have had a significant direct economic impact on businesses, particularly in the hospitality sector and the businesses that provide goods and services to that sector. The Committee note that the announcement for the policy and legal changes being brought about by these Regulations were made on 1st December, only four days before coming into force. Given that many of the affected businesses would have invested heavily at this time of year, for example, in perishable stock, what measures of financial support have the Welsh Government put in place to ameliorate the economic impact and what consideration was given to other policy alternatives?

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

The Explanatory Note to these regulations contain errors. The Explanatory Note states :- “The amendments to the Functions of Local Authorities Regulations (a) provide for the Regulations to expire on 19 February 2020 instead of 8 January 2020, to align with the expiry date of the Principal Regulations.” The new sunset dates specified should be in 2021, not 2020. Both the Regulations and the Explanatory Memorandum specify the correct dates.

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

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum explains that this is “due to the need to put them in place urgently to deal with a serious and imminent threat to public health.”. The Explanatory Memorandum goes on to state that “a summary integrated impact assessment has been prepared and will be published on the gov.wales website - <https://gov.wales/impact-assessments-coronavirus>. However, at the time of writing (9 December) none have been published. The Welsh Government are asked to confirm when such summaries are expected to be published.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is required to merits reporting points 2,3 and 4.



Committee Consideration

The Committee considered the instrument at its meeting on 14 December 2020 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

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Government Response: The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

Merits Scrutiny point 2: measures to ameliorate the economic impact and consideration to alternatives

The Regulations strengthened the restrictions in Wales to focus on places where people meet and where coronavirus thrives. We have drawn on the recent evidence from the UK Scientific Advisory Group on Emergencies (SAGE), which examined which interventions have had the biggest impact on the virus. It highlighted the positive impact of measures in the Scottish level three system and the English tier three restrictions.

We already had many of these in place in Wales. Cabinet considered variations of further measures which were all broadly equivalent with those in England and Scotland. The Regulations being considered placed new restrictions for the hospitality sector, the entertainment sector and indoor attractions.

To complement other support available (e.g. the UK Government's Job Retention Scheme and Self-Employed Income Support Scheme), a substantial support package of £340m for businesses materially impacted by the restrictions has been developed by the Welsh Government. The first element is a £160m Restrictions Business Fund which will provide businesses in the hospitality sector with payments of £3,000 or £5,000. Tourism, leisure, retail and supply chain business will also be eligible for this support if they have greater than 40% reduction in turnover during the restriction period. These payments will be administered by local authorities.

A second additional element of support is being made available to hospitality, tourism and leisure businesses or supply chain companies experiencing greater than 60% reduction in turnover during the restriction period. The eligibility checker for this new package went live on 11 December 2020 and the application process will open in January 2021.

Merits Scrutiny point 3: error in explanatory note

The Government is grateful for the notice of the issue. As the Committee notes, the correct dates were used in the Regulations themselves and in the Explanatory Memorandum.

Merits Scrutiny point 4: publication of summary integrated impact assessment

The summary integrated impact assessment was published on the Government's website on Monday 14 December.

SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984. The Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, nuisance or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant.

These Regulations come into force on 11 December 2020 and will expire on 11 January 2021.

The Minister for Housing and Local Government made a statement on 10 December 2020 adding that “the purpose of the Regulations is to ensure that during the Christmas and mid-winter period, evictions are kept as low as possible. With access to services and alternative accommodation often limited during this time, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of transmission of the virus.”

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 26 January 2021 in order for it to remain in effect”

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 3(2) is a saving provision and it states



“(2) The expiry of these Regulations does not affect the validity of anything done or not done pursuant to these Regulations before they expire.”

It is unclear why this provision is necessary owing to the operation of section 34 of the Legislation (Wales) Act 2019. The provision appears to serve no purpose and is superfluous. There will be contexts in which it is both meaningful and desirable, or even necessary, to make provision replicating a provision of the Legislation (Wales) Act but in this instance it is unclear why it has been included and could cause confusion. The Government are asked to explain why this provision is deemed necessary.

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 or public policy likely to be of interest to the Senedd.

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). Although the Explanatory Memorandum states that these Regulations are made in response to a public health emergency, it fails to refer specifically to the fact that these regulations engage human rights and how they deem the provisions to be justifiable and proportionate in the context of those rights. The Government are asked to provide this justification.

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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

“Given the public health emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so.”

Although it is accepted that there is no statutory requirement to consult when making these regulations under the above powers, can the Government confirm whether or not they were able to engage in any capacity with relevant stakeholders before making these regulations.

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

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:

“The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment.”



The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 14 December 2020 and reports to the Senedd in line with the reporting points above.



Government Response: *Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020*

Technical Scrutiny point 1:

Whilst section 34 of the Legislation (Wales) Act 2019 may have sufficed to ensure that expiry of the Regulations will not render invalid that which was validly done before the Regulations were in force, this statement contains additional wording “or not done” which is intended to avoid any argument that a decision not to enter a property or take other steps towards execution of a writ or warrant on account of the restrictions in the regulations might be able to be impugned as not being something “done”.

We consider that regulation 3(2) of the Regulations is required given the UK Government had already stated that possession orders in England and Wales would not be enforced by bailiffs between 11 December 2020 and 11 January 2021 (there is a similar provision in regulation 4(3) of the Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020). In addition, the Health Protection (Coronavirus Restrictions) (No 4) (Wales) Regulations 2020 also contains a similar provision.

Merit Scrutiny point 1: We consider that the Regulations are compatible with the European Convention on Human Rights.

Merit Scrutiny point 2: It was not possible, given the urgency to act, to engage with stakeholders on the specific content of the Regulations before they were made. However, stakeholders had been previously informed by Welsh Government officials of the announcement by the UK Government that evictions would not take place over the Christmas period.

Stakeholders were updated by the Welsh Government on the Regulations when they came into force last Friday, and a communication has been issued to landlords through Rent Smart Wales.

Merit Scrutiny point 3: The Welsh Government notes the Committee’s comment and has nothing further to add in relation to this point.

Ymateb y Llywodraeth: Rheoliadau Iechyd y Cyhoedd (Gwarchodaeth Rhag Troi Allan) (Cymru) (Coronafeirws) 2020

Pwynt Craffu Technegol 1:

Er y gallai adran 34 o Ddeddf Deddfwriaeth (Cymru) 2019 fod yn ddigonol er mwyn sicrhau na fydd y ffaith bod y Rheoliadau wedi dod i ben yn gwneud unrhyw beth a wneir mewn modd dilys cyn i'r Rheoliadau ddod i rym yn annilys, mae'r datganiad hwn yn cynnwys y geiriau ychwanegol "neu nas gwneir". Bwriad hyn yw osgoi unrhyw ddadl nad yw penderfyniad i beidio â mynd i eiddo neu gymryd camau eraill i weithredu gwrit neu warant o ganlyniad i'r cyfyngiadau yn y Rheoliadau yn rhywbeth "a wneir".

Rydym yn ystyried bod rheoliad 3(2) o'r Rheoliadau yn angenrheidiol o ystyried bod Llywodraeth y DU eisoes wedi datgan na fyddai gorchmynion adennill meddiant yng Nghymru a Lloegr yn cael eu gorfodi gan feiliaid rhwng 11 Rhagfyr 2020 ac 11 Ionawr 2021 (ceir darpariaeth debyg yn rheoliad 4(3) o Rheoliadau Iechyd y Cyhoedd (Coronafeirws) (Gwarchodaeth Rhag Troi Allan a Chymryd Rheolaeth o Nwyddau) (Lloegr) 2020). Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) 2020 hefyd yn cynnwys darpariaeth debyg.

Pwynt Craffu ar Rinweddau 1: Rydym yn ystyried bod y Rheoliadau hyn yn gydnaws â'r Confensiwn Ewropeaidd ar Hawliau Dynol.

Pwynt Craffu ar Rinweddau 2: Gan fod angen gweithredu ar frys, nid oedd yn bosibl ymgysylltu â rhanddeiliaid ar gynnwys penodol y Rheoliadau cyn iddynt gael eu gwneud. Fodd bynnag, roedd rhanddeiliaid wedi eu hysbysu yn flaenorol gan swyddogion Llywodraeth Cymru am gyhoeddiad Llywodraeth y DU na fyddai achosion o droi allan yn digwydd dros gyfnod y Nadolig.

Cafodd rhanddeiliaid ddiweddariad ar y Rheoliadau gan Lywodraeth Cymru pan ddaethant i rym ddydd Gwener diwethaf, ac mae cyfathrebiad wedi ei anfon at landlordiaid drwy Rhentu Doeth Cymru.

Pwynt Craffu ar Rinweddau 3: Mae Llywodraeth Cymru yn nodi sylw'r Pwyllgor ac nid oes ganddi unrhyw beth arall i'w ychwanegu mewn perthynas â'r pwynt hwn.

Agenda Item 5.3

SL(5)699 – The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020

Background and Purpose

These Regulations limit the circumstances under which a pupil or student may attend the premises of a school or further education institution in Wales between 14 and 22 December 2020. The Regulations are made in response to the risks to public health arising from Coronavirus and are based upon advice given by the Chief Medical Officer for Wales. The Regulations prohibit-

- (i) proprietors of schools from allowing pupils in year 7 and above to attend school; and
- (ii) proprietors of further education institutions from allowing students to attend the institution.

There are exceptions for (among others) the children of critical workers, vulnerable pupils and students, and pupils of special schools.

Procedure

Made Affirmative.

The 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 dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

The enabling powers relied upon in the Welsh text are-

Section 45C(1) and (3)(c), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984 (our emphasis).

The enabling powers relied up upon in the English text are-

Section 45C(1) and (3), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984.



Merits Scrutiny

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

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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."



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

We acknowledge that these Regulations have been made in response to a public health emergency. The Committee would, however, like the Welsh Government to provide further detail on who it consulted and when, prior to making these Regulations.

