

LEGAL SERVICES

Imposing Travel Restrictions on residents in protected areas from entering Wales – Legal Advice

1. The UK Government has made legislation imposing additional restrictions on a number of localities, primarily in the north west and north east of England (“protected areas”). This has led to a variety of different restrictions, mainly these impose restrictions on gatherings in indoor premises. They do not impose any restrictions from leaving the area in question. This has led to concerns that people from protected areas could travel into Wales, to any part which has not been designated as a local health protection area, which includes the majority of west and mid Wales, with Pembrokeshire, Ceredigion, Powys and the majority of Carmarthenshire and Gwynedd. Such people whilst prevented from entering local health protection areas without reasonable excuse, may travel through any LHPA in transit to another area, not an LHPA under the Coronavirus Restrictions as they stand.
2. The proposal therefore is to limit travel from the protected areas into Wales. Any rationale to impose restrictions on people travelling from areas in England (or indeed Scotland and Northern Ireland) would need to be based on a public health response to prevent the spread of coronavirus. The areas in question have high prevalence of coronavirus, with Merseyside being particularly badly affected with around 600 cases per 100,000.
3. In theory a quarantine system could be imposed (similar to the one that applies under the International Travel Regulations) but it would be easier to justify a system that is consistent with the current restricted travel approach as this is about regulation of movement of UK citizens in Wales. Quarantine would also see movement of people from protected areas into Wales, which itself could constitute a health risk, even if they were required to self-isolate once reaching their destination in Wales. They would also need to be permitted to leave isolation for certain essentials which increases risk of transmission.
4. The current local health protection area restrictions in force in Wales are based on a rationale that is about containing spread of the virus. A restriction on travel into Wales from areas where the incidence (and potentially interconnectivity) is high is consistent with this approach.
5. The Welsh Ministers have power to make regulations under the Health Protection (Control of Disease) Act 1984 which could limit travel to Wales from areas where there are restrictions in place in England and other devolved nations. They would of course only apply once a person was in Wales, but entering into Wales (without reasonable excuse) could constitute an offence.

6. Effectively restrictions of this nature were imposed with the initial stay at home lock down and subsequent stay local requirements, albeit that would apply to everyone within Wales as well.
7. It would support the rationality around imposing such a restriction for such a restriction to apply to all devolved nations, this is particularly the case given the very high incidence of coronavirus in Northern Ireland, and would dovetail with the international travel restrictions currently in place. Selecting only protected areas in England would carry risk.
8. Additionally, the criteria for selecting areas should be carefully considered. Given the rationale must be based on providing a public health response, selecting areas purely by reference to selections effectively made by the UK Government or Scottish Government, for example, through the listing of protected areas may not provide a basis. Whilst say the prevalence of coronavirus in protected areas in north east England may be particularly high, the risks associated with those areas may be less than risks associated with travel from cities close to Wales where they may be greater connectivity. If for example cases increased in Bristol, albeit to a far less extent than in north England, there still may be a rationale for travel restrictions to apply to residents of Bristol notwithstanding no additional local controls are in force there, given the movement of people between there and Newport and Cardiff.
9. Introducing restrictions solely by reference to protected areas would introduce a further set of controls in addition to those imposed by the International Travel Regulations and the Coronavirus Restrictions Regulations, and ones reflecting criteria set by other Governments.
10. For clarity of law, Legal Services advise that areas in question would need to be set out in legislation; this is likely to mean that the Regulations would require frequent amendment to list new areas or delist ones which were no longer protected or for which the rationale for restricting travel no longer applied.
11. We would need to consider what the conditions are in the other nations and follow this closely as this would influence what restrictions were necessary in the Regulations and they would need to be kept under review.
12. Whilst this could be done by reference to specific counties in Wales for example there may be a public health argument that suggests that it should apply to all of Wales to ensure that those areas where the spread is low are protected also. Presently of course people from other nations cannot enter the local lock down areas.
13. There is one further matter which needs to be considered which is that currently in England people who have tested positive with coronavirus are required to