

Review of Coronavirus protections – 21 December

Exempted from publication under Section 35 – Policy in Development of the Freedom of Information Act 2000

Decision required

To agree whether outdoor events should be permitted after Christmas Day and to discuss any potential modifications to previous alert level two protection to come into force from 27 December.

Summary

1. This paper builds on recent Cabinet discussions about the omicron variant and the wave of infections expected in January. While there remain uncertainties, advice from TAC and the CMO for the review on 16 December (CAB(21-22)62) has been to introduce as stringent measures as early as possible to flatten the potential peak in hospital and ICU admissions which could overwhelm the NHS. However, without wage support schemes in place from the UK Government like the Job Retention Scheme (JRS) and the Self-Employment Income Support Scheme (SEISS) the harms from restrictions cannot be mitigated in the same way as previous waves, ruling out the most stringent measures at this stage (particularly given uncertainties and unknowns highlighted by TAG).
2. At the meeting on 16 December, Cabinet agreed to a package of measures and messages for the week up to and including Christmas day (CAB(21-22)62 and subsequent further note). At that meeting Cabinet agreed to consider the package of additional restrictions that would be needed in Wales from 27 December. Alert level two was identified as a potential starting point for considering protections that could have an impact in flattening the peak of cases and hospitalisations, whilst keeping as much of the economy open as possible. It was agreed, however, that nightclubs should be closed and social distancing and other mitigations required in shops and offices. While large indoor events were identified as particularly risky, additional advice and options were sought in order to consider:
 - Whether outdoor events should continue under current mitigations, be asked to implement additional mitigations, or be required to stop.
 - Options for different approaches to elements of alert level two given the context has changed since the last time higher alert levels were used.
3. Separate advice is being prepared on financial implications and options for supporting affected businesses in the absence of UK Government wage support.

Large outdoor events

4. A discussion paper on outdoor events was provided to Cabinet with associated legal advice on 20 December (discussion paper included at **Doc 1**). This highlighted the issues and summarised engagement with stakeholders. It also included advice

from both the Technical Advisory Cell and Public Health officials. In line with the Public Health and CMO advice that the safest option would be to suspend events, Cabinet agreed that large events would be prohibited from 26 December, with professional sports continuing behind closed doors.

5. This decision has been included in a press release and the decision will be taken forward in the drafting of regulations. The announcement includes highlighting financial support will be made available through a spectator support fund, details of which will be finalised in consultation with stakeholders.
6. The decision on events informs discussions on the wider package of measures to be included from the 26/27 December. No decisions have yet been made in other parts of the UK to cancel or curtail large events, close any premises, or re-introduce wider legal restrictions. It has been recognised this may create circumstances in which Welsh citizens travel to England for events or activities prohibited in Wales. This could involve large numbers in some circumstances (e.g. football).

Consideration of alert level two measures

7. Discussions at Cabinet on 16 and 20 December identified alert level two as the most realistic basis for a suite of protections that could be introduced, whilst being able to bring in a financial package of support that could mitigate some of the economic harms relative to the public health risk. As part of discussions on 20 December, a breakdown of the different provisions in the regulations at alert level two was provided (**Doc 2**) alongside a discussion and options for amendments.
8. Options for adopting higher alert levels would be more viable if the UK Government were to reinstate wage support schemes, like the JRS and SEISS. Further advice can be prepared if UKG reinstates these schemes, which would widen choices given harms to the economy can be better mitigated. This paper focusses on advancing discussions on alert level two measures that could be put in place from 26/27 December, in addition to those already agreed.

Considering the changed context

9. Doc 2 highlights further detail on the changed context in which any decision to move wholly or partly to alert level two is being made. It notes that the rollout of boosters, risks of additional economic harms (in particular lack of JRS / SEISS), and increasing concerns about population fatigue may mean elements of the alert levels might be argued to be no longer proportionate. These factors could mean that alert level two as currently set out may not achieve the same levels of adherence or public acceptance as during previous waves.
10. Most materially the lack of wage support (both the inability to implement in the same way and a lack of new funding from HMT) will mean interventions are likely to have a greater economic harm and opportunity costs than when previously implemented. Economic harms are happening without restrictions of course, so the harm being caused by new restrictions is not a binary either/or choice (albeit one harm is from lack of action and the other from direct action via restrictions).