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

We note there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

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

We note that there is no child impact assessment and invite the Welsh Government to explain what steps it took to assess the particular impact of these Regulations on children.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required (but not to points 2 and 3).

Committee Consideration

The Committee considered the instrument at its meeting on 14 December 2020 and reports to the Senedd in line with the reporting points above.



WELSH GOVERNMENT RESPONSE: The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020

Technical scrutiny point 1:

The Welsh Government agrees that there is an inconsistency between the enabling powers cited in the Welsh and English text, in that section 45(3)(c) is cited in the Welsh text and 45(3) in the English text. This is a typographical error in the English text. This does not affect the validity of the Regulations.

Merits scrutiny point 4:

Due to this being emergency legislation, formal consultation was not possible. The decision to introduce regulations was informed by advice from the CMO and PHW. In formulating the regulations we were able to draw on feedback and previous discussions with key stakeholders on the operation of schools during the pandemic. This includes feedback from the Children's Commissioner for Wales, parents, learners, local authorities, third sector and education unions. Given the timescales involved, the intention of the regulations was discussed briefly with the Chair of ADEW over the weekend. The Children's Commissioner for Wales has previously raised concerns about provision of education for vulnerable learners and critical workers during such a decision. The legislation addresses these points of concern. We have tested this approach working with the 22 local authorities and the unions during the firebreak, although the context for making the decision has shifted, we understand local authorities working with schools have the ability to offer this.

Merits scrutiny point 5:

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".

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 help 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.

An IIA was completed and published as part of the firebreak arrangements and as part of the move to providing provision for vulnerable learnings and children of critical workers as part of the HUB provision in April which fully explored the impact of the approach. These are published and, they are available at the following links:

<https://gov.wales/provision-education-response-covid-19-impact-assessment>

<https://llyw.cymru/y-ddarpariaeth-addysg-mewn-ymateb-i-covid-19-asesiad-effaith>

<https://llyw.cymru/crynodeb-or-cyfyngiadau-ar-ymgynnull-yn-gymdeithasol-theithio-cau-busnesau-phresenoldeb-yn-yr-ysgol>

<https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school>

A Summary Impact Assessment is in the final stages of development for the Covid control plan which the FM announced last week and is to be published this week. The intention is to publish that plan this week along with or shortly after the control plan itself.

In addition, the Impact Assessment made on 26 October covers the impact of extending the half term for years 9 and upwards. This is not directly equivalent to the current situation because years 7 and 8 were able to attend during that week. However in other respects the assessment of impact of the current measures would be similar.

Merits scrutiny point 6:

An IIA was completed and published as part of the firebreak arrangements and as part of the move to providing provision for vulnerable learnings and children of critical workers as part of the HUB provision in April which fully explored the impact of the approach. These are published and, they are available at the following links:

<https://gov.wales/provision-education-response-covid-19-impact-assessment>

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<https://llyw.cymru/crynodeb-or-cyfyngiadau-ar-ymgynnull-yn-gymdeithasol-theithio-cau-busnesau-phresenoldeb-yn-yr-ysgol>

<https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school>

YMATEB LLYWODRAETH CYMRU: Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Mangre Ysgol a Mangre Sefydliad Addysg Bellach) (Cymru) 2020

Pwynt craffu technegol 1:

Mae Llywodraeth Cymru yn cytuno bod anghysondeb rhwng y pwerau galluogi a enwir yn y testunau Cymraeg a Saesneg, gan fod adran 45(3)(c) yn cael ei henwi yn y testun Cymraeg a 45(3) yn y testun Saesneg. Gwall teipograffyddol yn y testun Saesneg yw hwn. Nid yw hyn yn effeithio ar ddilysrwydd y Rheoliadau.

Pwynt craffu ar rinweddau 4:

Am mai deddfwriaeth frys oedd hon, nid oedd ymgynghori ffurfiol yn bosibl. Roedd y penderfyniad i gyflwyno rheoliadau yn seiliedig ar gyngor gan y Prif Swyddog Meddygol ac Iechyd Cyhoeddus Cymru. Wrth lunio'r rheoliadau, roeddem yn gallu defnyddio adborth a thrafodaethau blaenorol â rhanddeiliaid allweddol ar weithrediad ysgolion yn ystod y pandemig. Mae hyn yn cynnwys adborth gan Gomisiynydd Plant Cymru, rhieni, dysgwyr, awdurdodau lleol, y trydydd sector ac undebau addysg. O ystyried yr amserlenni o dan sylw, trafodwyd bwriad y rheoliadau yn fras â Chadeirydd Cymdeithas Cyfarwyddwyr Addysg Cymru dros y penwythnos. Mae Comisiynydd Plant Cymru wedi codi pryderon o'r blaen ynghylch darparu addysg i ddysgwyr hyglwyf a gweithwyr hanfodol pan wneir penderfyniad o'r fath. Mae'r deddfwriaeth yn ymdrin â'r pwyntiau hyn sy'n peri pryder. Rydym wedi profi'r dull hwn o weithio gyda'r 22 o awdurdodau lleol a'r undebau yn ystod y cyfnod atal byr. Er bod y cyd-destun ar gyfer gwneud y penderfyniad wedi newid, rydym yn deall bod awdurdodau lleol, gan weithio gydag ysgolion, yn gallu cynnig hyn.

Pwynt craffu ar rinweddau 5:

Mae'r Rheoliadau wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) sy'n achosi'r clefyd o'r enw COVID-19 neu'r "coronafeirws".

Cyngor Prif Swyddog Meddygol Cymru yw bod angen gweithredu yn awr er mwyn inni liniaru trosglwyddiad parhaus Covid-19 ac atal capasiti'r GIG yng Nghymru rhag bod o dan ormod o bwysau a chael ei lethu o bosibl. Bwriad y Rheoliadau hyn yw helpu i atal marwolaethau Covid-19 uniongyrchol a marwolaethau sy'n gysylltiedig â'r ffaith nad yw gwasanaethau'r GIG ar gael o ganlyniad i drosglwyddo'r feirws yn eang yn y gymuned.

Cafodd Aseiad Effaith Integredig ei gwblhau a'i gyhoeddi fel rhan o drefniadau'r cyfnod atal byr ac fel rhan o'r cam i ddarparu ar gyfer dysgwyr hyglwyf a phlant gweithwyr hanfodol fel rhan o'r ddarpariaeth hyb ym mis Ebrill a archwiliodd effaith y dull gweithredu yn llawn. Mae'r rhain wedi eu cyhoeddi, ac maent ar gael drwy ddilyn y dolenni a ganlyn:

<https://llyw.cymru/y-ddarpariaeth-addysg-mewn-ymateb-i-covid-19-asesiad-effaith>

<https://gov.wales/provision-education-response-covid-19-impact-assessment>

<https://llyw.cymru/crynodeb-or-cyfyngiadau-ar-ymgynnull-yn-gymdeithasol-theithio-cau-busnesau-phresenoldeb-yn-yr-ysgol>

<https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school>

Mae Asesiad Effaith Cryno yng nghramau olaf ei ddatblygiad ar gyfer y cynllun rheoli Covid y gwnaeth Prif Weinidog Cymru gyhoeddiad yn ei gylch yr wythnos diwethaf ac sydd i'w gyhoeddi yr wythnos hon. Y bwriad yw cyhoeddi'r cynllun hwnnw yr wythnos hon gyda'r cynllun rheoli ei hun neu'n fuan ar ôl hynny.

Yn ogystal, mae'r Asesiad Effaith a wnaed ar 26 Hydref yn cwmpasu effaith estyn yr hanner tymor ar gyfer blynyddoedd 9 ac uwch. Nid yw hyn yn cyfateb yn uniongyrchol i'r sefyllfa bresennol am fod blynyddoedd 7 ac 8 yn gallu bod yn bresennol yn ystod yr wythnos honno. Fodd bynnag, mewn ffyrdd eraill, byddai asesu effaith y mesurau presennol yn debyg.

Pwynt craffu ar rinweddau 6:

Cafodd Asesiad Effaith Integredig ei gwblhau a'i gyhoeddi fel rhan o drefniadau'r cyfnod atal byr ac fel rhan o'r cam i ddarparu ar gyfer dysgwyr hyglwyf a phlant gweithwyr hanfodol fel rhan o'r ddarpariaeth hyb ym mis Ebrill a archwiliodd effaith y dull gweithredu yn llawn. Mae'r rhain wedi eu cyhoeddi, ac maent ar gael drwy ddilyn y dolenni a ganlyn:

<https://llyw.cymru/y-ddarpariaeth-addysg-mewn-ymateb-i-covid-19-asesiad-effaith>

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<https://llyw.cymru/crynodeb-or-cyfyngiadau-ar-ymgynnull-yn-gymdeithasol-theithio-cau-busnesau-phresenoldeb-yn-yr-ysgol>

<https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school>

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The European Union (Withdrawal) Act and Common Frameworks**

DATE **17 December 2020**

BY **Jeremy Miles MS, Counsel General and Minister for European Transition**

The European Union (Withdrawal) Act 2018 requires the UK Government to report to Parliament periodically on matters relating to Common Frameworks and the UK Government's use, if any, of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence. I am notifying Members that the ninth such report was laid in Parliament on 10 December 2020, covering the period 26 June - 25 September 2020.

The report outlines continued positive work on Common Frameworks, and confirms that the UK Government has not used the 'freezing powers'. Despite disruption caused by the Covid pandemic, the progress of work across the Common Frameworks programme throughout 2020 represents a considerable achievement, and provides a model for future intergovernmental projects.

However, the Common Frameworks process risks being destabilised by the UK Government's approach to the UK Internal Market. The report acknowledges the Devolved Governments' disagreement with the UK Internal Market Bill which has now been passed by Parliament. But, as it covers the period up until 25 September, it does not reflect the fact that the Senedd voted against giving legislative consent to the UK Internal Market Bill on 9 December 2020.

