



Llywodraeth Cymru
Welsh Government
ADVICE

From:

NR

C19 Project Team

Cleared by:

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Date:

3 November 2020

For decision by: First Minister

Copied to: All Ministers and Deputy Ministers

Subject	Agreement of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020
100 word summary	The First Minister is asked to agree new national Regulations that will come into force on Monday 9 November after the firebreak period.
Timing	URGENT. A decision is required as soon as possible in order to lay new Regulations as soon as practicable before they come into force.
Recommendation	<p>The First Minister is asked to:</p> <ol style="list-style-type: none"> 1. Agree to make the Health Protection (Coronavirus Restrictions) (No 4) (Wales) Regulations 2020, noting these will be submitted separately 2. Agree to the publication of the CMO statement at Doc 1 and summary Integrated Impact Assessment at Doc 2. You have made an Oral Statement to the Senedd on 3rd November therefore a separate Written Statement has not been prepared.
Decision report	This decision does not require a Decision Report as it relates to legislation.

ADVICE

Background

1. The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 came into force on 23 October, following advice (MA/FM/3428/20) which

recommended putting in place a firebreak or circuit break between 23 October and 8 November. These Regulations are set to expire at the end of the day on 8 November, and will therefore need replacing by new Regulations which will be laid as a package on Wednesday 4 November.

Recommendations

2. You are asked to agree the policy underpinning a new set of Regulations that will come into force Monday 9 November after the end of the firebreak.
3. You also are asked to agree to the publication of the **CMO statement at Doc 1** as well as the **Summary Integrated Impact Assessment at Doc 2**.

Public health situation

4. It is estimated that infections could be growing between 1% and 5% per day in Wales (28th October). Due to the inherent lag between exposure to the virus and becoming a confirmed case, the impact of the fire-break on surveillance indicators would not be expected to be seen for at least two weeks following this period. However modelling by Swansea University estimates that the fire break will reduce and delay the peak number of deaths.
5. For the first time in this wave of infections incidence for Wales is higher than 200 cases per 100,000 people. No Local Authority is below the amber threshold for either incidence (between 25-50 cases per 100,000). The 7-day figures for Wales as a whole between 24-30 October are 258.5 cases per 100,000 and a test positivity of 19.7% (PHW, 2 November).
6. The most recent estimate of the Reproduction number (R_t) for Wales from SAGE (28th October) is predicted to be between 1.0 and 1.3. While there may still be high degrees of variability (for example, in a localised outbreak), there is now more confidence in the reliability of the R and growth rate estimates compared to two to three months ago. Public Health Wales have also estimated R_t for Wales using data on the number of positive cases. As of 26/10/20, R_t in Wales is estimated to be 1.30 (95 % confidence interval 1.27 – 1.32) (TAC brief 30 October).
7. The seven day incidence rate up to 30 October (reported 2 November) shows significant variation across Wales, with Merthyr Tydfil (689.6) and Rhondda Cynon Taf (506.5) recording the highest incidence rates, and Ceredigion the lowest at 30.3. Currently all Local Authority areas have a rate above 50 apart from Ceredigion, and nineteen of those have rates above 100. The test positivity rate has a range of between 6.1% to 31.2% across local authorities.
8. In the 7 days to 26 October 2020, an average of 93 people a day were admitted to hospital as confirmed or suspected with COVID-19. 835 beds were occupied with COVID-19 related patients; this is an increase from 571 in the 7-day period to 13 October prior to the fire break. The number in ICUs with COVID-19 is 44, which is higher than it was for the 7-day period to 13 October (27). The summary at **Doc 3** provides a table and charts of the progress of key indicators.

9. The number of new cases are also continuing to rise across the UK (with 23,254 confirmed cases on 1 November). The growth rate per day estimated by SAGE across England is between 3% and 5% (TAC brief 30 October). As a result, England will go into a lockdown on 5 November and this will remain in effect until at least 2 December.
10. Globally total cases exceed 42m worldwide, with an increase of 9% in daily new cases compared to the previous week, and deaths now over 1.1m. The most significant increase has been observed in Europe, where deaths and cases increased by 40% in the past seven days, compared to a week earlier. In response, France and Germany have recently reinstated national lockdowns. (FCDO Global Covid 19 dashboard, 26 October)

Mitigations

11. There are no immediate concerns with **PPE availability** but **increasing pressure on NHS capacity is a significant concern** as the numbers in hospitals are increasing. Indicators linked to NHS capacity are annexed.
12. The 24 hour turnaround of tests for Test Trace Protect (TTP) in all centres remains high compared to historical trends, with the fastest being the tests taking place in hospital. For example, the 24 hour turnaround average for all centres was 60% in the week commencing 19 October. On contact tracing, between 18 and 24 October, 84% of positive cases eligible for follow-up were reached, while 88% of close contacts eligible for follow-up were successfully contacted and advised accordingly (Covid-19 Data Monitor 2 November). This is despite a very large increase in cases.
13. The latest Ipsos MORI survey results coinciding with the start of the fire-break (from fieldwork taking place 23-28 October) shows that self-reported compliance with the Regulations remains relatively high. The proportion of respondents wearing face coverings remains high (83%) despite a small dip from the previous survey. 57% of people report only leaving the home for essential trips, up from 46% in the previous wave (fieldwork taking place 9-12 October) but below the peak of 75% in April, while 62% report staying local. Approval ratings of the Welsh Governments' performance to contain the virus have fallen to 64% in the most recent wave, the lowest since the question was introduced in May. However, ratings of the Welsh Government remain much higher than the UK Government where only 34% think they are doing a good job.

