



Llywodraeth Cymru
Welsh Government

From:

Tom Smithson
C19 Project Team

Irrelevant & Sensitive

Cleared by:

Reg Kilpatrick

Date:

14 April 2020

MINISTERIAL ADVICE

For decision by: First Minister

Copied to: All Ministers and Deputy Ministers

Subject	Review of the requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020
100 word summary	This advice provides an initial view on the impact and effectiveness of requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020. This review is carried out under regulations 3(2) and is the initial review required by 16 April; subsequent reviews are required every 21 days.
Timing	Urgent. A decision is required by 16 April to meet the requirements of regulation 3(2).
Recommendation	The First Minister is asked to agree: <ol style="list-style-type: none"> 1. To retain the full package of requirements and restrictions set out in The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020. 2. To agree the Written Statement at Doc 2. 3. To note further advice will be prepared on amendments to the regulations outside of this review.
Decision report	This decision does not require a Decision Report as it relates to legislation

ADVICE

Background

1. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 came into force at 4:00pm on 26 March. These were amended by The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020, which came into force at 12:01am on 7 April 2020. The Regulations as amended are referred to in this advice as “the Regulations”.
2. The Regulations impose temporary restrictions on gatherings and the movement of people, and requirements and restrictions on the operation of businesses, including closures, in Wales. This has been done to minimise the extent to which people leave their homes to help reduce and control the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
3. Regulation 3(2) requires Welsh Ministers to review the need for restrictions and requirements under the Regulations every 21 days, with the first review to be carried out by 16 April 2020. This advice constitutes that first review. The next review will be required by 7 May 2020. The Regulations expire on 26 September 2020, subject to prior approval of the Senedd.
4. There is also a requirement for Welsh Ministers to publish a direction terminating any requirement or restriction no longer necessary to respond to the prevention, protection, control or public health response to the incidence or spread of infection in Wales (regulation 3(3)). Regulation 3(4) clarifies the direction referred to in regulation 3(3) can relate to requirements or restrictions in relation to, or description of, specified businesses or services. In order to meet this requirement a process of continuous review has been put in place to both prepare for future reviews and consider the restrictions in between those formal review periods.
5. You announced in Plenary on 8 April that restrictions will remain in place following 16 April, but that the precise nature of those requirements will be agreed based on the latest evidence. This advice summarises the latest evidence and considers options to maintain, extend or remove specific restrictions and requirements under the Regulations.

Summary

6. This first review is informed by the latest evidence prepared by SAGE (as at Tuesday 14 April). This evidence has not been able to fully capture the impacts of the package of restrictions put in place across the UK since 23 March, given the time lags associated with interventions having an effect. In particular, additional measures (including physical distancing in all work settings) coming into force in Wales on 7 April have only been in place for a week. While there is some evidence the measures are having the desired effect, it is still too early and the evidence of impact is still not robust enough, to warrant easing of restrictions at this time. We do not expect to have evidence that the first peak has been passed until next week at the earliest. Restrictions are likely to need to continue until there is a sustained and continuous decline in cases (weeks rather than days).

7. As such, **it is recommended the full range of restrictions in the Regulations remain in place.** A statement to this effect from the Chief Medical Officer is included at Doc 1. A draft Written Statement on the review is attached at Doc 2.
8. In addition to considering the overall picture of the package of measures, the review has considered each regulation in turn (Doc 3). **This has identified some minor amendments that could be taken forward, but are not sufficiently developed to be included in this review. Additional advice will be submitted on the specific changes shortly.** The Regulations will be kept under continuous review as more robust evidence about effectiveness and proportionality emerges.
9. A working group of senior officials has been established to review restrictions at least once a week, both to inform each 21-day review and to allow for restrictions to be eased, amended or tightened as soon as needed between formal reviews.
10. Compliance with existing restrictions appears to be positive and there is widespread support for measures from citizens, businesses, social partners and the wider public sector at this time. Enforcement to date appears to be proportionate with compliance through guidance and advice proving effective and limiting the need for extensive use of penalty notices so far.

Evidence from SAGE modelling on transmission rates

11. Evidence from SAGE suggests the rate of infection (R) in the community is between 0.5 and 1, depending on the degree of compliance with existing mitigation measures (reported 14 April). An R over 1 indicates exponential growth. Should the modelling prove to be correct, this suggests the restrictions will have the desired effect of reducing the spread of infection. SAGE report (14 April) there are three important areas of COVID-19 transmission: Hospitals; Care Homes; and the Community.
12. Draft advice from the Scientific Pandemic Influenza Group on Modelling (SPI-M), which reports to SAGE, highlights that