I also published a [Written Statement](#) on 16 December which outlined details of a possible legal challenge to the UK Internal Market Bill. We have asked for a response from the UK Government within 14 days.

The report can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941711/The European Union Withdrawal Act and Common Frameworks.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941711/The_European_Union_Withdrawal_Act_and_Common_Frameworks.pdf)



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 June to 25 September 2020

December 2020



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 June to 25 September 2020

Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union (Withdrawal) Act 2018

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**The Rt Hon Michael Gove MP
Chancellor of the Duchy of
Lancaster and Minister for the
Cabinet Office**



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**The Rt Hon Brandon Lewis CBE
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Northern Ireland**



**The Rt Hon Alister Jack MP
Secretary of State for Scotland**



**The Rt Hon Simon Hart MP
Secretary of State for Wales**

Foreword

Since 2017, the UK Government and devolved administrations have been working together to develop agreements covering a range of policy areas which are flowing back from the European Union. This will have a direct bearing on the lives of citizens across the United Kingdom. The development of UK Common Frameworks is guided by principles agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017 between the UK Government and Scottish and Welsh Governments, and later on 15 June 2020, officially endorsed by the Executive Committee of the Northern Ireland Executive.

Under Schedule 3 of the European Union (Withdrawal) Act 2018, the UK Government has a statutory requirement to report to the UK Parliament every three months on the progress made on the development of UK Common Frameworks. This ninth European Union Withdrawal and Common Frameworks report details progress from 26 June - 25 September 2020. In addition to progress made, the report details that the UK Government did not make use of powers under section 12 of the European Union (Withdrawal) Act 2019 to temporarily maintain existing limits on devolved competence in some policy areas.

During this reporting period, the COVID-19 outbreak has continued to exert capacity pressures across the programme. The UK Government and devolved administrations have remained committed to progressing UK Common Frameworks and, as such, two Common Frameworks - Nutrition Labelling, Composition and Standards and Hazardous Substances (Planning) - were provisionally approved by JMC(EN) on 3 September. They became the first Common Frameworks to reach this major milestone.

Significant work was undertaken across the UK Government and devolved administrations to produce the Frameworks Analysis 2020, which was published on 24 September 2020. This report provides a detailed technical update on the implementation arrangements for each individual framework area. In addition to the regular European Union (Withdrawal) Act and Common Framework reports, the Analysis further illustrates the ongoing collaborative work between the UK Government and devolved administrations to deliver UK Common Frameworks.

The UK Government and devolved administrations have continued to engage with technical stakeholders and early engagement with legislatures took place to prepare for upcoming parliamentary scrutiny.

In parallel to developing Common Frameworks, the UK Government has developed a cross-cutting approach to the UK Internal Market. In July the UK Government published a White Paper, launching a four week consultation on the UK Government's proposals. Following this, the UK Internal Market Bill was introduced to Parliament on 9 September.

Implementation of Common Frameworks

- 1.1. Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to Common Frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 24 September 2020 and covered the reporting period 26 March 2020 to 25 June 2020.¹
- 1.2. The purpose of these reports is to ensure that the process of developing Common Frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for Common Frameworks

- 1.3. Under the Withdrawal Agreement, EU law will continue to apply to and in the UK during the Transition Period. Under the devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Northern Ireland Executive endorsed the JMC(EN) principles in June 2020, meaning all four administrations across the UK have agreed that common approaches will continue to be required in some areas now the UK has left the EU.
- 1.4. In October 2017, the Joint Ministerial Committee (EU Negotiations) agreed upon principles to guide the work to create Common Frameworks.² These principles are set out below:
 1. *Common Frameworks will be established where they are necessary in order to:*
 - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
 - *ensure compliance with international obligations;*
 - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
 - *enable the management of common resources;*
 - *administer and provide access to justice in cases with a cross-border element;*
 - *safeguard the security of the UK.*
 2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919783/Eighth_EUWA_and_Common_Frameworks_Report.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
- *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
- *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5. These principles continue to guide all discussions between the UK Government and the devolved administrations on Common Frameworks. Details of how these principles have been taken into account are included in this report, and will be included in future iterations of this publication.

Progress Towards Establishing Future Frameworks

1.6. The following section sets out the steps taken during this reporting period by the UK Government, in collaboration with the devolved administrations, towards implementing long-term Common Frameworks. It also outlines how the frameworks principles have been taken into account.

Frameworks Delivery

1.7. Frameworks will be implemented depending on the requirements of the particular policy area. This may require a combination of legislative and non-legislative measures. A detailed overview of which frameworks fall into legislative or non-legislative categories can be found in the Frameworks Analysis 2020 published on 24 September 2020.³ The delivery process detailed below accounts for the need for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been completed. As a result, frameworks will be implemented at different points in time, depending on their individual requirements.

1.8. The work to establish Common Frameworks has five phases. The delivery plan below illustrates how a framework moves through these five phases of development. Each framework moves through this process at a different pace.

- **Phase 1: Principles and proof of concept:** Took place between October 2017 and March 2018 and consisted of engagement between UK Government and devolved administration officials (also referred to as multilateral deep dives) focusing on legislative and key non-legislative

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf

frameworks, as well as establishing some of the key interdependencies that affect multiple frameworks.

- **Phase 2: Policy development:** Detailed policy development takes place, including joint work between UK Government and devolved administration officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement may also take place. This results in a jointly drafted and agreed outline framework.
- **Phase 3: Review and consultation:** Ongoing UK Government and devolved administration collaboration takes place to further develop and finalise policy approaches, explore interactions with cross-cutting workstreams, and agree operational and governance arrangements. Technical engagement takes place with sector-specific stakeholders. Towards the end of Phase 3 an in-depth review and assessment takes place, conducted jointly at official level. This phase results in cross-departmental collective agreement on the policy approach within the UK Government, and provisional confirmation of the framework by members of JMC(EN). This in-depth review and joint confirmation ensures that a minimally operable framework, recognised as a 'provisional framework', has been developed.
- **Phase 4: Preparation and implementation:** Upon JMC(EN) ministerial confirmation of a provisional framework, the framework will be shared with all legislatures to enable parliaments to scrutinise should they wish to do so. The provisional framework will be laid before Parliament at this stage of development. UK Government and devolved administration officials will work jointly on any ongoing reappraisals of cross-cutting issues, and review parliamentary recommendations in order to finalise individual frameworks. At the end of this phase, the provisional framework will receive JMC(EN) ministerial approval prior to implementation.
- **Phase 5: Post-implementation:** Post-implementation arrangements will take place. These will vary between frameworks and details continue to be developed as the Common Frameworks programme progresses.

Commitment to Transparency

- 1.9. The UK Government is fully committed to transparency in the UK Common Frameworks programme. The European Union (Withdrawal) Act and Common Frameworks report, detailing programme delivery and individual framework development, will continue to be laid quarterly, as per statutory requirements.
- 1.10. The previous report published on 24 September was published jointly alongside a revised frameworks analysis. The Frameworks Analysis 2020 provides specific technical details on the intended implementation arrangements for each individual framework area, and illustrates the ongoing collaborative work between the UK Government and devolved administrations to deliver Common Frameworks.

Revised Delivery Plan

- 1.11. As in the previous reporting period, the COVID-19 outbreak continued to place capacity pressures on officials working across the UK Common Frameworks programme during this ninth reporting period, in both the UK Government and the devolved administrations. The UK Government and the devolved administrations remain committed to delivering UK Common Frameworks and the programme will continue into 2021.
- 1.12. Whilst the programme of work continues into 2021, the UK Government and devolved administrations expect to deliver, at a minimum, provisional frameworks by the end of the Transition Period. During this reporting period, individual framework project timelines were reviewed to allow for the later development stages, including parliamentary scrutiny, to be conducted in 2021. A provisional framework is an outline framework which has undergone collaborative policy development, testing of policy conclusions, peer review and, where appropriate, external sector-specific engagement. This process will allow frameworks to be provisionally confirmed by JMC(EN) Ministers by the end of December 2020 and therefore ensure that those frameworks are operational on an interim basis by the end of the Transition Period.

Common Frameworks Revised Analysis

- 1.13. Over a 6-month period, policy teams worked with their counterparts in the devolved administrations to review the proposed implementation arrangements for their frameworks. Updated assessments were recorded in the Frameworks Analysis 2020, highlighting the changes that have taken place since the previous analysis publication in April 2019. Further, it outlines a reclassification process which has been undertaken by the UK Government and devolved administrations to reassess implementation arrangements. It sets out why certain policy areas previously assessed as requiring full frameworks do not require new frameworks at this time, and why other areas now require non-legislative rather than legislative arrangements.
- 1.14. The publication of the analysis is part of an ongoing dialogue between the UK Government and the devolved administrations, and should therefore not be considered as a final position. The position it sets out is provisional and subject to change as discussions with the devolved administrations continue. A fourth iteration of the Frameworks Analysis is expected to be published in 2021.

Framework Coordination

- 1.15. Common Frameworks are being developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 June 2020 to 25 September 2020).
- 1.16. During this reporting period, there were three meetings of the UK Government-Devolved Administrations Frameworks Project Board, involving Cabinet Office senior officials and their counterparts in the devolved administrations. The

Project Board provides a forum for monitoring the progress and agreement on the direction of the Common Frameworks programme.

- 1.17. At an operational level, there have been weekly Frameworks Project Team meetings between officials in the UK Government and the devolved administrations, where productive, collaborative work has been undertaken to support the detailed development of frameworks by policy officials.
- 1.18. Multiple meetings have taken place between officials in various departments, for example, the Department for Environment, Food and Rural Affairs (DEFRA) and their counterparts in the devolved administrations. These include working group meetings on Animal Health and Welfare, Plant Health, Waste, Chemicals and Pesticides, and Fisheries.
- 1.19. During this reporting period, Cabinet Office, as programme coordinator, has continued to engage with departments across the UK Government via the monthly Frameworks Wider Working Group to provide policy leads with updates, discuss barriers and drive progress. The Frameworks Policy Group (FPG) has also met each month to discuss cross cutting issues and barriers. FPG comprises representatives from intergovernmental and devolution teams within Cabinet Office, the territorial offices, and other UK Government departments that handle large framework portfolios or cross-cutting workstreams such as trade and the UK Internal Market.