11. We will also be implementing alert level two type interventions in moving up the alert levels (adding protections) whereas previously we have moved down the alert levels (relaxing from alert level three). There is the risk some elements of alert level two will create a great deal of political or press interest (e.g. placing new restrictions on weddings at short notice) and draw attention away from the basic messages. This may argue for related amendments to maintain support for measures and focus on key messages (particularly where guidance is being relied upon).

Considering potential implications of changes

12. In general terms, to keep regulations as simple as possible there will be anomalies. However, some parts of the regulations have built up over time and become complex as a result, in particular those within private homes. The need to create a series of exemptions for complex social and support networks has resulted in very complex rules in private dwellings, many of which people may not understand.
13. The desire for simple and consistent approach (as far as possible) has meant it has been difficult to amend one part of the regulations to address the concern of a particular group or sector without then creating new anomalies and claims of unfairness from others. However, many rules still have a series of exceptions.
14. Different parts of the regulations also interact with each other, such as the rules on gatherings and the reasonable measures (e.g. rule of 6 is then used to determine size of groups that need to be socially distanced between each other in a public place). Differences (e.g. between numbers allowed to gather in private homes versus public places) have previously been justified by differences in relative risk or enforceability, but are a key source of tension for the public.
15. The principal benefit of the alert levels are that they bring together a package of measures that work together and are generally consistent and rational. Adjusting them would have uncertain effects, particularly if they are made less stringent.
16. Maintaining the current framework as far as possible should make implementation smoother in the run up to Christmas as previous guidance for alert level two can be quickly refreshed. There is limited time available to make wholesale changes to guidance and communication materials if they are to be published quickly.

Explaining the rationale for additional protections and when they will be released

17. The rationale for introducing alert level two measures may be difficult to communicate when other parts of the UK are not doing the same. Wales currently has the lowest case rates in the UK (or at least not rising as quickly as other parts) and has relatively low and declining pressures on the NHS. Announcing measures may seem counterintuitive to some, though widespread media coverage of the risks of omicron will help as will be able to point to published TAG advice.
18. We will need to be open about the uncertainty that still exists about the level of pressure the NHS will be under, but that there is a very real risk that the explosive growth of omicron could lead to unsustainable pressure high above previous peaks. By introducing measures on 27 December we hope to flatten that peak. Despite

CABINET

CAB(21-22)63

this, we could still see very high levels of pressure on the NHS, but it will be more manageable than if no new protections were in place.

19. Given the uncertainty, the outcome could be in both directions. It could be worse than expected, and in that scenario the actions taken now will help reduce the impacts on our NHS and reduce deaths. However, it could be better than we expect which might enable protections to be removed quickly, particularly if observed precautionary behaviour change seen in the last few weeks continues. What we will not have is certainty before decisions need to be made. If the worst case turns out to be the path we are on it will already be too late to stop it or slow it down.
20. In light of this we may want to emphasise that these decisions are being made to provide some certainty about restrictions that are likely to be needed. We could offer reassurances that all regulations will continue to be kept under review and if new evidence emerges that offers reassurance our NHS will not face unsustainable pressure then we will seek to remove these additional protections.
21. There is also a scenario where announcements are made in Wales and in the following days much stricter restrictions are announced in England. However, Cabinet are making decisions on the basis of the specific situation in Wales.