*'given the lag between changes in transmission and the impact on hospitalisations and deaths, it is still not yet clear whether R is substantially below 1. **As a result, SPI-M's consensus is that, although it is realistic possibility that R may currently be around 0.6, it could also be much closer to 1. We cannot rule out R being greater than 1.**'* (1 April, original emphasis in bold.)
13. If R is greater than 1, additional restrictions may need to be considered. It is worth noting that the UK has a less stringent lockdown than some European countries such as Italy and Spain (Stringency Index, University of Oxford, Blavatnik School of Government). For example, both Italy and Spain place additional restrictions on movement (such as preventing travel across municipalities, not allowing exercise outside the home, or limits in the distance from the home) and higher penalties (larger fines and powers to seize vehicles).
14. Should the actual R be just below 1 (e.g. 0.9) then any easing of restrictions that increased contact rates would push the spread of infection back into exponential growth, undermining the wider package of restrictions. If the actual R is

confidently at the lower end of the estimate (0.5) there is the possibility of considering easement of some restrictions over time, with appropriate safeguards, where the impact on the spread of infection is considered to be negligible. Any such consideration needs to be informed by more robust epidemiological data (from mid-April onwards).

15. The modelling from SAGE provides scenarios to inform decision-making. These are not predictions and are based on a range of assumptions that are kept under review. This modelling suggests that, under a Reasonable Worst Case Scenario (RWCS) in which existing mitigation are maintained but there is poor compliance (40% of population complying), the peak weeks for deaths in the first wave (running 30 March until September) could be from the start of April. Under this scenario, the subsequent decline in new deaths, ICU occupancy, hospitalisation and new infections is likely to be very slow. Weekly deaths across the UK are modelled to peak at around 2,700, with 3,700 ICU admissions per week.
16. Under a scenario in which compliance is good (75%), SAGE models a much more rapid decline in new deaths, ICU occupancy, hospitalisation, and new infections. The charts from the SAGE modelling in the two scenarios illustrate this in Doc 4. **This suggests ensuring compliance with existing measures may be the most effective approach to meeting public health objectives in the short term.** Evidence on compliance is provided below and in Doc 5.
17. COBR(M) reported on 9 April that stronger evidence is expected to emerge from 13 April onwards, but there is unlikely to be much clarity by 13 April. Despite early evidence of high levels of compliance more detailed epidemiological evidence is required to have confidence in the effect of measures to date. The overall message from COBR(M) was that there was not yet sufficient evidence to relax any measures (as of 9 April), and this is unlikely to change prior to the review due by 16 April.
18. COBR(M) also highlighted significant wider negative consequences of the restrictions: wider health impacts from redirection of NHS resources (cancelling non-urgent elective operation), less exercise and on mental health; economic impacts from business closures, reduced activity in 'non-closed' sectors, and unemployment; and societal impacts such as loneliness, domestic abuse, access to food, and lack of school. These are not considered as part of this review, but will be key pressures to balance against the relaxation of restrictions over time as long as health objectives are still met. This is summarised in the note to COBR(M):

'In short, the current package of social distancing measures need to be fully assessed for their effectiveness, but it is too early to vary them. In due course, when the evidence suggests the virus has been suppressed to a sufficient level, there will be some complex decisions to take about how the measures could be varied safely, given the wider societal and economic effects' (9 April, original emphasis)

Effect of, and compliance with, restrictions across the UK and in Wales

19. Evidence on the overall effect of, and compliance with, restrictions across the UK and Wales is set out in Doc 5. In summary:

- It is too early to draw conclusions from epidemiological data on the effectiveness of restrictions due to the lag in reporting. More precision is expected to inform the next 21-day review and ongoing reviews in the interim.
 - There is evidence of substantial behaviour change as a result of restrictions across the UK. This should lead to a large drop in the infection rate.
 - Compliance rates across the UK and Wales appear to be positive and retain widespread support from businesses, social partners, citizens and public bodies.
 - The use of fixed penalty notices is increasing, but the majority of cases in Wales are dealt with through direction and guidance.
20. An assessment of social distancing adherence from the TAC COVID-19 modelling update (9 April) suggests 60% compliance. This assessment combines data from mobile networks, transport operators, Google, and surveys. While this is positive, greater compliance could help reduce the rate of transmission more quickly.
21. Key to continued compliance is ongoing public support. Doc 7 highlights findings of recent public attitude surveys. These signal continued high levels of public support across the UK and within Wales for existing restrictions and an expectation that these will need to continue until at least the summer, with an increasing expectation of longer periods of restrictions beyond the expiry of the Regulations on 26 September. Self-reported compliance with various measures included in these surveys is also improving.