Framework Development

- 1.20. The Nutrition Labelling, Composition and Standards framework received provisional confirmation at the JMC(EN) on 3 September, and the lead policy team prepared for parliamentary scrutiny. The framework made good progress and is on track to be ready for full implementation by the end of the year.
- 1.21. The Hazardous Substances (Planning) framework also received JMC(EN) provisional confirmation on 3 September following approval from portfolio ministers in each administration. Preparations for parliamentary scrutiny were initiated.
- 1.22. The Food and Feed Safety and Hygiene (FFSH) framework team made good progress on preparations for technical stakeholder engagement in October.
- 1.23. The Emissions Trading System (ETS) framework made good progress during this reporting period. Policy teams responded to recommendations from the earlier Phase 3 Review and Assessment (R&A) panel and further developed the framework, preparing it for the latter stages of its development including portfolio ministerial approval.
- 1.24. The Radioactive Substances framework completed an initial light touch review in August, following which further policy development was conducted in preparation for an in-depth Phase 3 Review and Assessment in October.

- 1.25. Policy development for the remaining frameworks in the programme continued in anticipation of in-depth Phase 3 Review and Assessments panels in October and November.

Programme Development

Review and Assessment

- 1.26. UK Government and devolved administration officials further refined the review and assessment approach within the Common Frameworks development process to ensure it is timely and provides appropriate levels of assurance. As a result, review and assessment has been focused on the end point of policy development. This facilitates the rapid development of frameworks while ensuring that all frameworks are robust enough for provisional JMC(EN) confirmation, through in-depth review and assessment by UK Government and devolved administration officials. Policy development will continue into Phase 4 in 2021. As such, a further review will be conducted towards the end of Phase 4 to take stock of parliamentary scrutiny feedback and the resolution of cross-cutting issues that will have been worked into the provisional frameworks.
- 1.27. Within this reporting period, the Frameworks Project Team worked with the UKG-DA policy teams to sequence outstanding Review and Assessment (R&A) panel meetings for individual frameworks. Panels are being held over a 6-week period in October and November. The Project Team held multiple workshop sessions to finalise policy development and to prepare policy teams for the R&A process.

Stakeholder Engagement

- 1.28. As part of the wider commitment to transparency within the Common Frameworks programme, the UK Government and devolved administrations work in collaboration to conduct a programme of engagement with wider stakeholders and legislatures at various points in the development of each Framework. As part of this process, sector-specific engagement with industry experts takes place, conducted jointly across all administrations where possible. This updates stakeholders on the development of specific frameworks and allows an opportunity to input their views.
- 1.29. The COVID-19 outbreak continued to impact engagement work during this reporting period. Despite this disruption, a programme of engagement with key industry stakeholders by governments on individual frameworks has continued. This includes a combination of online video sessions and correspondence which has provided direct input into the policy development. To ensure progress, the timing, location and format of engagements continue to be arranged to suit the stakeholders for each individual framework.
- 1.30. During this reporting period, the Food and Feed Safety and Hygiene framework commenced its technical stakeholder engagement. Work was undertaken to prepare for technical engagement sessions to be conducted on further frameworks (expected

shortly after this reporting period). Preparations were undertaken for the following frameworks: Agricultural Support; Food Compositional Standards and Labelling; Chemicals and Pesticides; Animal Health and Welfare; Agriculture - Zootechnics; and Public Procurement. All engagement events are being planned in line with the COVID-19 guidance.

Parliamentary Engagement

- 1.31. The UK Government remains committed to transparency of the UK Common Frameworks programme, and to keeping the public and Parliament updated. Officials from the UK Government and devolved administrations have previously jointly agreed to a process which enables all legislatures to scrutinise frameworks during their development.
- 1.32. On 17 September, the House of Lords established a new Common Frameworks Scrutiny Committee (CFSC). The CFSC is chaired by Baroness Andrews and will sit for the parliamentary year with the purpose of scrutinising UK Common Frameworks.
- 1.33. The UK Government recognises the House of Commons Public Administration and Constitutional Affairs Committee's (PACAC) interest in the overall UK Common Frameworks programme. The Minister for the Constitution and Devolution (MCD) has written to Mr William Wragg MP, chair of PACAC, to set out the general process for engaging with UK Parliament, and has agreed to ensure PACAC receives copies of all framework summaries and provisional frameworks shared with UK Parliament.
- 1.34. During this reporting period, no provisional frameworks were laid in any legislature for scrutiny. The Nutrition Labelling, Composition and Standards and the Hazardous Substances (Planning) framework lead policy teams started to engage with legislatures to prepare for upcoming parliamentary scrutiny.
- 1.35. The majority of provisional frameworks are expected to be shared with the UK Parliament, Scottish Parliament, Welsh Parliament and Northern Ireland Assembly for scrutiny in 2021. As such, departments have started to engage with legislatures at official level. During this reporting period, the Nutrition Labelling, Composition and Standards, Emissions Trading System, and Food and Feed Safety and Hygiene framework summaries were formally shared with committees across all legislatures.
- 1.36. Responses to two parliamentary questions on the frameworks programme tabled on 6 July were provided to Claire Hanna MP for Belfast South. The questions concerned the frameworks within the remit of the Northern Ireland Department of Agriculture, Environment and Rural Affairs and plans for stakeholder engagement.

Northern Ireland and the Ireland/Northern Ireland Protocol

- 1.37. The JMC (EN) 16 October 2017 principles for Common Frameworks state that frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK

that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

- 1.38. The Protocol on Ireland/Northern Ireland ('the Protocol') to the Withdrawal Agreement, including the Unilateral Declaration on Consent made by the UK Government, avoids a hard border on the island of Ireland, whilst ensuring that the UK, including Northern Ireland, could leave the EU as a whole. As long as the Protocol is in force, special provisions apply in Northern Ireland. These include (but are not exhausted by) Northern Ireland remaining within the UK's customs territory but aligning with the EU on goods (including certain laws for VAT on goods), and EU tariffs applying in Northern Ireland except for movements within the single customs territory of the UK.

UK Internal Market

- 1.39. In parallel to developing Common Frameworks, the UK Government has developed a cross-cutting approach to the UK Internal Market to support the free flow of goods and services throughout England, Wales, Scotland and Northern Ireland after the end of the Transition Period in December 2020.
- 1.40. During this reporting period, on 16 July 2020, the UK Government published a White Paper on the UK Internal Market, launching a four week public consultation on proposals for ensuring continued seamless intra-UK trade. The UK Government received 302 responses to the UK Internal Market consultation, and in addition engaged directly with a wide range of stakeholders from across all four parts of the UK. Consultation responses showed overwhelming support from businesses for measures to avoid trade barriers and provide certainty for firms. Formal responses to the consultation were received from the three devolved administrations, setting out clearly a number of concerns around the UK Government's approach to the UK Internal Market. The UK Government published a response to the consultation on 9 September 2020.
- 1.41. The UK Internal Market Bill was introduced to Parliament on 9 September, and by the end of this reporting period had completed Committee stage in the House of Commons. The Bill will ensure the UK can operate as a coherent internal market following the end of the Transition Period by enshrining in law the principles of mutual recognition, ensuring regulations from one part of the UK are recognised across all four parts of the UK, and non-discrimination, which will support companies trading in the UK regardless of where in the UK they are based. The UK Internal Market provisions will operate on a full UK-wide basis, considering the Ireland/Northern Ireland Protocol for goods.
- 1.42. Common Frameworks provide an agreed approach to ensuring regulatory coherence across the UK in specific policy areas, providing a mechanism for collaborative policy making between the UK Government and devolved administrations in devolved policy areas following the end of the Transition Period. One of the principles guiding

the development of Common Frameworks is that they will support the functioning of the UK Internal Market.

- 1.43. While the UK Internal Market legislation will intersect with frameworks that have a 'market' component (i.e. policy areas that include regulation of services or goods production or sale), many of the components of each framework, or in many cases entire frameworks, will fall out of scope of the legislation.
- 1.44. Whilst the devolved administrations have been clear that they disagree with the UK Government's approach to the internal market, discussions between the UK Government and the devolved administrations on the interaction between the UK Internal Market Bill and Common Frameworks continue.
- 1.45. Both the UK Government and the devolved administrations are committed to the progression of the Common Frameworks programme and are continuing to work collaboratively towards that aim. The UK Government considers that, on their own, Common Frameworks cannot guarantee the integrity of the entire UK Internal Market as they are primarily sector-specific and not intended to address the totality of economic regulation or the cumulative effects of divergence, and that the Internal Market Bill therefore builds upon Common Frameworks by providing additional legislative protection to intra-UK trade, ensuring that barriers are not created to the ability of UK companies to trade with every part of the UK. The UK Internal Market Bill will continue to progress through Parliament during the next reporting period.

Legislation Relating to Retained EU Law Restrictions

- 1.46. Section 12 of the European Union (Withdrawal) Act 2018 removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary 'freeze' on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 1.47. The process for making, agreeing and revoking these regulations can be found in the first European Union (Withdrawal) Act and Common Frameworks report.

Regulations to 'Freeze' Devolved Competence

Retained EU law restrictions applied during reporting period

- 1.48. No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

- 1.49. No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end of the reporting period.