Approach to new post firebreak period in Wales

14. The decision to implement a firebreak in Wales was based on scientific evidence and advice produced in the light of the worsening public health situation in the UK and Wales. The UK Government Scientific Advisory Group for Emergencies non-pharmaceutical interventions (NPI) paper (21 September) suggested that a "fire break" in which a package of NPIs is re-introduced for a time limited period would act to reduce R below 1, to 0.8, and set back the state of the current wave by 28 days (for a two week fire break). This means that any resumption in the growth of cases would be from a significantly lower level than would have been the case without the firebreak. The Welsh Government's Technical Advisory Cell

recommended a 2-3 week hard firebreak to bring R below 1 in order to lessen the force and slow the growth of the epidemic in Wales.

15. Advice from TAC was the longer and harder the firebreak the greater the gains in suppressing the virus but the greater the wider harms to society and the economy. While the financial and public acceptance costs have since fallen following the surprise UK Government announcement of a longer lockdown in England, there are significant issues about the confidence in the Welsh Government and trust of the public as well as significant economic costs. A major change in position could undermine trust in the Welsh Government and affect future adherence to public health messages. Whilst extending the firebreak in line with the UK Government decisions in England would undoubtedly have immediate health benefits, the post-firebreak regime relies on behaviour change to be sustainable, which could be undermined over the medium and long-term if it is seen by a breach of trust with the public.
16. During the firebreak, discussions took place across the Welsh Government on post firebreak options followed by a series of meetings with stakeholders (local authorities, the police, business representatives and trade unions) on 28th October. There was a high degree of consensus for: a principles based approach; the need for simple rules on the number of people allowed to meet; and on the importance of clear guidance and information provision, both general and targeted at key groups. Stakeholders noted people value the opportunity to meet in a controlled environment. If that opportunity is not available, there is likely to be more meeting up in riskier, informal, unsupervised settings. They also noted the need to balance rights and responsibilities between people delivering and people receiving services and that we avoid differential impacts on people based on their household configurations when considering household mixing guidelines.
17. Cabinet met twice on 27 and 29 October and agreed that new rules must be accompanied by a change in behaviour (e.g. seeing fewer people, greater adherence to social distancing) if we are to succeed in suppressing the virus and keeping it at a manageable level (at or below R_t 1.2). Without a fundamental shift the way people mix with others in all areas, and without a more restrictive approach in other areas of society like schools or leisure, we will see a return to exponential growth. Time limited restrictions (whether local or national) do not solve this fundamental problem.
18. The approach which emerged from these discussions and which has informed Ministerial choices on the new Regulations can be summarised as follows:
 - that there should be as little social mixing as possible, in particular within people's houses
 - groups meeting in regulated, supervised settings and outdoors should be accommodated where possible to aid broader compliance
 - clear priority must be given to schools remaining open

- clear and straightforward communications with which to build acceptance for and confidence in the post firebreak approach will be key to maintaining the gains from the fire-break period.
- communication should focus on what people should and should not do, as opposed to can and cannot
- rules must be simple, clear and consistent and public must be enabled and supported where possible to follow the rules
- rules do not automatically lead to the right behaviours, but they can support them where they are seen as fair, proportionate and enforceable

This approach also recognised that in regulated premises little more can be done to reduce risk as significant adaptations have already been made. Further discussions have identified areas in which hospitality settings might be able to do more to support elements like TTP (e.g. taking contact details for all members of a group) or to limit dwell time.

19. The Cabinet also agreed that we have to retain the option of further, more severe restrictions, including a future firebreak, given the unpredictability of the disease and the current highly negative trends across the UK and beyond. The rapidly developing situation is illustrated by the recent announcement of a strict national lockdown covering the whole of France. There are now different interventions in place in each part of the UK, and all of these will need to be closely monitored to determine the effectiveness of each (for example there are some early signs the approach in Scotland may be having some effect without recourse to a full 'stay at home' lockdown). Cabinet also agreed that action will continue to need to be taken as at a local level, taking full account of subsidiarity, and separate advice will be provided to you on how lessons from local lockdowns are being taken on board for the post-firebreak regime.
20. Advice from TAC has highlighted the need to increase public understanding and bring the population to a new set of normative behaviours given that the level of impact of any interventions will depend on adherence. TAC reports there is high confidence that a single set of simple rules for the whole country would be better understood, better followed, and therefore have a greater impact on the transmission of the virus. This has driven the approach to the proposals in the Regulations, with a greater emphasis to be placed on doing the right thing rather than asking what the Regulations allow.
21. International evidence also points to a clear issue over falling compliance linked to confusion over messaging and fatigue over measures, especially among younger age groups. The WHO recognises an increasing and expected disengagement of people with changing rules and public health messages. They recommend focussing on engagement, hard22. m reduction and recognition of hardship (which contrasts with the lockdown approach of regulation, restriction and public health messages).
22. The new Regulations also take account of the impact the English lockdown will have given the numbers of people who cross the border to work, visit family, shop, do business and travel. In 2019, there were 98,500 people who commuted

out of Wales to England and 42,700 people who commuted into Wales to England. The English lockdown will affect people companies operating in both Wales and England wherever they are based. As an example, in 2018 sales to the rest of UK accounted for 30% (£30.1bn) of all sales with 82% (£24.6bn) of these sales made to England (Trade survey for Wales 2018) Businesses and people near the border will also be particularly affected. In terms of timing, Wales is coming out of the firebreak a few days after England starts its month-long lockdown. We will keep the situation under review to ensure that people in England, especially those who live near the border, will not be able to circumvent the tighter restrictions that will be in place there during the lockdown by travelling to Wales.