Decisions needed on alert level two package

22. The regulations relating to alert level two are summarised in detail in Doc 2, which has previously been provided to Cabinet for discussion. Further to the Cabinet discussion on 20 December key issues have been extracted and options set out for decisions in **Doc 3**.
23. The starting point for Doc 3 is that unless covered in that document it is assumed existing alert level two regulations are retained (as set out in Doc 2). Alert level two regulations are already published. Doc 3 therefore seeks a number of decisions on potential amendments to alert level two; these should be considered in light of the changing context and considerations set out earlier in this paper.
24. It has already been announced that nightclubs will close on 27 December and more recently that sporting events will not be permitted from 26 December. It is proposed all other elements of alert level two come into force on 27 December to align with the announcement for nightclubs. This minimises any disruption caused by changes in gathering rules in private homes (if retained). This would mean that all events over 50 people outdoors or 30 people indoors would be prohibited from 26 December with the remainder of the regulations coming into force on 27 December.
25. **Cabinet is asked to:**
 - a. **agree options for amendments to alert level two as set out in Doc 3**
 - b. **agree revised alert level two regulations should come into force on 27 December (with large events prohibited from 26 December)**

Covid passes and use of Lateral Flow Tests (LFTs)

26. A separate discussion paper has been provided on the pros and cons of extending the Covid pass as part of this package of protections and the potential role of Lateral Flow Tests (LFTs). This is set out in **Doc 4**.
27. TAG advice has been that the Covid pass should be supplemented by the use of a LFT within 24 hours, and guidance has since changed to recommend everyone 'flow before they go', even in places where the Covid pass is required.
28. The principal issue with expanding use of the Covid pass at this time is that the rationale for the pass is weakened once omicron becomes dominant and boosters are not fully rolled out. This is because of concerns about the degree of vaccine escape of omicron and that two doses (as currently on the pass) may not be sufficient to prevent infection and lower transmission. As such, any expansion of the Covid pass should be paused until vaccination status in the pass can incorporate boosters in determining whether a 'full course' has been completed. This is not expected until mid-January (by which time everyone eligible should have been offered a booster).
29. The alternative to rolling out the pass would be to move to a LFT only system. However, moving to a system that relies on proof of negative LFT only (even if only on a temporary basis) has a number of issues. This risks undermining the role of the Covid pass (which would not be relevant to the new checks). It could also risk undermining the push for wider vaccine take-up if it leads to vaccines being seen as not effective. There will also be difficulty in communicating and explaining a complex change (which could be seized on by anti-vaccine protesters). It would also create additional demand for LFTs (dependent on scope), which are already experiencing pressures on supply and distribution. LFTs will also be used for a growing number of purposes, including the introduction of Daily Contact Testing.
30. On this basis (and the further detail provided in Doc 4) **it is not proposed the Covid pass is rolled out further at this stage, but this position is revisited once boosters are incorporated into the pass** (potentially in mid-January).

Communications and publication

31. We announced our intention to introduce new restrictions from the 27 December on the 16 and 17 December. We are promoting the 'stay safe this Christmas' message linked to the announcement through a rapid advertising campaign with a small budget of £50,000.
32. We will need to agree a date to announce the full details of the 27 December protections to allow the public and sectors to prepare as on 16 and 17 December we outlined the measures at a very high-level.
33. If restrictions are elements of AL2 and not the full move to the familiar AL2, a range of comms assets and new bespoke guidance will need to be drafted, cleared and translated at speed to be published before 27 December. Relevant departments will need to be on stand-by to engage with their sectors on the new restrictions.

CABINET

CAB(21-22)63

34. Familiarity of rules – a move to fully alert level two restrictions would at least of the benefit of familiarity among the public and allow us to revise and use existing communications materials.
35. If Cabinet decided to proceed with further restrictions beyond those we announced on the 16/17 December, we will again need to consider when to announce the decision and the accompanying comms activity that will be required. For example, banning crowds at Christmas sporting functions or introducing legal restrictions on meeting in homes would be significant announcements.
36. We will also need to consider the communications resources needed to react at short notice to any significant announcements by the UK Gov over the Christmas period. All our communications activity will continue to be underpinned by the latest stage of the Keep Wales Safe campaign 'Disrupt' (which began on 6 December) with its focus on behaviours and vaccination and will continue as planned..

Financial implications

37. Separate advice is being prepared for Cabinet on the financial support package that can be made available linked to bringing in alert level two restrictions.

Legal advice

38. Legal advice is attached at **Doc 5**.

Recommendation:

To agree any amendments required to alert level two regulations and for them to come into force on 27 December.

To agree not to expand the use of the Covid pass at this time.

**Mark Drakeford MS
First Minister
December 2021**