

# SL(5)634 – The Health Protection (Coronavirus Restrictions) (No. 2) (Amendment) (No. 18) (Bangor) Regulations 2020

## Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the Principal Regulations”). The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984.

The Regulations designate an area comprising 8 electoral wards in the Bangor area of Gwynedd as a local health protection area under the Principal Regulations. This means that:

- no household within that area will be treated as being part of an extended household and the formation of an extended household by such a household is prohibited, save where one household comprises of no more than one adult and any number of children;
- persons living in that area must not leave or remain away from the area without reasonable excuse;
- residents of that area are required to work from home, unless it is not reasonably practicable for them to do so;
- people outside of that area are prohibited from entering the area without reasonable excuse. It is not a reasonable excuse to enter the area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations came into force at 6.00 p.m. on 10 October 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 15 October, and at least once every seven days thereafter.

## Procedure

Made Affirmative

## Technical Scrutiny

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

**1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**



Regulation 2(2) refers to the electoral division of "Menai" to be inserted as paragraph (q)(viii) in paragraph 1 of Schedule 4A to the Principal Regulations.

The second footnote to Regulation 2 provides that these names were specified by the County of Gwynedd (Electoral Changes) Order 2002 (S.I. 2002/3274) ("the 2002 Order"). The Schedule to the 2002 Order refers to "Menai (Bangor)" and "Menai (Caernarfon)". Whilst it may appear obvious when reading the Regulations that the electoral division to be taken into account here is Menai (Bangor), as the name "Bangor" is included in the title of the Regulations, it may be less obvious when considering the Principal Regulations in isolation. In the interests of clarity, and consistency with the names given to electoral divisions in the 2002 Order, the Welsh Government is asked to confirm whether the reference in paragraph (q)(viii) in paragraph 1 of Schedule 4A to the Principal Regulations should be to "Menai (Bangor)". This may also avoid potential confusion and duplication should the "Menai (Caernarfon)" electoral division be subject to restrictions in future. The same issue arises in the Welsh version of the Regulations.

## Merits Scrutiny

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

*The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include 8 electoral wards in the Bangor area. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and is proportionate to that aim.*

We believe that there is an error which requires correction in the Explanatory Memorandum as extracted above, as Article 11 of the European Convention on Human Rights protects the



right to freedom of assembly and association, not freedom of information. The Welsh Government is asked to confirm that this correction will be made.

## **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 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.*

*More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the area of Bangor, as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas. The evidence and advice they have provided has been instrumental in determining the extent of the new local health protection area.*

*Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Mental Health, Wellbeing and the Welsh Language explained on the television news on Friday, 9 October 2020 the intention to impose the restrictions and requirements achieved through these Regulations; and the proposed changes will be widely reported by the media.*

## **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 that 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.

## **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 these Regulations introduce a tightening of coronavirus restrictions in 8 electoral wards in the Bangor area of Gwynedd.

The Explanatory Memorandum states that the Regulations are a response “to the threat to human health from coronavirus” and “to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely”.



We believe that, where coronavirus restrictions are being tightened in any significant way, Explanatory Memorandums should set out the evidence on which the Welsh Government relies in deciding that such tightening is necessary and proportionate. We believe the same principle should apply where restrictions are being lifted.

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that:

- a) the 8 electoral wards in the Bangor area of Gwynedd should go into local lockdown in the way that they did;
- b) the need for local lockdown in those areas was so urgent that there was no time for the Senedd to approve a draft of the Regulations in advance;
- c) other areas of Wales did not need to go into local lockdown.

Providing this evidence will aid transparency as well as the Committee's scrutiny of coronavirus restrictions, in particular in the event that areas of Wales will go into a series of 'rolling lockdowns' in the coming months.

We also believe that including evidence in Explanatory Memorandums will help raise public awareness of Explanatory Memorandums and the statutory instruments themselves.

#### **5. 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 these Regulations came into effect before they were laid before the Senedd. In particular, we note the following from the letter from the First Minister to the Llywydd dated 9 October 2020:

*Under section 4(1) of the Statutory Instruments Act 1946, I wish to inform you that that these come into force before they will be laid before the Senedd. This is considered necessary and justifiable in this case in view of the changing evidence on risk in relation to this disease. The Regulations will be available on both the Welsh Government Coronavirus pages on gov.wales and at legislation.gov.uk before they come into force.*

We ask the Welsh Government to provide further details of the evidence which is referred to in the letter extracted above and to provide a detailed explanation as to why it was necessary to bring these Regulations into force before they were laid before the Senedd.

### **Implications arising from exiting the European Union**

None

### **Welsh Government response**

A Welsh Government response is required in relation to the technical reporting point and merit reporting points 1, 3, 4 and 5 only.

### **Legal Advisers**



**Legislation, Justice and Constitution Committee**  
**13 October 2020**