Detailed assessment of the new Regulations

23. The aim is to address the public health emergency we face while taking account of and mitigating as far as possible the impacts of the package between the four harms. These are the direct harm caused by Covid-19 cases, the indirect health impacts not directly related to Covid 19, including the impact on the way people are using health and social care services, the impact on society of the restrictions put in place to slow virus transmission and save lives and the wider economic, social and wellbeing impacts.
24. A significant part of the new Regulations replicate those which were in place before the firebreak¹ as those provisions were designed as preventative measures to protect public health in Wales. For example we still require open premises to take all reasonable measures to minimise the risk of transmission (previously Regulation 12), all the enforcement measures remain in place, we are maintaining the curfew on hospitality venues and the list of businesses required to close. The advice below therefore focusses on those areas in which changes are proposed in the new Regulations and for which there are differences.

Household Mixing

25. The principal challenge is that household mixing remains the main transmission route for coronavirus, but despite the current restrictive approaches across Wales we are not seeing the behaviour change required in all parts of the population. Our communications and messaging will be a key tool and will be supported by the Regulations. Messages will focus on helping people understand what is risky and asking people to adapt their behaviour, for example by keeping contacts to an absolute minimum, if mixing doing so with same people, not meeting in big groups and avoiding meeting people at home.

Extended Households

26. Before the firebreak, up to four households could meet indoors in an extended household or bubble. This provision has proved confusing to many members of the public who did not understand that it was meant to be an exclusive

¹ The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, as amended

arrangement or that they could only meet in open premises with members of their extended household. It was also not possible to enforce this rule.

27. Given the need to avoid social mixing indoors in unregulated settings such as private homes as much as possible in view of the high risk of transmission, the new Regulations will be more restrictive and revert to **a single extended household consisting of only two households joining together and these two households should not change**. If there is a requirement to tighten restrictions (e.g. in a firebreak or lockdown scenario), provisions would need to be made for people living alone, single parents, those requiring care and support, or feeling isolated will always be able to meet with others (as happened when the local health protection areas were introduced).
28. Subject to improvements in the overall epidemiological situation we can provide in future reviews for an extended household to break up and reform after a suitable period of time. This would allow for a household to dissolve their extended household, wait a period of 7-10 days, then create a new household. Given the number of changes coming into force on 9 November this change will be best considered as part of the review process.
29. **It was also agreed at Cabinet that the restriction on a two household extended household or bubble should also apply to a private garden.** This is intended to emphasise the risks associated with private homes (of which a garden is a part) and the reality that as the weather gets worse more and more activity will be driven indoors.

Rule of four – in regulated open premises and outdoors

30. The more restrictive approach to meeting in households will be balanced by some more flexibility in regulated settings which will make the overall package more acceptable, more enforceable and avoid driving people into private homes if they can meet in regulated, safer spaces.
31. **It is proposed the maximum number of people that can meet is set to four in any regulated setting** such as a bar or restaurant and a **maximum of four people from different households can meet outdoors**. This means that up to four people (not including children under 11) from different households can meet – but this should be a maximum not a target. The only exception would be if more than four people live together in one household. The intention is that this rule should be a legal backstop and we will be clear that people should keep mixing with different people to a minimum, that the number is an absolute maximum rather than a “target” number and that the maximum number will be strictly enforced.
32. This will be reviewed after two weeks of the regulations being in force.
33. Hospitality premises will also be playing a greater public health role and discussions are underway on additional measures to further mitigate the risks posed by people from different households mixing in their premises such as:
- Taking bookings only
 - Collecting contact details from all members of the group
 - Validating these details

34. From an enforcement perspective, a cap on numbers is easier for hospitality settings and enforcement officers as enforceability is provided for by the size of group rather than its composition. Pre-firebreak technically only members of a single extended household were allowed to go to a hospitality venue together, but this was widely ignored and proved unenforceable.
35. It is also fairer and more proportionate for young people and people new to an area who may not have a family or close friend group with whom they can form an extended household and risk therefore being isolated. We are aware of the risk that the alcohol consumption leads to more risky behaviour in terms of virus transmission but this is mitigated by maintaining the 10pm curfew provision described below.
36. Children under 11 are not considered to be either very susceptible to the virus, nor to be significant transmitters of it therefore it is proposed they are not included in the restrictions on social mixing. From an equality perspective however, one negative impact is that people earning less than the Welsh median average may be less able to access spaces such as bars or restaurants as they may not have enough money to pay for the drink or the meal.

Indoor Organised Activity – general rule for 15 people

37. Before the firebreak changes were agreed by Cabinet to make provision in Regulations to **allow organised activities outdoors in regulated premises such as community centres or places of worship for up to 15 people**. These changes have since also been endorsed by Cabinet for the post-firebreak set of rules. The kind of activities that could take place include support groups for people with dependency problems, weight loss or exercise classes. Allowing these activities should contribute to reducing loneliness and isolation and improve physical and mental well-being. The face to face element is particularly important for vulnerable groups as many cannot access on-line groups for a variety of reasons including digital exclusion.
38. The new Regulations would make gatherings allowable indoors in open premises by providing a general rule for a maximum of 15 people (exempting children under 11 and those organising the activity) to participate in an indoor activity organised by a responsible body and subject to the organiser carrying out a risk assessment. The requirement for the activity to take place in 'open premises' makes it subject to the reasonable measures regime (and thus to enforcement measures) which means that numbers should be kept as low as practicable, or that bodies should seek to organise the activity on-line where possible.
39. FAQs and sectoral guidance (e.g. for community centres) are already prepared which provides assurance that risks of a general rule are mitigated as far as possible. This general rule also clarifies the position before the firebreak where organisers were unsure as to whether their classes fitted the definitions of 'educational' or 'public services' which were (and remain) reasonable excuses to gather indoors. This clarification also puts a limit on the size of the groups that already meet where previously there was none and means that the number of people meeting indoors for exercise will be reduced from 30 to 15.