Effectiveness of restrictions

22. The Health Ministerial Implementation Group (MIG) (7 April) reported that SAGE would be able to advise on the effect of interventions by 13 April, including whether further interventions might need to be considered. The reported feedback from SAGE, however, made clear there would not be sufficient scientific data for changes to interventions be made at that point. The focus for SAGE would therefore be to consider which measures could be relaxed and in what sequence from an epidemic perspective, based on emerging evidence about which measures are having, or likely to have, the greatest impacts on disease progression.
23. With compliance being key to their success, SAGE agreed that, if the measures are to remain in place, clear communication around how they help in reducing infection rates will be necessary to avoid a drop in compliance.
24. The SPI-M offered an initial view on broad categories of restrictions (1 April). This is summarised in Doc 6, but will be subject to additional evidence and analysis. In general, they advise restrictions should be lifted gradually based on likely impacts on transmission rates. This suggests restrictions on the use of outdoor spaces could be an early restriction to be lifted when possible, which could help reinforce compliance with remaining measures. This was the same message also provided today (14 April) in which relaxation of outside activities (but not

children's playground with hard surfaces) was not thought to increase R significantly and would prove beneficial for mental and physical health. In Wales this may point to re-considering restrictions, in due course, on exercise or use of public paths and land.

25. There is also the possibility that existing restrictions are not having the desired effect and additional requirements or restrictions may need to be considered.

Potential amendments to the Regulations

26. As noted throughout and in the CMO's statement there is currently not sufficient evidence or justification to remove restrictions in their entirety or for the direction of removal of individual requirements or restrictions. There may be a case however to adjust elements of the Regulations to respond to feedback from stakeholders, address ambiguities and provide further clarity.
27. There needs to be a public health rationale for each of the requirements and restrictions, relying on the advice from the Chief Medical Officer for Wales. This includes where there are differences in requirements and restrictions between the Regulations in Wales and provisions in the rest of the UK, where there may not be a joint opinion of the four CMOs. We need to ensure all requirements and restrictions are reviewed to ensure they meet public health objectives and are proportionate.
28. Doc 3 contains a regulation-by-regulation review, providing a summary and rationale for each regulation, including requirements and restrictions, highlighting areas to be kept under review, and drawing conclusions from an initial review. In conjunction with the review of requirements and restrictions, the review in Doc 3 also offers a wider review of the Regulations. No changes are proposed as a result of this review, but a limited number of amendments have been identified to be considered as part of a future review. These include correcting inconsistencies, considering the list of businesses and services in Schedule 1, Part 4, and further technical adjustments. Following discussions today (14 April) further advice will be prepared shortly to consider the following key issues as identified in Doc 3 and from feedback from Ministers and the police:
- Consider the reasonable excuse for exercise, both in term of the limit on the number of times (particularly for medical reasons) and the distance that it can take place away from the home.
 - Restrictions on visitors to care homes
 - Options to relax restrictions on businesses which can operate on a click and collect basis (e.g. garden centres)
 - The potential to allow some sports behind closed doors for broadcast where social distancing can be maintained (e.g. snooker)
 - Consider how to address concerns from the police that they cannot remove people once they have already travelled to a 2nd home.

Coordination across the UK

29. Broadly similar restrictions and requirements apply in England, Scotland and Northern Ireland. England and Scotland Regulations require a review by 16 April 2020. In Northern Ireland the review must be completed by 18 April 2020. All nations Regulations require further reviews every 21 days thereafter. All nations' restrictions and requirements expire on 25 September 2020.
30. We are assured that there will be a further COBR(M) to consider the latest evidence before the UK Government announces the outcome of its review. All the indications are that the UK Government plans to continue with the current arrangements. There remain questions as to whether this would be for the duration of the 21-day review period and the messaging around any announcement. For example, it is possible that a statement which over emphasises the contribution of the existing measures may adversely impact future compliance, should measures subsequently relaxed may need to be reintroduced. This could dilute the effectiveness of the measures. It is also not yet clear how the UK Government intends to engage the Welsh Government and other devolved administrations in preparing for the second review point. At that point there is likely to be greater pressure to relax some measures and a greater regional variation in the progression of the pandemic across the UK; making a decision on the universal continuation of measures more difficult to justify.

Next Steps / Continuous Review

31. The Regulations require both a review every 21 days and for Welsh Ministers to publish a direction to terminate a restriction as soon as it is no longer necessary. In order to meet this duty, the requirements and restrictions need to be kept under continuous review, not simply waiting for each 21-day review.
32. A cross-Government group of senior officials has been established to carry out this initial review. It will continue to meet at least once a week to keep the requirements and restrictions under review. This will help prepare for the next 21 day review (due by 7 May), as well as allowing for any recommendations to relax, tighten, add, or amend requirements or restrictions to be brought forward as soon as possible outside of those reviews.
33. When the time is right, the potential lifting of requirements or restrictions will need to be coordinated across the UK. Our preference is for a gradual easement by activity, as opposed to a geographical or age-related lifting of restrictions which would be difficult to police and could lack clarity. A number of draft tests to apply to possible easements have been developed to identify a potential sequence of easements, noting the primary and most important rationale for lifting any restrictions must be safeguarding public health.
34. A paper on the approach to easements preferred by the Welsh Government in relation to Wales has been prepared by officials, for potential discussion across the UK at COBR. Subject to those discussions, the next step is to apply the tests to an initial list of activities which have been identified for early testing.