Regulations to Repeal the ‘Freezing’ Powers

- 1.50. In addition to the ‘freezing’ powers inserted into the devolution statutes by the European Union (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

Powers to apply retained EU law restrictions repealed during reporting period

- 1.51. No regulations have been made under section 12(9) of the European Union (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

Progress required in order to repeal the powers to apply retained EU law restrictions

- 1.52. The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish Common Frameworks in collaboration with the devolved administrations.
- 1.53. The ‘freezing’ powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of Common Frameworks would be needed. The UK Government will keep this position under review, in line with the statutory duty in section 12(10) of the European Union (Withdrawal) Act.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021**

DATE **14 December 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C –SI laid in Parliament which amends legislation in a devolved area

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

The 2021 Regulations:

EU Legislation:

- Apply the provisions of the retained EU law version of Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers, as it applies in England and Wales and Scotland, to Northern Ireland subject to modifications.

Domestic Legislation

- Amend the Fertilisers and Ammonium Nitrate Material (EU Exit) Regulations 2019 (S.I. 2019/601).

Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence

The 2021 Regulations do not impact on the Senedd’s legislative competence or the Welsh Ministers’ executive competence.

The purpose of the amendments

The The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021 amend the Fertilisers and Ammonium Nitrate Material (EU Exit) Regulations 2019 (S.I. 2019/601) in light of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement

(the Protocol), to reflect the continued application of the EU law version of Regulation (EC) 2003/2003 on fertilisers in Northern Ireland.

S.I. 2019/601 replaces the “EC fertiliser” regime in EU law with a new UK-wide regime providing for a “UK fertiliser” label, which will function in the same way. The Protocol sets out that certain provisions of Union law listed in the Protocol shall apply under certain conditions in the UK in respect of Northern Ireland. Regulation (EC) No 2003/2003 is listed at Annex 2 of the Protocol. This instrument reflects the continued application of the EU law version of Regulation (EC) No 2003/2003 and also applies the provisions of the retained EU law version of Regulation (EC) 2003/2003 on fertilisers, as it applies in England and Wales and Scotland, to Northern Ireland subject to modifications. This will enable the marketing of “UK fertilisers” in Northern Ireland. Regulation (EC) 2003/2003 as it has effect in EU law will continue to apply in Northern Ireland under “the Protocol” after the end of the Transition Period.

Regulation (EC) 2003/2003 lays down rules on the designation, definition, composition, identification and packaging of ‘EC fertilisers’ which can be freely traded throughout the EU. If S.I. 2019/601 were to remain unchanged, the retained EU law version of Regulation (EC) No 2003/2003 would appear to apply in Northern Ireland as it would include references to Northern Ireland bodies, but despite those references it would only apply in Great Britain by virtue of the combined effects of sections 3 and 7A of the European Union (Withdrawal) Act 2018. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021 is also required to enable the marketing in Northern Ireland of ‘UK fertilisers’.

The SI and accompanying Explanatory Memorandum, setting out the effect of this amendment is available here: <https://www.legislation.gov.uk/ukdsi/2021/9780348216905>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

209 - The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

Laid in the UK Parliament: 9 December 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8C(1) of the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend the Fertilisers and Ammonium Nitrate Material (EU Exit) Regulations 2019 in light of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the Protocol”) to reflect the continued application of the EU law version of Regulation (EC) No 2003/2003 on fertilisers in Northern Ireland.

These Regulations also apply the provisions of the retained EU law version of Regulation (EC) No 2003/2003, as it applies in England and Wales and Scotland, to Northern Ireland (subject to modifications). This will enable the marketing of “UK fertilisers” in Northern Ireland.

Regulation (EC) No 2003/2003 as it has effect in EU law will continue to apply in Northern Ireland by virtue of the Protocol.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 14 December 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Plant Health (Amendment) (EU Exit) Regulations 2020**

DATE **14 December 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Plant Health (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations amend the following legislation:

EU Legislation

- Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants; and
- Commission Implementing Regulation (EU) 2017/2313 of 13 December 2017 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement, within a protected zone.

Domestic secondary legislation

- The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations do not impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

The 2020 Regulations make corrections and technical amendments to retained direct European Union (EU) law and domestic legislation in order to address failures of retained EU law to operate effectively and to ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement

(‘the Protocol’) required at the end of the Implementation Period (IP), in relation plant health.

The purpose of the amendments

The purpose of the 2020 Regulation is to protect biosecurity and support trade between Northern Ireland (NI) and Great Britain (GB) by ensuring the continued functioning of plant health controls in relation to Qualifying Northern Ireland goods (‘Qualifying Goods’) moving from NI to GB, and within GB, following the end of the Transition Period.

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (‘the Plant Health Regulation’) and tertiary legislation made under that Regulation has been incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 (‘the Withdrawal Act’), save insofar as the legislation applies to NI for the purposes of the Protocol. This legislation has been amended in relation to GB by the Plant Health (Amendment etc.) (EU Exit) Regulation 2020 and the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the EU.

The 2020 Regulations will make further amendments to the Plant Health Regulation (as amended by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020) to deal with other deficiencies and matters arising out of, or related to, the Protocol. As a result of the Protocol, different Sanitary and Phytosanitary (SPS) requirements now apply in GB and in NI. The operability amendments contained in 2020 Regulations supplement the government’s policy on unfettered market access for Qualifying Goods.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348216875>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

210 - The Plant Health (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 9 December 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations make corrections and technical amendments to retained direct European Union (EU) law and domestic legislation in order to address failures of retained EU law to operate effectively and to ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement ('the Protocol') required at the end of the Implementation Period (IP), in relation plant health.

These Regulations amend the following legislation:

EU Legislation

- Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants; and

- Commission Implementing Regulation (EU) 2017/2313 of 13 December 2017 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement, within a protected zone.

Domestic secondary legislation

- The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 14 December 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE SI laid in Parliament - The World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

DATE 22 December 2020

BY Lesley Griffiths Minister for Environment, Energy and Rural Affairs

Purpose of the instrument

1. The purpose of this Instrument is to ensure the UK does not breach its obligations under the World Trade Organisation (“WTO”) Agreement on Agriculture (“AoA”) in relation to domestic support.
2. Part 6 of the Agriculture Act 2020 provides the Secretary of State with regulation making powers to ensure continued compliance by the UK with its obligations under the WTO AoA in relation to classification and notification of domestic support, and its commitment to reduce its trade-distorting subsidies.

This Instrument provides as follows:

3. Regulation 4(2) sets the percentage of the UK Aggregate Measurement of Support (“AMS”) each administration can use. The AMS is the total amount of support a WTO Member State can give. The limits are designed to safeguard compliance with the overall UK AMS commitment and ensure policy choices are not constrained.
4. The amounts set out in regulation 4(2) are AMS limits in each part of the UK does not include any spending from ‘the reserve’. The reserve is the difference between the sum of the amounts set out in regulation 4(2) and the total amount of Amber box support allowable to the UK under the AoA. It is expected the reserve will cover Amber box crisis-measures, and other specific purposes as set out in regulation 4(3).

5. Under regulation 5, when an administration intends to introduce a new support scheme, or to amend an existing support scheme, they must give notice to the other administrations. A 'fast track' process will be used for amended schemes which do not change the current scheme classification.
6. Regulation 5 sets out the process for a proposing authority to notify a new or amended support scheme. Under regulation 5(6), the proposing administration is required to propose a classification for the scheme (Green, Blue or Amber box) and provide evidence in support of the classification.
7. Regulation 6 sets out the process for determining the classification of a scheme and includes a process for challenging the proposed classification of a new or amended domestic support scheme.
8. Under regulation 7, new or amended schemes cannot be adopted if they would lead to a breach of an administration's AMS ceiling as set out in section 4(2).
9. In order to comply with WTO obligations, the UK Government is required to notify to the WTO use of domestic support on an annual basis. Regulation 8 sets out the information required from administrations to allow the UK Government to meet these obligations.
10. Regulation 9 makes provision for the Secretary of State to request further information from administrations in relation to notifications required under the AoA, or in relation to disputes with other signatories to that Agreement.

The Instrument and accompanying Explanatory Memorandum, setting out the detail is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348214987/introduction>

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Why consent was given?

11. Guided by the principles set out in the Inter-governmental Agreement, a Bilateral Agreement was made between the Welsh Government and UK Government. The Agreement required the UK Government to consult the Devolved Administrations and to seek to proceed by agreement before making regulations for the purpose of securing compliance with obligations of the United Kingdom under the Agreement on Agriculture.
12. Provisions which may be made include limits on the amount of domestic support provided in the United Kingdom and processes for the appropriate authorities to decide how different types of domestic support should be classified.

13. The Bilateral Agreement sets out a robust and transparent mechanism for dispute resolution involving the Welsh Ministers on the making and operation of the Instrument.



NORTHERN IRELAND ASSEMBLY

Committee for the Economy

Mick Antoniw MS
Chair
Legislation, Justice & Constitution Committee
(Via email)

14th December 2020
Our Ref.: EC282/20

Dear Mick,

Re: Shared Prosperity Fund

At its meeting on the 9th December 2020, Members of the Committee for the Economy discussed the announcements made thusfar regarding the UK Shared Prosperity Fund, which will be tasked to support people and communities, opening up new opportunities and spurring regeneration and innovation.

In November the Chancellor announced that £220m will be allocated in 2021-22 to help local areas prepare for the introduction of the SPF. As the withdrawal agreement between the UK and the EU keeps structural funding until the end of 2020, after which funding that has already been agreed will continue to be paid, but no more applications for funding can be made. However the Chancellor also announced that total domestic UK-wide funding will at least match EU receipts which is on average £1.5 billion a year.

The Committee has heard concerns from a range of stakeholders that the UKSPF will not fully or appropriately replace the monies that they have been able to draw down from EU social and structural funds. Members also have questions about how the Fund will operate, and whether allocations will be competitive, criteria-based, and whether the Fund will be allocated for each region of the UK based on its population.

As you will be aware, NI has generally received a higher proportion of EU funds coming to the UK than it would if allocations were based on its population within the UK. There are obviously questions around how far the Fund and its operation will be devolved to the DAs, with the information announced on the Fund at this point suggesting that the UK Government will have a key role in deciding how and where the Fund is applied.