40. **One implication of this rule is that it will also reduce the number of people able to attend a wedding reception, a gathering or wake after a funeral and an exercise class indoors to fifteen (from thirty before the firebreak).** The numbers of people able to attend a wedding ceremony or funeral depends on the size of the venue. Policy officials have raised concerns about the viability of related businesses bringing the numbers down to 15 from 30 but this needs to be weighed against the overall need to simplify the rules, avoid exemptions that undermine those rules, and protect public health by limiting numbers of people meeting one another. It is difficult to justify a knitting group is higher risk than a wedding reception or exercise class – and allowing for a general rule of 30 may have a cumulative effect.
41. A second implication is that it will allow small business meetings/events to take place. While the expectation is that these should remain on line, hotels and other venues will wish to offer small face to face business events as these form a significant part of their income and from a business perspective, there are advantages to meeting in person. Lead officials have been engaging with venues for some time and have developed specific guidance for these events in addition to the wider hospitality guidance. Their view is that these events can take place in a Covid secure way and it will be made clear to venues that these meetings/events are subject to the reasonable measures requirements and must allow a gathering only for the purposes of a specific activity – not for ancillary activities such as a group dinner or reception. This would also require online activity (e.g. virtual meetings) to take place unless there is a specific business need to meet in person.
42. A third implication is that this general rule would allow children's and other parties to take place, subject to their being organised by a responsible body and adherence with reasonable measures provision. While we may not wish to encourage such parties, there may be situations when it is less risky for them to take place. For example, if all the children are in the same class. As noted below in the section on schools, this we are keeping emerging evidence on transmission among children under review and detailed advice on this issue will be provided in the guidance. Rather than legislate for every eventuality it is proposed this is discouraged in guidance to minimise risk rather than legislate for it. Adult parties are likely to be limited given the proposal to not allow activities in which alcohol is sold or consumed.
43. It is also proposed that **the reasonable excuse allowing for such gatherings should only apply to activities where alcohol is not sold or supplied with the only exception being for wedding receptions and gatherings or wakes after funerals** (which are expected to be sit down meals). A restriction on licenced premises was considered, but this may prevent some community activities where a licenced premises is the only one available (e.g. in a rural area).
44. Guidance is unlikely to cater for all eventualities and an alternative is to list only those types of activities considered as a reasonable excuse to gather or further define the reasonable excuses in the Regulations. This remains problematic as it runs the risk of excluding a wide range of groups. This is why, the

recommendation is for a general rule accompanied by guidance and FAQs to clarify a range of issues.

Outdoor organised activity – general rule for 30 people

45. To provide for sport and other organised outdoor activity to take place, up to 30 people will be able to take part in organised outdoor activities, whether sporting or more general, providing all reasonable measures are in place. This reverts to an early position in which organised activities were subject to a risk assessment by a responsible body.
46. There will be an exception to the rule of thirty for elite and sub-elite sports as designated by Sports Wales. Sports Wales will act as the gatekeeper, preventing a general rule and only allowing activities where mitigations can be put in place.

Events

47. No events bringing together more than 15 people indoors or 30 people outdoors will be able to take place until the Spring and no test or pilot events will take place until February at the earliest. This means that no outdoor or indoor events which bring together more than 30 people or 15 people respectively. This has the implication of events above these limits would not be possible to commemorate Armistice Day or Diwali.
48. The new Regulations will prohibit a legal loophole whereby event organisers could organise an event composed of multiple small groups of people seated or standing separately as doing so goes against the policy intent of restricting numbers of people meeting indoors and outdoors. For example a football stadium claiming it was filled with many groups of four people, so didn't constitute a gathering.

Fixed penalty notices

49. A review of the Fixed Penalty Notices (FPNs) under the Regulations has not completed because of time constraints, but this aims to consider the specific outliers in the Coronavirus regulatory regime; in particular those FPNs introduced to match the position in England. This has led to a £1,000 FPN for failing to quarantine when returning from overseas and a £10,000 FPN for organising an unlicensed music event. While there are some questions about whether these remain proportionate it has not been possible to review these as part of the preparations for the new Regulations. They are therefore retained, but should be subject to revision once the review of FPNs is completed.
50. The consequence of the decisions set out in this advice and discussed by Cabinet is that new offences have been created. The principles applied in proposing FPNs attached to these offences has been:
- To retain the same baseline set of FPNs and escalator for individual offences (£60 reducing to £30, doubling up to £1,920 maximum)
 - For business restrictions to replicate the English approach (£1,000, doubling for subsequent offences to £4,000 with a final maximum FPN of £10,000)

- For the new offence of organising an event of more than 15 indoors or 30 outdoors to be set at a level of £200, doubling to a maximum of £6,400. This is the lower starting point of the options proposed by police representatives (£200/£500 proposed).

51. A summary of the position is provided below and a detailed table in the annex but the over-riding principle is that the scale of the penalty will be proportionate to the risk.

52. The standard FPN of £60 (with an increasing scale) will be applied to the following new offences:

- Gathering in a private home or garden with people outside your household
- Gathering in public (outdoors or in regulated open premises in a group more than four
- Not self-isolating when required to do so
- Providing false information to contact trace

53. The scale of FPN for businesses who carry on operating when required to close, sell alcohol between 10pm and 6am or which keep their premises open in defiance of a closure notice will be increased from the standard FPN of £60 to £1000 which aligns with England and will be more dissuasive.