Cross-Government Working

35. This advice was prepared with contributions and clearance from a cross-Government working group including representatives from the Chief Medical Officer, Chief Scientific Officer, Legal Services, and Legislative Counsel.

Financial Implications

36. There are wide-ranging and significant financial implications of the lockdown itself, in particular restrictions around economic activity and the support being made available by the Welsh Government. This is a fast-moving and rapidly-developing situation and detailed financial analysis of the implications has not been possible. The key objective of these Regulations is the protection of public health.
37. The financial implications of the impact of the epidemic are being considered across Welsh Government. The Regulations require the termination of any requirement or restriction no longer necessary to respond to the prevention, protection, control or public health response to the incidence or spread of infection in Wales. This advice outlines a process to ensure a continuous review of requirements and restrictions in the Regulations, or parts of them, so they can be lifted as soon as possible, based on evidence on the effectiveness of measures on the spread of infection. This will limit the economic and financial impact as far as possible, without putting the public health response at risk.

Legal issues, powers & statutory duties

38. The Welsh Ministers are required by regulation 3(2) to 'review the need for restrictions and requirements imposed by these Regulations every 21 days, with the first review being carried out by 16 April 2020'.
39. The Regulations are made under section 45C of the Public Health (Control of Disease) Act 1984, subsection (1) of which gives the Welsh Ministers powers 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 in... Wales'. Subsection (3)(c) provides that the Regulations may make provision 'imposing or enabling the imposition of 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.'
40. In turn, section 45D(1) provides that regulations may not impose a restriction or requirement, unless the Welsh Ministers consider that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
41. Regulation 3(3) provides:-
- As soon as the Welsh Ministers consider that a requirement or restriction imposed by these Regulations is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with the coronavirus, the Welsh Ministers must publish a direction terminating the requirement or restriction.*
42. Therefore in carrying out the Review, the Welsh Ministers must consider the following issues:

- i. Whether the restrictions or requirements are still needed for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection of the coronavirus in Wales; and
 - ii. Whether the restrictions or requirements remain a proportionate response to that purpose.
- 43. Consideration will specifically be needed to be given to the ongoing effect and therefore necessity and proportionality of the restrictions and requirements in preventing, protecting against, controlling and providing a public health response to the incidence and spread of the coronavirus, based on the medical evidence of their effect.
- 44. If it is considered that the restrictions and requirements, whether taken as a whole or considered separately, continue to be necessary and proportionate, they should remain in place. If any or all of the requirements are not considered necessary, then they should be terminated by means of direction. If any are no longer considered proportionate, they should either be terminated or amended to ensure that they continue to be proportionate.
- 45. It should be noted that this is the first review, and on the basis that the Regulations continue in place, future reviews, on a three weekly cycle, will need to consider the same issues, which may lead to partial relaxation of specific restrictions or requirements.
- 46. Under regulation 3(4), a direction terminating a restriction or requirement may be exercised in relation to a specified business or service or a specified description of business or service, which could, subject to appropriate health advice, be exercised in relation to specified sectors.
- 47. It is also important to note the requirement of regulation 3(3) referred to above, which requires the Welsh Ministers to issue a direction terminating a restriction or requirement as soon as they consider that a particular restriction or requirement is no longer necessary. This is not connected with the three weekly review process, but is a wider, ongoing duty to keep the provisions of the Regulations under review, requiring immediate action to relax restrictions or requirements if they are no longer considered to be necessary.

Communication or media handling

- 48. A draft written statement is included at Doc 2. The communications team will discuss with you the handling of this announcement separately in advance of any decision.
- 49. Coordination with the UK Government and other Devolved Governments will continue to be important to maintain compliance and avoid confusion or unclear messages. Any future divergence in approach between Wales and the rest of the UK will need careful handling.

Annex 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Reg Kilpatrick, have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- All Ministers and Deputy Ministers
- All Special Advisors
- Chief Medical Officer
- Andrew Goodall
- Tracey Burke
- Andrew Slade
- Des Clifford
- Reg Kilpatrick
- Helen Lentle
- Rob Orford
- Dylan Hughes
- Neil Surman
- Peter McDonald
- Chrishan Kamalan
- Neil Buffin
- Toby Mason
- Jo Trott
- Terry Kowal
- Name Redacted
- Fliss Bennee
- Tim Render
- Andrew Jeffreys

- Jo Salway
- Jo-Anne Daniels

- Government
Plenary
Business
mailbox

- Will Whiteley
- Zowie Hay