The Committee agreed that I should write to Committees in Wales and Scotland to seek your views on the information that is currently available on the Fund and any other issues you might have identified.

I look forward to a response at your earliest convenience.

Yours Sincerely,

CArchibald

**Dr Caoimhe Archibald MLA
Chairperson
Committee for the Economy**

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/3999/20

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

SeneddLJC@senedd.wales

16 December 2020

Dear Mick

Thank you for your letter of 13 November relating to the UK Fisheries Bill and the section 109 Order under the Government of Wales Act 2006 (GOWA). I am pleased to advise the Bill received Royal Assent on 23 November.

The Fisheries Act 2020 and the EU Exit SIs contain concurrent powers. The UK Government is bringing forward a section 109 Order under GOWA to provide a carve out from the consent requirements in paragraphs 8 and 11 of Schedule 7B to GOWA. The Order was laid on 10 December.

This carve out seeks to ensure Minister of the Crown consent will not be required where the Senedd legislates to remove concurrent functions in specified enactments, including the Fisheries Act 2020 and Fisheries EU Exit SIs. However, the proposed carve out is subject to some very specific exceptions in relation to the regulation of fishing boats.

I referred to these exceptions in my letter of 30 October, and you have sought more detail on this. The exceptions protect existing Secretary of State functions to regulate British fishing boats, apart from Welsh fishing boats, in the Welsh zone. We acknowledge such functions are a unique feature of the devolution of fisheries within the UK and the rationale provided for this carve out is consistent with the existing devolution of executive and legislative fisheries powers already in place across the wider fisheries statute book.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

You also note in your letter "If appropriate to do so, we would also welcome you making this correspondence with the Secretary of State publicly available". I have attached the letter from the Secretary of State for Wales dated 5 October.

I have copied this letter to Mike Hedges MS, Chair of the Climate Change, Environment and Rural Affairs Committee.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



UK Government
Llywodraeth y DU

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Ref: 495SUB 20

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs
Cardiff Bay
Cardiff
CF99 1SN

5th October 2020

Dear Lesley .

I am writing in respect of the application of the Government of Wales Act 2006 (Amendment) Order 2020 to the Fisheries Bill ahead of the LCM debate on the Bill in the Senedd tomorrow.

I can confirm, subject to UK government-wide clearance, that the Order will carve out concurrent functions established in the Fisheries Bill from the relevant requirements in Schedule 7B to the Government of Wales Act 2006 to allow the Senedd to remove them in future without needing the UK government's agreement. This is subject to explicit exclusions to be agreed between the UK government and the Welsh Government in light of complexities around the regulation of fishing vessels.

I am copying this letter to the Parliamentary Under Secretary of State for DEFRA and the Counsel General and Minister for European Transition.

Yn eiddo .

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Agenda Item 9.3

Jane Hutt MS
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JH/4157/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Crickhowell House
Cardiff Bay
CF99 1NA

John Griffiths MS
Chair
Equality, Local Government and Communities Committee
Senedd Cymru
Crickhowell House
Cardiff Bay
CF99 1NA

16 December 2020

Dear Mick and John,

I wrote to you on 15 October with regards to the UK Government's Domestic Abuse Bill ("the Bill") and informed you that the Bill's progression through the House of Lords is delayed, with the Lords' Second Reading now not expected to commence until January.

I also stated that my officials have been involved in ongoing discussions with their UK Government counterparts with regards to c73(1)(b) which, as currently drafted, significantly encroaches on devolved matters as it allows the Secretary of State (SoS) to issue guidance across the whole range of devolved and non-devolved matters related to domestic abuse and in particular its effect on children.

I am pleased to confirm that collective UK Government agreement has been reached to bring forward amendments to c73 of the Bill to ensure the SoS's power to issue guidance is respectfully limited to matters which are reserved and do not encroach on devolved Welsh matters. We will continue to work closely with the UK Government through implementation of c73(6) (*Duty on the SoS to consult with the Welsh Ministers*), to ensure that the guidance issued takes full account of the devolved position.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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Correspondence.Jane.Hutt@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

It remains my position that consent is required for clauses 65, 66 and 68 and Part 1 of Schedule 2 because they fall within the legislative competence of the Senedd. They contain modifications to criminal offences which could be made, in part, by the Senedd. Legislation to observe and implement international obligations, such as those required for the Istanbul convention also fall within the competence of the Senedd where necessary legislation falls within devolved areas.

I hope my letter is helpful and clarifies these matters.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter "J".

Jane Hutt AS/MS

Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

Agenda Item 9.4



Comisiwn y Gyfraith
Diwygio'r gyfraith
Law Commission
Reforming the law

Sent on behalf of Nicholas Paines QC

The Law Commission's Consultation Paper on Devolved Tribunals in Wales

Dear Sir or Madam (for the attention of members of the Legislation, Justice and Constitution Committee) ,

I am pleased to inform you that the Law Commission's Consultation Paper on Devolved Tribunals in Wales has been published today.

The consultation paper reviews the law underpinning devolved tribunals in Wales. It makes a number of proposals to reform the system of tribunals, and asks whether consultees agree. It also seeks the views of consultees on more open questions.

Consultees are invited to respond to the paper by Friday 19 March 2021.

Versions of the consultation paper in both English and Welsh can be downloaded from our website at <https://www.lawcom.gov.uk/project/devolved-tribunals-in-wales/>. It is published alongside a summary, which is also available in both English and Welsh.

Rydw i'n falch o gael eich hysbysu bod Papur Ymgynghori Comisiwn y Gyfraith ar Dribiwnlysoedd Datganoledig yng Nghymru wedi cael ei gyhoeddi heddiw.

Mae'r papur ymgynghori'n adolygu'r gyfraith sy'n tanategu'r tribiwnlysoedd datganoledig yng Nghymru. Ynndo, mae llawer o gynigion i ddiwygio'r system o dribiwnlysoedd, gan ofyn a yw'r sawl fydd yn ymateb i'r ymgynghoriad yn cytuno â'r cynigion. Rydym hefyd yn ceisio canfod barn ymgynghoreion trwy ofyn cwestiynau mwy penagored.

Estynnwn wahoddiad i chi ymateb i'r papur ymgynghori cyn Dydd Gwener 19 Mawrth 2021.

Gellir canfod a lawrlwytho y papur ymgynghori yn y Gymraeg a'r Saesneg o'n gwefan <https://www.lawcom.gov.uk/tribiwnlysoedd-datganoledig-yng-nghymru/>. Yn ogystal â'r papur ymgynghori llawn, gellir canfod y crynodeb ar y wefan, sydd ar gael yn ddwyieithog hefyd.

Devolved Tribunals in Wales | Law Commission | Comisiwn y Gyfraith

1st Floor, Tower, Post Point 1.52, 52 Queen Anne's Gate, London, SW1H 9AG (access via 102 Petty France)

Tel: +44 (20) 3334 0443 | Web: www.lawcom.gov.uk

Email: DevolvedTribunalsWales@lawcommission.gov.uk



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Law Commission project: Devolved tribunals in Wales**

DATE **17 December 2020**

BY **Rt Hon Mark Drakeford MS, First Minister of Wales**

Further to the statement dated 10 August 2020, I am pleased to inform the Senedd that the Law Commission is now consulting on its review of the law governing the operation of the devolved Welsh tribunals and its proposals for reform. These include:

- Replacing the existing separate tribunals with a single unified first-tier tribunal, broken down into chambers catering for similar claims.
- Bringing the Valuation Tribunal for Wales and school exclusion appeal panels within the new unified first-tier tribunal.
- Reforming the Welsh Tribunals Unit (the part of the Welsh Government which currently administers most devolved tribunals) into a non-ministerial department.
- Standardising the processes for appointing and dismissing members of the tribunals, and introducing a greater role for the President of Welsh Tribunals.
- Standardising procedural rules across the tribunals, and introducing a new Tribunal Procedure Committee to ensure that the rules are kept up-to-date.

The consultation will be open from 16 December 2020 to 19 March 2021. Further details about the consultation including next steps and how to respond can be accessed on the Law Commission's website at the following link.

<https://www.lawcom.gov.uk/project/devolved-tribunals-in-wales/#devolved-tribunals-in-wales>

Agenda Item 9.5

Update on the UK Internal Market (UKIM) Bill

Statement made on 17 December 2020

Statement: UIN HCWS665

Statement made by:

Paul Scully
Minister for London and Parliamentary Under Secretary of State (Minister
for Small Business, Consumers and Labour Markets)
House of Commons

Statement -

The UK Internal Market (UKIM) Bill is fundamental to providing a reliable legal basis for the effective and coherent functioning of the UK internal market. It guarantees that businesses and consumers across the UK are not subject to harmful internal trade barriers following our exit from the EU Single Market regime. Legislation of this kind must be in place across the whole UK in order to provide businesses and consumers from all parts of our country with the same legal protections and advantages.

From the outset, it has been the UK Government's objective to legislate for the UK Internal Market Bill with the consent of all the devolved legislatures. At every stage, we have followed the spirit and letter of the devolution settlement and worked hard to secure legislative consent for this vitally important piece of legislation for all of the UK. We have also engaged with businesses, business representative organisations and wider stakeholders, such as academics, across the entire country since the Bill's introduction to better understand expectations, needs and concerns. The UK Government regrets the Scottish Government's decision to withdraw from UK-wide work on the internal market in Spring 2019.

The engagement with the Welsh Government, in particular, has resulted in tangible changes to the Bill to accommodate concerns as well as strengthen devolved involvement within the machinery of the legislation; this includes putting the relationship between the Market Access Principles and Common Frameworks on the face of the Bill as well as ensuring that the Secretary of State is obliged to seek the consent of the Devolved Administrations when panel appointments are made to the Office of the Internal Market (OIM). We have also agreed to have an annual meeting to review the operation of Parts 1-4 of the UK Internal Market legislation with

the Devolved Administrations, including the Office for the Internal Market's reports and new developments that might require the use of delegated powers, using our intergovernmental structures.