54. House parties have been raised as a specific and recurring issue by IMTs and the police. For example in early October, the decline in the number of cases in Newport slowed because of the increase in cases related to house parties. At this time the assessment from North Wales' Police and Crime Commissioner was that increased calls on this issue were likely and that increasing the penalty would be a positive step.

55. In view of this evidence and the risk of transmission a FPN for attending a house party could involve more than one offence (a specific stand alone FPN for attending the house party of £60 and a second FPN with an increasing scale for gatherings). This is proportionate given that most of those organising and attending will likely be young people, and that those from low income households would have difficulty in paying a very high fine such as the £10,000 for those organising house parties in England. A house party will be defined as *"a social gathering in a private dwelling where more than 15 people are present"* which is the same number as Scotland (in England it is 30).

56. Organising an event with more than 15 people indoors or 30 outdoors will incur a FPN of £200 (with an increasing scale). These events could be a house party or any kind of outdoor celebration. If there are any aggravating elements such as particular recklessness or commercial motivation, then there may be a justification for prosecution which could be included in the guidance for police or other enforcement authorities.

57. The £10,000 FPN for organising unlicensed music events which came into force at the end of August remains as it is considered effective by the police and was used in August after such an event in Banwen. This will need to be kept under review to ensure it is proportionate. The FPNs for all other offences remain the same as was the case pre-firebreak. Separate legal advice is provided on the

FPNs. Legal Services consider that it will be necessary to ensure that the review is completed with a view to determining a comprehensive and joined up approach to the FPN levels, given the current disparities and potential vulnerability that the setting of FPNs could be seen as arbitrary.

Self-isolation

58. Ministers have agreed advice (MA-FM-3404-20) on placing a duty on employers not to knowingly enable or encourage people to work when they should be self-isolating either because they have tested positive or because they are required to do so by TTP. The need for this duty is reinforced by examples of companies which are actively encouraging staff to come to work when they should be self-isolating or refusing to pay workers self-isolating and threatening disciplinary action if they do not attend work when required to self-isolate.
59. Consideration was given to whether workers that failed to notify their employer of a requirement to self-isolate and the dates of that period should incur a standard FPN of £60 as there have been reports of employees going to work in care homes when positive. It was decided however that this FPN was unnecessary on the basis of limited evidence, that a worker who is working from home would need to inform his or her employer unless unable to work and that a worker who was unable to go to work because he or she was self-isolating would necessarily have to inform the employer. It is also the case that this requirement would be difficult to enforce.
60. This complements the agreement to offer a self-isolation support payment of £500 (MA/FM/3134/20) to people who are required to self-isolate with a positive test or a close contact of someone who has a positive test, who cannot work and will lose income and suffer hardship as a result. This is a payment designed to remove barriers to self-isolation. It will be administered by local authorities and the Welsh Government will evaluate this support payment and assess its effectiveness.
61. A failure to self-isolate if required to do so (after a positive test or at the request of TTP) will be an offence which will be enforced by a standard FPN of £60 for a first offence and then escalating. This highlights a potential issue of rationality given the international travel regulations includes a FPN of £1000 for not self-isolating. It is considered that it is the international travel regulations that are the anomaly in these circumstances, but those regulations are not considered in this advice. They should be included in the wider review on FPNs.
62. In addition providing false information to contact tracers or once notified to isolate about your isolation address and the members of your household will incur the standard £60 FPN. Heavier fines could, however, disproportionately affect BAME or socio-economically disadvantaged people and it is important that the approach to FPNs that has developed since the beginning of the pandemic remains one that is proportionate and coherent.
63. There is limited evidence in Wales regarding compliance with the requirement to self-isolate and that provided by the UK Government is not considered strong and comprehensive. It is however clear that there are many barriers to compliance, notably from people in particular groups such as those on a low

income or in precarious employment or single parents. Along with the self isolation payment, we are exploring how to facilitate self-isolation through changing the rules or incentivising behaviour change. This could include (providing evidence supports such a measure) reducing the period for self-isolation as a close contact to 10 or 7 days rather than 14. If a change to the self-isolation period were adopted, it should be agreed across the 4 UK nations at CMO level to ensure consistency. We could also consider offering support payments in a wider range of circumstances and adopting a broader definition of hardship – for example to include people who have to self-isolate but are not close contacts such as supply teachers.

64. There may be new interventions that could be trialled to encourage and amplify safe behaviours, and to discourage and dampen risky actions. We are working with Public Health Wales, universities and other partners to consider the potential of rapid, low cost experiments of behavioural change measures. Some of these options would have financial implications, in which case detailed advice will be necessary for the relevant Minister to consider.

Travel restrictions

65. Post firebreak, travel restrictions will be place. In practice this means that without a reasonable excuse people will not be able to travel from areas of high prevalence regions in the rest of the UK to Wales. Similarly, without a reasonable excuse, if Wales is considered a region of high prevalence then people from Wales will not be able to travel elsewhere in the UK without a reasonable excuse. All the indications are that Wales, as a region of the UK, will be a high prevalence area on 9 November as the impact of the firebreak in Wales will have yet to be seen.

