

Message

From: Jeremy Miles (Ministerial) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9A4190DF5B8D4B4A879E1C4D5B056D9D-JEREMY MILE]
Sent: 21/03/2020 08:58:39
To: PS Counsel General & Minister for European Transition [ps.counselgeneral@gov.wales]
Subject: Re: URGENT OFF SEN Legal powers for Welsh lockdown Official: Sensitive

Helpful thanks

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From: PS Counsel General & Minister for European Transition <PS.CounselGeneral@gov.wales>
Sent: Friday, March 20, 2020 3:03:13 PM
To: Jeremy Miles (Ministerial) <Jeremy.Miles@gov.wales>
Subject: URGENT OFF SEN Legal powers for Welsh lockdown Official: Sensitive
Forwarding for info but as the FM asked for the advice I thought you would like to see Helen's response.
Thanks

NR

Senior Private Secretary | Prif Ysgrifennydd Preifat

I&S

PS.CounselGeneral@gov.wales

From: NR (Project Team - C19) NR @gov.wales>

Sent: 20 March 2020 14:54

To: Lentle, Helen (OFM - Legal Services Department) <Helen.Lentle@gov.wales>; Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>; Dunning, Diane (OFM - Legal Services Department) <Diane.Dunning@gov.wales>; PS FirstMinister <PS.FirstMinister@gov.wales>

Cc: PS Counsel General & Minister for European Transition <PS.CounselGeneral@gov.wales>; Runeckles, Jane (OFM - Special Adviser) <Jane.Runeckles@gov.wales>; Clifford, Desmond (OFM - Director General) <Desmond.Clifford@gov.wales>; Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>; Wakeling, Sarah (OFM - Legal Services Department) <Sarah.Wakeling@gov.wales>; NR (PSG - HR - Expert Services) @gov.wales>

NR

Subject: RE: URGENT OFF SEN Legal powers for Welsh lockdown Official: Sensitive

Hi Helen,

Thank you very much for this – I appreciate it, especially at such short notice!

Best wishes,

NR

Name Redacted COVID-19 - Project Team

Llywodraeth Cymru / Welsh Government

CF10 3NQ

Ffôn/Tel

I&S

E-bost/Email NR @gov.wales

E-bost/Email : ProjectCovid-19@gov.wales

From: Lentle, Helen (OFM - Legal Services Department) <Helen.Lentle@gov.wales>

Sent: 20 March 2020 14:51

To: NR (Project Team - C19) NR @gov.wales>; Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>; Dunning, Diane (OFM - Legal Services Department) <Diane.Dunning@gov.wales>; PS FirstMinister <PS.FirstMinister@gov.wales>

Cc: PS Counsel General & Minister for European Transition <PS.CounselGeneral@gov.wales>; Runeckles, Jane (OFM - Special Adviser) <Jane.Runeckles@gov.wales>; Clifford, Desmond (OFM - Director General)

<Desmond.Clifford@gov.wales>; Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>; Wakeling, Sarah (OFM - Legal Services Department) <Sarah.Wakeling@gov.wales>; NR (PSG - HR - Expert Services)

NR @gov.wales>

Subject: RE: URGENT OFF SEN Legal powers for Welsh lockdown Official: Sensitive

NR

We have now considered this request quickly in the time available and below is a short summary of the position with regard to current and anticipated powers.

The Civil Contingencies Act 2004

The power to order and enforce a lockdown is, under current legislation, set out in section 20 of the Civil Contingencies Act 2004. The power to make an order is exercisable either by Her Majesty by Order in Council, or where not possible, without serious delay, to arrange for an Order in Council, by a senior Minister of the Crown, i.e. the Prime Minister or a Principal Secretary of State, by making emergency regulations. These powers are not devolved and therefore not exercisable by the Welsh Ministers. It should also be noted that "emergency powers" is one of the listed reservations, in paragraph 47 of Schedule 7A to the Government of Wales Act 2006, and therefore out-with legislative competence. Powers are being sought under the Coronavirus Bill to confer emergency powers on the Welsh Ministers, but clearly that is yet to be enacted. The emergency regulations made under the 2004 Act may make any provision appropriate for the purpose of (amongst other things) protecting human life, health or safety and protecting or restoring the provision of services relating to health. Emergency includes an event or situation which threatens serious damage to human welfare in the United Kingdom or in a Part or region. They may include provision to prohibit movement to or from a specific place, prohibit travel at specified times and prohibit assemblies (section 22(3)). Whilst the Welsh Ministers have powers under the 2004 Act, they are ones exercisable under Part 1, in essence they enable orders to be issued to responders: local authorities, health bodies and fire and rescue authorities, requiring them to take action in response to an emergency.

The Health Protection (Coronavirus) (Wales) Regulations 2020

The Minister made a declaration about there being a serious and imminent threat to public health on 17th March. These came into force on 18th March.

If there are reasonable grounds to believe someone (or a group of people) is or may be infected/infect others, WMs or Public Health consultants can:

- Impose screening requirements on them to inform an assessment
- Impose any other restriction or requirement including isolation to stay at home (so long as proportionate). People can be required to be kept in isolation if necessary or proportionate to do so to reduce risk of infecting others.

We are not suggesting this could be applied to ALL of Welsh citizens and of course would need to be used proportionately.

These will Regulations be revoked on Royal Assent under the Corona Virus Bill.

Coronavirus Bill

Powers relating to potentially infectious persons in Wales.

If a public health officer decides a person is a potentially infectious they can send them for screening and assessment and they can be ordered to stay for 48 hours.