The UK Government does however deeply regret that the Scottish Parliament and Senedd Cymru have both refused to provide their consent for the Bill. We have maintained, throughout the Bill's passage, that the Government is open to discussing the concerns of each Devolved Administration, and would make changes to the Bill where it is possible, without undermining the necessary purpose and integrity of the legislation. Proceeding with the Bill to Royal Assent is necessary to put the legal structures in place which provide clarity and consistency for businesses and citizens working across the country.

The Sewel Convention envisages situations where the UK Parliament may need to legislate for the whole country in this way. The exceptional circumstances of our departure from the EU, and the need to provide a UK-wide legal underpinning for the internal market, is clearly one such situation. This Government is fully committed to the Sewel Convention and the associated practices for seeking consent. Indeed, in the current legislative session of Parliament alone, the UK Government has secured (to date) 37 LCMs from the devolved legislatures; this is in addition to the hundreds of other LCMs passed by the devolved legislatures over the last 21 years of devolution. We will, of course, continue to seek legislative consent, take on board views, and work with the Devolved Administrations on all future Bills that engage the legislative consent process, just as we have always done.

The UK Internal Market Bill will allow people to do business reliably and seamlessly across all parts of the UK and enable the UK Government to boost our economic recovery, increase investment across the whole UK, create new jobs and be stronger as a country as we emerge from this pandemic. The UK Government stands as the conservator of this great Union - the most successful political and economic Union in history - as a force for bettering peoples' lives, with devolution delivering clear benefits for all UK citizens. The UK Internal Market Bill will help to ensure that England, Scotland, Wales and Northern Ireland remain more prosperous, stronger and safer together.

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Agenda Item 9.6

Llywodraeth Cymru
Welsh Government

Our Ref – LG/432/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

18 December 2020

Dear Mick

Further to the First Minister's letter of the 3rd November, I am writing to let you know the sixteenth British-Irish Council Environment work sector Ministerial meeting took place on Wednesday 4th November, hosted virtually by the UK Government. Member Administrations previously agreed to postpone the meeting originally scheduled to take place in Jersey earlier in the year.

The BIC Environment work sector Ministerial meeting discussed the collaborative action being taken and the progress being made on the current work programme including marine environment, climate change and invasive non-native species.

All members agreed that the seventeenth Ministerial meeting will be hosted in 2022 and that the BIC Environment work sector would continue its focus on the marine environment, climate adaptation and invasive non-native species for its forward work programme.

A communiqué was agreed by all the ministers during the meeting and has been published on the BIC website.

Regards



Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Ein cyf/Our ref: MA/LG/4388/20

Chairs of Legislation, Justice and Constitution and Climate Change,
Environment and Rural Affairs Committees
Ty Hywel
Cardiff Bay
Cardiff
CF99 1SN

22 December 2020

Dear Mick and Mike

UK Agriculture Bill – Third Reading and “ping pong” amendments

On 28 September, I laid the Supplementary Legislative Consent Memorandum (Memorandum No.4) on the Agriculture Bill. The Senedd gave its consent to the Bill the following day. However, during Third Reading in the House of Lords the UK Government tabled a number of technical amendments which now form part of the Agriculture Act 2020.

The UK Government also tabled a new provision relating to reports on free trade agreements during the consideration of amendments in Parliament (“ping pong”), which now forms part of the Act. These provisions are summarised below:

Section 17 (Continuing EU programmes: power to provide financial assistance)

Section 17 permits an “appropriate national authority” to give financial assistance to a specific list of people/individuals. The amendment made in Third Reading extends the definition of “appropriate authority” to include the Scottish Ministers in the cases of agreement or operational programmes approved in relation to Scotland.

Section 18 (retained direct EU legislation)

Section 18 provides the listed legislation relating to support for rural development, fruit and vegetable producer organisations and apiculture has direct effect under the Withdrawal Agreement in relation to existing programmes and activities will become retained direct EU legislation so as to have effect for other purposes.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

This amendment includes a new category of EU legislation within the list. The new category of legislation relates to promotion measures, and the amendments have effect on a UK-wide basis.

Section 42 (Reports relating to free trade agreements)

This new provision requires the Secretary of State to lay before Parliament a report explaining whether, or to what extent, measures applicable to trade in certain agricultural products in certain free trade agreements are consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health, animal welfare, and the environment. "UK levels of statutory protection" is defined to mean levels of protection which, at the time the report is made, are provided for by or under any legislation which has effect in, or in any part of, the United Kingdom.

A free trade agreement which includes measures applicable to trade in agricultural products may not be laid before Parliament under Part 2 of the Constitutional Reform and Governance Act 2010 unless the Secretary of State has first laid such a report. When the Secretary of State lays the report before Parliament the Secretary of State must also provide a copy of it to certain persons, including the Welsh Ministers and the other devolved administrations.

Section 56 (extent)

The amendment made to section 56 is consequential on the inclusion of the Scottish Ministers within section 17 (detailed above). This amendment provides section 17 extends to England, Wales, Northern Ireland and Scotland.

Schedule 5 (provision relating to Wales: Apiculture)

The amendment applies the negative resolution procedure to any regulations made under paragraph 5 of Schedule 5 (apiculture), unless section 50(5) applies. If section 50(5) applies, the regulations would be subject to the affirmative resolution procedure.

Schedule 6 (provision relating to Northern Ireland: Apiculture)

The amendment applies the negative resolution procedure to any regulations made under paragraph 6, unless section 50(5) applies. If section 50(5) applies, the regulations would be subject to the affirmative resolution procedure.

The Bill has now received Royal Assent but I wanted to bring these amendments to the attention of Members.

Regards



Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs
Pack Page 426

Minister for Finance & Trefnydd
Welsh Government
Cathays Park
Cardiff.

Tuesday 5 January 2021

Subject: Changes to Land Transaction Tax Higher Rate

Dear Minister,

I write regarding the changes introduced by the Welsh Government's draft budget for 2021/22, particularly the higher rate of Land Transaction Tax (LTT) for additional homes, taking effect from 22nd December 2020. We strongly object to this decision and the way it has been implemented, believing it is detrimental to thousands of residents and contradicts the Welsh Government's own budget-setting objectives and values.

Throughout the pandemic, landlords have been subjected to immediate changes that have limited their property rights – as the Senedd's Legislation, Justice, and Constitution (LJC) Committee has attested. Although we have made our views clear to the Minister for Housing & Local Government on the speed and lack of consultation regarding those decisions (e.g. the extension of notice periods), we understand they were introduced to prevent the spread on public health grounds.

Your decision regarding LTT is not a public health measure and, therefore such a swift introduction has no such justification. The manner of introduction, not to mention the financial impact, has wrought great disruption for those experiencing the already stressful process of house-buying at Christmas time. Those households and businesses already had to contend with the rapidly changing impact of the Coronavirus response restriction, having in many cases seen sales fail for no fault of their own and incurred significant extra costs as a consequence.

Not only is this an unwelcome burden to those private landlords providing housing for those who cannot afford, or choose not to buy at such an uncertain time, it makes it harder for "second-step" owner-occupiers to move to a new home and, thus, free up stock for first time-buyers. This change requires considerable additional funds to be found as those who have been unable to sell their current home until after they have secured their new home, must pay the surcharge upfront and wait to reclaim it upon the sale of their former principal private residence. This may cause some transactions to collapse and cause further hold-ups for anyone caught in a chain.

The start of a national lockdown is not the time to put additional burdens on a sector already facing some of the longest and most severe Coronavirus restrictions and will deter investment in rental properties that we so badly need.

The Welsh Government's own [Budget Narrative document states in paragraph 3.10](#) that the move to unwind the lifting of the LTT threshold – *"is consistent with the Welsh taxes principles of being clear and stable enabling citizens and business to plan with certainty"*. This move is not in keeping with the Government's own taxation principles, nor has there been any impact assessment carried out. While government can and do change taxes at short notices as part of a budget process, businesses and consumers are well aware that such changes may take effect from the date set for the budget. It is most unusual for such changes to be implemented immediately months ahead of such a budget in a draft set of proposals.

Given all this, we are hardly surprised to see the [Law Society state](#) "Solicitors across Wales [are] appalled and dismayed with just 4 hours' notice of the increase in LTT making the housing market incredibly vulnerable during Covid." We hope that their intervention would at least provoke a rethink from this destabilising decision from the Government.

Therefore, we call on the Welsh Government to drop this change immediately and make good on any transactions this change has already had on those affected.

I have cc'd members and clerks of the Finance and LJC committees so they are also aware of our objections.

We look forward to your reply.

Sincerely,



Chris Norris
NRLA Policy Director

CC: Llyr Gruffydd MS, Alun Davies MS, Sian Gwenllian MS, Mike Hedges MS, Rhianon Passmore MS, Nick Ramsay MS, Mark Reckless MS, Mick Antoniw MS, Carwyn Jones MS, Dai Lloyd MS, David Melding MS.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/VG/0003/21

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru

5 January 2021

Dear Mick,

I wrote to you in August and in October replying to your requests for information about the rationale for laying a Legislative Consent Memorandum before the Senedd for the Medicines and Medical Devices Bill and the on-going discussions between the Welsh Government and Department of Health and Social Care (DHSC) on the proposal for a medical device information system (MDIS). On 2 December, I laid a Supplementary Legislative Consent Memorandum on the Bill concerning a Government amendment passed by the House of Lords that the Devolved Administrations (DAs) should be consulted before any regulations under Clause 16 (new Clause 18) are made, irrespective of whether the proposed regulations are seen as relating primarily to supporting specific device safety elements or supporting the wider healthcare system.

As you know a debate on the legislative consent motion on the Bill has been scheduled for 12 January. I am writing to update you on recent developments and my intentions in relation to the motion.