66. The key difference with the provisions pre-firebreak is that for these purposes, Wales will be a single geographical unit or region in the UK **which means that it will be possible to travel within Wales**. The population of Wales makes it broadly equivalent on those terms to many regions (and even local areas) in the rest of the UK. The 22 local authorities in Wales has long been recognised as too complex for managing local health or other services. The low populations in some local authorities in Wales can skew figures and do not reflect realistic functional areas (e.g. travel to work or access to service areas will span multiple local authorities in Wales). The geographical coverage of any future local or regional restrictions will need to be revisited but a local authority boundary has not been suitable for travel restrictions, hence the adoption of an all-Wales approach immediately post-firebreak.

67. The high prevalence or hotspot areas in other parts of the UK are:

- England – until 2 December the entire territory or whenever the lockdown comes to an end (and then all tier 2 “high” and tier 3 “very high” local authority areas)
- Scotland – areas designated as on levels 2, 3 and 4
- Northern Ireland – currently the entire territory

68. The main benefit of an all-Wales approach is that it signals a relaxation after the firebreak and will offer the opportunity for people to travel to other parts of

Wales. From a communications perspective, it is also a simple and straightforward message to explain. The main disadvantages of this approach is that it may draw criticism from low prevalence areas in Wales who may feel they are being exposed to the risk of the virus being carried by visitors from higher prevalence areas.

69. There are several points to consider, but many issues may not emerge until England comes out of its lockdown. Firstly, whilst incidence rates are likely to be high on 9 November, (and possibly broadly comparable to other parts of the UK) we are hoping to see a stabilisation and reduction in prevalence in the weeks after the firebreak. Secondly, the national lockdown in England from 4 November – 2 December will mean that people living in England will not be able to travel to Wales without a reasonable excuse during this period. Thirdly travel *per-se* is not the main transmission risk; that lies in the behaviours and activities undertaken at either end of the trip. A refreshed approach to promoting better behaviours, coupled with the some potential economic benefits for the tourism and hospitality (and benefits for protected groups, who are disproportionately represented in these industries) may counter concerns from low prevalence areas in Wales. Fourthly, we will keep this provision under regular review. Refreshed guidance could seek to deter people from high prevalence areas of Wales travelling to lower prevalence areas or if necessary, new travel restrictions in Wales could be re-introduced swiftly. These may need to apply to a larger area that better reflect functional economic geographies or use a version of “stay local” to avoid problems with narrowly defined local authority boundaries or hyper-local approaches that do not reflect how people normally commute or access services.
70. Legal Services consider that an option which restricted access between areas in Wales and high prevalence areas elsewhere in the United Kingdom, but not access between low and high prevalence areas within Wales (particularly where areas in Wales may have a higher prevalence than areas elsewhere in the UK) subject to restrictions to travel in Wales would run high risks of a successful challenge were a judicial review to be brought. The Welsh Ministers have already received pre-action protocol correspondence from a resident in England, on travel restrictions, and this would be an area which would be likely to invited further challenge.
71. The other option was establishing local authority or regional restrictions on travel from 9 November. These could be applied only to the highest prevalence areas, however this would be inconsistent with taking a national approach after the firebreak. The main benefit of this approach is that it will continue to ‘protect’ lower prevalence areas of Wales and would be consistent with the approach being taken in relation to hotspots in other parts of the UK. The main disadvantage is that the requirement to stay within boundaries will create hardship for those communities and this approach (in relation to local authority boundaries) has also drawn criticism for failing to recognise the ‘real’ connections between places. This option is also likely to have an impact on the tourism and hospitality sector, (and have a negative equality impact as a result). Also relevant is the evidence in CMO advice that the virus is seeded fairly widely across Wales and that in such circumstances, restrictions on travel are less important in reducing transmission.

International Travel

72. Non-essential international travel from Wales and into Wales should now be prohibited from 9 November. People resident in Wales will be able to return to their homes and any returning travellers would be subject to whatever travel regulations were in place at the time they returned. If the country from which they were returning was non-exempt (not on the Travel Corridors list) then the person would need to isolate for 14 days on arrival in Wales.

Childcare and Education*Childcare*

73. Childcare should continue to operate as it did pre-firebreak with regular, informal childcare continue to be an exemption to rules on gatherings

Schools

74. All schools will open from 9 November as pre-firebreak with blended provision for pupils required to self-isolate. This mirrors the approach taken across the UK and in the rest of Europe and responds to the negative impacts on children and young people from requiring schools to close in the first lockdown. Schools in Wales have been provided with guidance on alternative arrangements for classes/bubbles who are unable to attend school due to periods of self-isolation.
75. For pupils not required to self-isolate, blended learning (a combination of on line learning and face to face teaching) is not regarded as a comparable substitute for face to face teaching and would impact disproportionately on more vulnerable and disadvantaged learners.
76. **Further advice will be provided in the event of further restrictions for example if a further fire-break period is decided on, or if local conditions require it.** If there is a need to restrict face to face contact in future, either completely or partly (with for example learners attending one week in two), we would prioritise vulnerable children, those which are digitally excluded, families facing disadvantage and the children of key workers. We will also be producing additional support on blended learning for both teachers and students
77. Current evidence on known health risks from school attendance balanced to known long term harms suggests that all learners returning to school is preferred. **We will however be monitoring emerging evidence on transmission within schools, notably secondary schools and providing additional advice to Ministers if required.**

Further and Higher Education

78. The pre-firebreak model of blended learning in Further Education settings should continue.
79. Higher Education should continue the existing blended learning delivery model. HEIs should be asked to consider remote or distance learning approaches to the

greatest extent possible. This would provide consistency with our position of encouraging and enabling home working which businesses will be expected to take forward.