Where a person is confirmed to be infected or reasonable grounds to suspect a public health officer can impose requirements and restrictions as necessary and proportionate in maintenance of public health.

It is a criminal offence if they don't comply with restrictions.

Mass Gatherings

If WMs make a declaration of a serious and imminent threat they can direct closure of premises/restrict gatherings having regard to CMO advice. We should make clear that this could not be relied upon to effect a lockdown.

Also we haven't seen the most recent version of the Corona Virus Bill and the UK Govt deadline for laying amendments is 5pm today.

Happy to discuss.

Regards,

Helen

Helen Lentle

Cyfarwyddwr Gwasanaethau Cyfreithiol/Director of Legal Services

Adran Gwasanaethau Cyfreithiol/Legal Services Department

Swyddfa'r Prif Weinidog/Office of the First Minister

Llywodraeth Cymru/Welsh Government

Ffôn/Tel [redacted] **I&S** for my Executive Assistant Julie Garrett

Ebost/email: helen.lentle@gov.wales or **NR** [\[redacted\]@gov.wales](mailto:[redacted]@gov.wales)

Mae Gwasanaethau Cyfreithiol Llywodraeth Cymru'n ymrwymedig i gydraddoldeb ar sail rhyw, ac mae'r adran wedi llofnodi addewid "Women in Law" Cymdeithas y Gyfraith.

The Welsh Government's Legal Services Department is committed to gender equality, and is a signatory to the Law Society's Women in Law Pledge.

PWYSIG: Mae'n bosibl bod yr ohebiaeth neu'r ddogfen hon ac unrhyw beth sydd wedi'i amgáu gyda hi yn cynnwys cyngor cyfreithiol sydd wedi'i roi yn gyfrinachol i Lywodraeth Cymru, a hwnnw'n gyngor a allai fod yn destun braint broffesiynol gyfreithiol. Os ydych wedi cael yr ohebiaeth neu'r ddogfen hon drwy gamgymeriad, byddwch cystal â rhoi gwybod i'r awdur ar unwaith drwy ei ffonio.

IMPORTANT: This communication/document and any attachment/enclosure may contain legal advice supplied in confidence to the Welsh Government and may be subject to legal professional privilege. If you have received this communication/document in error, please notify the author immediately by telephone.

From: Lentle, Helen (OFM - Legal Services Department)

Sent: 20 March 2020 13:45

To: **NR** (Project Team - C19) **NR** [\[redacted\]@gov.wales](mailto:[redacted]@gov.wales); Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>; Dunning, Diane (OFM - Legal Services Department) <Diane.Dunning@gov.wales>

Subject: RE: URGENT OFF SEN Legal powers for Welsh lockdown

NR

I have just picked this up. Will speak to Neil. We have looked at this already in part so we will get back to you later.

Regards,

Helen

Helen Lentle

Cyfarwyddwr Gwasanaethau Cyfreithiol/Director of Legal Services

Adran Gwasanaethau Cyfreithiol/Legal Services Department

Swyddfa'r Prif Weinidog/Office of the First Minister

Llywodraeth Cymru/Welsh Government

Ffôn/Tel [redacted] **I&S** for my Executive Assistant Julie Garrett

Ebost/email: helen.lentle@gov.wales or **NR** [\[redacted\]@gov.wales](mailto:[redacted]@gov.wales)

Mae Gwasanaethau Cyfreithiol Llywodraeth Cymru'n ymrwymedig i gydraddoldeb ar sail rhyw, ac mae'r adran wedi llofnodi addewid "Women in Law" Cymdeithas y Gyfraith.

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From: **NR** (Project Team - C19) <**NR** [\[redacted\]@gov.wales](mailto:[redacted]@gov.wales)>

Sent: 20 March 2020 13:41

To: Buffin, Neil (OFM - Legal Services Department) <Neil.Buffin@gov.wales>

Cc: Lentle, Helen (OFM - Legal Services Department) <Helen.Lentle@gov.wales>

Subject: FW: URGENT OFF SEN Legal powers for Welsh lockdown

Importance: High

Hi Neil,

Thanks for speaking with me just now.

As discussed, please see below.

Thanks,

NR

Name Redacted COVID-19 - Project Team

Llywodraeth Cymru / Welsh Government

CF10 3NQ

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E-bost/Email : NR @gov.wales

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From: NR (Project Team - C19)

Sent: 20 March 2020 13:27

To: Lentle, Helen (OFM - Legal Services Department) <Helen.Lentle@gov.wales>

Cc: Kilpatrick, Reg (EPS - LG Director) <Reg.Kilpatrick@gov.wales>; Trott, Jo (Project Team – C19) <Jo.Trott@gov.wales>

Subject: URGENT OFF SEN Legal powers for Welsh lockdown

Importance: High

Hi Helen,

I'm NR – I work in the Project Covid-19 Team.

We have received a commission from Carys Evans, the FM's PPS, asking for information on the relevant legal powers that Welsh Ministers have to announce and enforce a lockdown within Wales. At a meeting yesterday, attended by the First Minister, Permanent Secretary, and several Welsh Ministers, the question of lockdown legal powers focused on the Civil Contingencies Act 2004, and references to emergency powers for public health crises. However, we need clarity on what relevant powers Welsh Ministers would have in this scenario.

We would be grateful for a response on this **ASAP or at the latest 15:00 today**, as the Permanent Secretary would like to review this information at 16:00 ahead of a meeting with the First Minister at 18:00 today. I appreciate this is a very tight deadline, but if you have any questions, please let me know.

Best wishes,

NR

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