Since the summer there has been much discussion between officials of the Welsh Government, the other DAs and DHSC about the design, functions and governance of the medical device information system. I also corresponded with and met Lord Bethell to progress matters. This has resulted in a draft memorandum of understanding (MOU) that includes a number of assurances relating to the operation of the information system. For example it emphasises the importance of four nation consultation and reporting on the operation of the MDIS, the establishment of joint officials' working groups to discuss and draft the regulations, escalation arrangements in the event of disagreement and technical operational matters. There are also safeguards on issues such as the use and sale of data. A copy of Lord Bethell's recent letter and draft MOU, which has to be agreed by Devolved Administrations, is attached.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Although the arrangements have not gone as far as I would have wished towards joint Ministerial governance of the MDIS an MOU is a positive compromise approach to the information system. This is now envisaged as a partnership involving other agencies, manufacturers, clinicians, individuals and the four governments. The proposed frequent Ministerial meetings on the MDIS as the preparation of the regulations progresses provides a real level of Ministerial oversight.

In terms of the regulations and the principles proposed by the DAs Lord Bethell has given an assurance that “we are committed to ensuring that any MDIS regulations will implement an operational model which will serve the best interests of patients across the UK and take account of the particular considerations of the DAs”.

Scotland and Northern Ireland had already given legislative consent to the proposals before agreement was reached with the Welsh Government to progress to an MOU. In the light of the assurances, the cross over with a significant reserved matters, the likely significant benefits of the information system to patient safety and medical device improvement and innovation, which I have previously outlined, I intend to recommend that the Senedd approves the legislative consent motion to the Medicines and Medical Devices Bill. This will ensure that Wales fully participates in the MDIS.

I have written in similar terms to the Chair of the Health, Social Care and Sports Committee, Dr Dai Lloyd MS and I am also copying this letter to all Members of the Senedd.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Ein cyf/Our ref MA/VG/0003/21

Dr Dai Lloyd MS
Chair, Health, Social Care and Sports Committee

5 January 2021

Dear Dai,

I wrote to you in August and in October replying to your requests for information about the rationale for laying a Legislative Consent Memorandum before the Senedd for the Medicines and Medical Devices Bill and the on-going discussions between the Welsh Government and Department of Health and Social Care (DHSC) on the proposal for a medical device information system (MDIS). On 2 December, I laid a Supplementary Legislative Consent Memorandum on the Bill concerning a Government amendment passed by the House of Lords that the Devolved Administrations (DAs) should be consulted before any regulations under Clause 16 (new Clause 18) are made, irrespective of whether the proposed regulations are seen as relating primarily to supporting specific device safety elements or supporting the wider healthcare system.

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Although the arrangements have not gone as far as I would have wished towards joint Ministerial governance of the MDIS an MOU is a positive compromise approach to the information system. This is now envisaged as a partnership involving other agencies,

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manufacturers, clinicians, individuals and the four governments. The proposed frequent Ministerial meetings on the MDIS as the preparation of the regulations progresses provides a real level of Ministerial oversight.

In terms of the regulations and the principles proposed by the DAs Lord Bethell has given an assurance that “we are committed to ensuring that any MDIS regulations will implement an operational model which will serve the best interests of patients across the UK and take account of the particular considerations of the DAs”.

Scotland and Northern Ireland had already given legislative consent to the proposals before agreement was reached with the Welsh Government to progress to an MOU. In the light of the assurances, the cross over with a significant reserved matters, the likely significant benefits of the information system to patient safety and medical device improvement and innovation, which I have previously outlined, I intend to recommend that the Senedd approves the legislative consent motion to the Medicines and Medical Devices Bill. This will ensure that Wales fully participates in the MDIS.

I have written in similar terms to the Chair of the Legislation, Justice and Constitution Committee, Mick Antoniw MS and I am also copying this letter to all Members of the Senedd.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 9.10

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio
Ewropeaidd Counsel General and Minister for
European Transition



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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06 January 2021

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement, that the Joint Ministerial Committee (EU Negotiations) met for an extraordinary meeting following the deal reached between the UK Government and the EU on the Trade and Cooperation Agreement on Tuesday 29 December. My apologies that this letter is retrospective, but due to the urgent nature of the meeting and taking place of the holiday period, it was not possible to notify the Committee in advance.

The meeting discussed the Trade and Cooperation Agreement, readiness and deal implementation, including the Future Relationship Bill. My full Written Statement on the meeting is available here:

<https://gov.wales/written-statement-joint-ministerial-committee-eu-negotiations-12>

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for
European Transition**

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Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Agenda Item 9.11



**Llywodraeth Cymru
Welsh Government**

David Rees MS
Chair of External Affairs and
Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
CF99 1SN

Mr Mick Antoniw MS
Chair of Legislation, Justice and Constitution
Committee
National Assembly for Wales
Cardiff Bay
CF99 1SN

07 January 2021

Dear Chairs,

I attended my first Ministerial forum for Trade meeting chaired by Greg Hands, Minister for International Trade on the 9 December, updates were provided on the ongoing free trade agreement negotiations as well as the continuity negotiations.

I raised a number of specific issues about which the Welsh Government is concerned, including the formalisation of the concordat and the involvement of Devolved Governments in any working groups that are established as part of FTA agreements (particularly where they relate to devolved matters). The Minister for International Trade was open to further discussions on both these matters. It was agreed in relation to our role in working groups that officials will develop proposals.

I will write to you again to inform you of the date of the next meeting.

Yours sincerely,

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

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Agenda Item 11

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 12

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

23 December 2020

Dear Lesley

UK Environment Bill

Thank you again for your **letter dated 28 August 2020**, in which you responded to the recommendations we put to you in our **report on the Legislative Consent Memorandum for the UK Environment Bill** (first report).

At our meeting on 14 December 2020, we considered the **Supplementary Legislative Consent Memorandum (Memorandum No.2)** which you laid before the Senedd on 4 December 2020.

You will be aware that the Business Committee has **set us a reporting deadline** of 4 February 2021 for the Memorandum No.2. Given the relatively short time available for committee consideration, it would be helpful if you could respond to the questions set out below.

1. We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:
 - a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?
 - b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?

2. Please can you elaborate on why you consider that new clause 107 and new Schedule 16 relate to matters within devolved competence when DEFRA say that it relates to the reservation in section C1, paragraph 65 of Schedule 7A to the *Government of Wales Act 2006* (the creation, operation, regulation and dissolution of types of business association)?



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3. Are there ongoing discussions between the Welsh and UK Government to try resolve the dispute as regards new clause 107 and new Schedule 16? If so, please can you provide the detail of such discussions.
4. Please can you provide us with all copies of correspondence between the Welsh and UK Governments about section 107 and Schedule 16 of the Bill (including any responses to your letters of 8 September and 4 December 2020)?
5. If an agreement on the dispute as regards new clause 107 and new Schedule 16 cannot be reached, what further action do you intend to take?
6. In relation to the concurrent plus functions in the Bill, we note that the Environment Bill is not covered by the Government of Wales Act 2006 (Amendment) Order 2021 that was laid before Senedd Cymru on 10 December 2020. Can you provide an update on how the Welsh Government intends to address the issues around the concurrent plus functions in the Bill?

We intend to address concerns that arise with your response of 28 August 2020 in our report on the Supplementary LCM. However, we would like to raise one issue with you regarding the response you gave to our recommendation 20, which in part asked for an explanation as to why you had not discussed clause 81 with UK Ministers. Your response stated that “Engagement at Official level has been sufficient to secure agreement on” clauses 81 and 82.

7. Please could you explain in respect of your response to the first bullet of recommendation 20:
 - the precise nature of the agreement between officials i.e. what has been agreed and the status of the agreement?
 - whether the agreement between officials, and its content, has been signed of by Ministers of both the Welsh and UK Governments?
 - why it was considered appropriate to not discuss a concurrent plus power with UK Ministers?

We would be grateful to receive a response by no later than 13 January 2021.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Agenda Item 13

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 14

By virtue of paragraph(s) vi of Standing Order 17.42

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Mike Hedges AS/MS
Chair
Climate Change, Environment and Rural Affairs Committee
Welsh Parliament
Cardiff Bay
Cardiff
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18 December 2020

Dear Mike

Further to my letter of 13 November, I am now in a position to update you on a number of points in relation to the Hazardous Substances Draft Framework. The following information updates the responses I previously gave:

Scrutiny process and timelines

9. Can you confirm that the framework will comprise the provisional FOA, the Concordat and the updated MOU referred to in the draft FOA?

The MoU referred to in the provisional FOA relates to the COMAH Regulations which is not part of this framework. Since I previously replied, it has been agreed we will no longer pursue a concordat. The framework will therefore solely consist of the text set out in the provisional FOA, with the operative parts to note being sections 6, 8, 11, 12 and 13.

10. Can you clarify whether the Concordat and the updated MOU will be available for Senedd scrutiny?

A concordat is no longer proposed.

11. Can you clarify the timeline for Senedd scrutiny of the provisional FOA and associated documents?

As with the other frameworks, the Senedd will have time to consider this fully in 2021.

Monitoring and review arrangements for the framework

13. Can you clarify whether a report of the review meeting between the UK administrations will be made publicly available?

The review of the framework will involve stakeholders so it is anticipated a report of the review meeting will be made publically available.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

14. Can you explain in what circumstances would it not be appropriate to involve stakeholders in the review process for the framework?

We intend to involve stakeholders in the review but as with all engagement work the process should be proportionate to the issues being considered. If very few issues have been raised in relation to hazardous substances planning in the period before the review, this would suggest a less formal approach to review would be appropriate.

15. Can you confirm whether and how the Senedd will be able to contribute to the review process for the framework?

It is not anticipated that the Committee will be formally invited to participate in the review process. Members of the Senedd however would be able to engage in the same way as other stakeholders.

I hope the above responses provide you with additional information to assist in the scrutiny of the Draft Framework. Please be assured that when we have reached a decision collaboratively with the other administrations regarding the framework review process and the final format of the Framework, the Committee will be updated.

Yours sincerely



Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Cc: Counsel General

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