Economy

80. All non-essential retail businesses, close contact services, gyms, cafés, pubs, restaurants and tourism businesses including accommodation will be allowed to re-open on the same basis as pre-firebreak and there will be no change to the 10pm curfew for alcohol sales in Wales. The financial implications of the post firebreak arrangements and support available for businesses are covered below. As was the case before the firebreak, all open premises will be required to put reasonable measures in place to minimise the risk of restrictions. To avoid any confusion we would be clear that the showing of a film, a market or a religious service does not constitute an event.

81. These provisions, notably the curfew for alcohol sales, will be kept under review with particular attention to the cross-border implications, given that England is entering a national lockdown for one month from 5 November.

82. The following premises that were not open pre-firebreak will remain closed after the firebreak, with the requirement to close to be reviewed every three weeks.

- Theatres and concert venues
- Nightclubs and sexual entertainment venues (though nightclubs that have repurposed as bars under the regulations can re-open, subject to the same reasonable measures and curfew).

83. Work will continue on additional measures that should be adopted under the reasonable measures regulation, for example requiring premises to display specified information such as the level of coronavirus risk and specific risk factors associated with their premises in a prominent place. This should describe how these risks are being mitigated and set out what people using and working in the premises should do. The aim is to address this during the first review of the new Regulations.

Working from home

84. Ministers agreed in Cabinet on 27 October they wish to place greater emphasis on working from home or working remotely and to encourage employers to do more to enable homeworking. This will be promoted via guidance and there remains the option to reintroduce Regulations as part of the review process if it is considered necessary (e.g. to place a duty on employers to enable homeworking). In parallel, the Welsh Government will explore opportunities, initially focusing on Welsh Government activities and estate, to develop more remote working hubs to support a blended approach to home working and reduce longer distance commutes.

Reasonable excuses

85. The previous sets of 'reasonable excuses' have been replaced in the draft regulations to provide additional clarity. These are now listed as either: a purpose that is reasonably necessary and there is no reasonably practicable alternative; or a specific circumstance that is allowable. The latter provides for those identified activities, like attending a wedding, that is not obviously necessary but is allowable.

Other settings

Public services, cultural venues and sporting venues

86. Local authority services closed during the firebreak such as waste recycling centres will resume, reflecting local circumstances. Similarly museums, archives and galleries as well as leisure, fitness centres, skating rinks and swimming pools will all be able to re-open on the same basis as before the firebreak (subject to the new rules on organised activities within those premises).

Places of worship

87. Cabinet agreed to revert to the pre-firebreak position and reopen for worship and all ceremonies with capacity determined by risk assessment. Religious services are therefore exempt from the rules on gatherings.

Enforcement

88. The police will be provided with the power to conduct controls on roads in certain designated areas to ascertain whether people are breaching the travel restriction Regulations.
89. To undertake these controls, a police constable must have written authorisation from a superintendent for the checks (unless the superintendent considers that is a matter of urgency). These can only take place for a period of up to seven days. Authorisation must also be sought if the check is to be extended for a further 7 day period. The person in charge of the vehicle when stopped is also entitled to obtain a written statement of the purpose of the road check from the local police force (no later than 12 months after the check).

Review and duration

90. The new Regulations will be initially reviewed by 19 November and thereafter every 21 days.
91. The Regulations are due to expire on 9 May 2021 six months after they come into force.

Economic, social, equality and environmental impact

92. There remain harms associated with the long-term social and economic impact of continued restrictions. It is evident that the potential long-term economic and societal impacts of COVID-19 is likely to be significant. The Office for National Statistics (ONS) estimated that monthly gross domestic product (GDP) in the UK

in August 2020 was 9.2% lower than the levels seen in February 2020. This follows the unprecedented 19.8% fall in GDP in the second quarter of 2020 (April to June). Although regional GDP figures for that period have not yet been published for that same period, the size of the contraction observed in Wales is likely to be consistent with the UK as a whole. Furthermore, the Business Impact of Coronavirus Survey covering 5 to 18 October found that of businesses currently trading, nearly half (47%) reported their turnover had decreased below what is normally expected for this time of year.

93. There is evidence to show that the economic downturn is now starting to have an impact on the labour market. In Wales the unemployment rate was 3.8% between June to August 2020, compared to 3.2% between January and March 2020. Evidence from previous recessions indicates that the young, the low paid, those with lower levels of qualification; those in temporary and part time employment; the disabled; women; those from minority ethnic groups are the ones that are most likely to suffer adverse effects throughout the crisis and in its aftermath. There is some early evidence that this is also the case for the current crisis. A report conducted by the Resolution Foundation finds that half of those furloughed during lockdown had returned to work by September, 9% of those previously furloughed were no longer working by September. The likelihood that a previously furloughed worker was not in work in September was disproportionately high for workers aged 18-24 (19%) and BAME workers (22%) (Jobs, jobs, jobs report Resolution Foundation 27 October).

Social harms

94. There is a wealth of survey evidence pointing to the social harms from lockdown measures, including significant negative impacts on mental health and wellbeing. The latest PHW Public Engagement Survey on Health and Wellbeing (19 to 25 October) found that 39% of respondents felt lonely at least occasionally, while 61% are worried about their mental health and wellbeing. These harms are particularly acute for the young, and those less able to understand the necessity of a change in routine such as young children or people with autism.
95. There is likely to be an overall negative environmental impact following the fire break due to an increase in travel, as only essential journeys were allowed during the fire break. In the week ending 29 October, road traffic, bus and rail receipts decreased as a result of it being half term and the fire break. Road traffic decreased by 18 percentage points compared to the previous week and stands at 54% of the levels seen on 13 March. This remains higher than a weekday low of 35% which followed the stay at home announcement back in March (Covid-19 Data Monitor 2 November).

Equality impacts

96. The time-limited firebreak impacted on equality and children's rights. These negative impacts were being tolerated on the basis of the risk to public health and the need to re-set the position on transmission of the virus. The post firebreak arrangements will be positive from an equality perspective as businesses will be able to re-open and people will be able to meet others from outside their household, but the restrictions on household meeting will impact on

the ability families living in more than two households to meet which may lead to increasing loneliness and isolation. Detail on the equality and children's rights impacts are annexed. .

- The opening of businesses will have a positive economic impact on people who earn less than the Welsh median average as the JRS scheme only covered two-thirds of their salary and not all businesses will be a position to "top-up" salaries
- Women, young people and employees from a minority ethnic background are more likely to be employed in industries that are now able to open (hospitality, close contact etc).
- Fully re-opening schools and FE colleges will have a positive impact on children living in poverty, many of which are from BAME communities, who may have less space, quiet and be digitally excluded
- Schools opening will also help women as looking after children and supporting them to learn tends to fall more to women than men which impacts on some women's ability to work and their health and wellbeing.
- The lifting of stay at home measures can be positive for women or children experiencing abuse
- The limit on the number of extended households may further exacerbate feelings of loneliness and isolation

Cross-Government Working

97. This advice was prepared with contributions from across the Welsh Government including the Chief Medical Officer, Chief Scientific Officer, Legal Services and Legislative Counsel, Policy Departments and KAS.

Financial Implications

98. There remains wide-ranging and significant financial implications of the restrictions, in particular those around economic activity and the support being made available by the UK and Welsh Governments. This is a fast-moving and rapidly developing situation and detailed financial analysis of all the implications has not been possible.

99. The direct budgetary implications of specific measures are being monitored by Strategic Budgeting and operations teams. The key objective of the Regulations is the protection of public health and 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 is intended to limit the economic and financial impact as far as possible, without putting the public health response at risk.

100. The Welsh Government created an enhanced Economic Resilience Fund of £294.5 million which recognised businesses needed additional support quickly through the firebreak period. The package also includes £100 million fund to help businesses develop in the longer term continues to be available, including the £20 million ring-fenced for tourism and hospitality.

101. Businesses required to close during the firebreak were expected to be able to access the income support for employees available from the UK Government – through the existing Job Retention Scheme or the new expanded Job Support Scheme which was due to come into force on 1 November. The Chancellor had stated that the UK Government were not able to bring the JSS forward to 23 October.
102. In response, on 23 October the Welsh Government increased by £5 million the now £25 million discretionary fund provided to local authorities to support businesses retain those workers at risk of falling through the gaps in support. This increases the enhanced Economic Resilience Fund to £299.5 million. In addition the Welsh Government allocated an additional £5m to the Discretionary Assistance Fund which provides grants to people in need of urgent help during the crisis, including those waiting for benefit payments and those in employment who are facing hardship.
103. The UK announcement on 30 October that a month-long lockdown would apply across England from 5 November included extending the JRS for a month until 1 December with employees receiving 80% of their current salary for hours not worked, up to a maximum of £2,500. (This mirrors levels available to employers under the original JRS in August, which had been scaled back in October to 60%.) All businesses in Wales are eligible in the same way as they would have been for the 'old' JRS, but the previous cut-off date of July (i.e. employees had to have been furloughed before the end of July to be eligible) no longer applies – any employee on the payroll as at 30 October is eligible. Even businesses which have not used the scheme before can now use the newly enhanced JRS (provided they meet the other criteria). The launch of the expected new JSS was postponed.
104. This means the extended furlough scheme is more generous for employers, including in Wales, than it was in October. On 2 November the Chancellor further announced that he will increase support for the self-employed through the Self-employment Income Support Scheme (SEISS). The self-employed will be able to claim state aid of up to 80% of profits in November. This is an increase from the current 40%. More businesses will also be able to benefit from government loan schemes which have been extended to the end of January, while firms can 'top up' existing Bounce Back Loans should they need additional finance.
105. We are awaiting further information from the UK Government on details of any consequential funding as a result of its lockdown announcement in England over the weekend. HMT has indicated that we are once again approaching the ceiling of the guarantee so it is likely we can expect some further funding this year, and HMT intend to provide further detail in the next few days.
106. Ministers have identified a further £294.5 million for the Economic Resilience Fund if it proves necessary to implement a second firebreak in Wales. It is however not clear what financial support will be available to Welsh businesses from the UK Government after 1 December. However, the Prime Minister announced

in Parliament yesterday (2 November) that the furlough scheme will continue to be available wherever it is needed and if other parts of the UK decide to go into measures which require the furlough scheme that is available to them – and that this applies not just now but in the future.

107. Strategic budgeting have cleared this advice: SB1352/5.

Legal advice

108. Legal advice is attached.

Communications and media handling

109. The announcement of post firebreak arrangements was announced via the First Minister's scheduled press conference at 12.15 on 2 November. This has been accompanied by a press release and social media activity. A new public facing FAQ has been published on gov.wales. This initial announcement will be followed by ongoing communications using all Welsh Government channels to raise awareness, activity will include media engagement, social media and paid for advertising. A written statement has been submitted separately.

110. A critical part of post firebreak arrangements will be a public awareness campaign to build support, understanding and bring the population to a new set of normative behaviours to reduce harm. The scale of impact of any NPIs will depend on public adherence.

111. Once made, a copy of the Regulations will be published on the GOV.wales website.

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 checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SB1352/5
	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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CG/2021/08911
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Tom Smithson, have assured the quality of 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.

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Additional copy recipients specifically interested in this advice:

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