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Llywodraeth Cymru
Welsh Government

From:

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Irrelevant & Sensitive

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Date:

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MINISTERIAL ADVICE

For decision by: First Minister

Copied to: All Ministers and Deputy Ministers

Subject	Review of lockdown measures, including the requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020
100 word summary	This advice provides a view on the impact and effectiveness of lockdown measures, including the requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020. This review is carried out under regulation 3(2) and is the review required by 7 May; subsequent reviews are required every 21 days.
Timing	Urgent. A decision is required by 7 May to meet the requirements of regulation 3(2).
Recommendation	<p>The First Minister is asked to agree:</p> <ol style="list-style-type: none"> 1. To retain the requirements and restrictions set out in The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, subject to amendments set out below. 2. The Written Statement at Doc 2. 3. To encouraging the following activity which involves a mix of policy choices, communications, engagement with stakeholders and amendments to Regulations (noting advice on specific Regulatory amendments and associated guidance will follow): <ol style="list-style-type: none"> a. Improving health and wellbeing by allowing greater use of outside spaces for the purposes of exercise. This will involve relaxing the number of times allowed for exercise to support this; b. Supporting the increase of economic activity in areas already allowed to open (but not choosing to do so) and allowing some currently closed

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	<p>economic activity outdoors to resume. This will involve amendments to the businesses allowed to open under Schedule 1.</p> <p>c. Resumption of some limited public services, starting with libraries and household waste and recycling centres. This would involve amending the reasonable excuse for being outside to include access to public services and amendments to references to libraries in the Regulations;</p> <p>d. A continued and gradual increasing of essential non-Covid activity in the healthcare system. This does not require changes to the Regulations.</p> <p>4. To a programme of engagement with stakeholders in a wide range of areas to prepare plans to move incrementally out of lockdown restrictions and put in place guidance and protocols to adapt to a 'new normal'.</p> <p>5. To offer views on priority areas in which to explore phased easements in preparation for the next review (28 May); initial priorities identified are for education and childcare settings, public transport, the public realm, and for businesses not currently allowed to open.</p>
Decision report	This decision does not require a Decision Report as it relates to legislation.

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ADVICE****Background**

1. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 came into force at 4:00pm on 26 March. These were amended by The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 on 7 April 2020 and The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 on 25 April. The Regulations as amended are referred to in this advice as “the Regulations”.
2. The Regulations impose temporary restrictions on gatherings and the movement of people, and requirements and restrictions on the operation of businesses, including closures, in Wales. This has been done to minimise the extent to which people leave their homes to help reduce and control the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
3. Regulation 3(2) requires Welsh Ministers to review the need for restrictions and requirements under the Regulations every 21 days, with the first review carried out on 16 April 2020 (MA-FM-1287-20). This advice constitutes the second review. The next review will be required by 28 May 2020. The Regulations expire on 26 September 2020, subject to prior approval of the Senedd.
4. There is also a requirement for Welsh Ministers to publish a direction terminating any requirement or restriction no longer necessary to respond to the prevention, protection, control or public health response to the incidence or spread of infection in Wales (regulation 3(3)). Regulation 3(4) clarifies the direction referred to in regulation 3(3) can relate to requirements or restrictions in relation to, or description of, specified businesses or services.
5. Since the last review on 16 April you published *Leading Wales out of the coronavirus pandemic: a framework for recovery* (24 April). This provides a framework against which we will assess whether the time is right to move out of lockdown and to assess specific measures in line with the wider recovery, social, environmental and economic, from the pandemic. This advice is structured around that framework.

Decision-making process

6. In accordance with the Regulations the imposition of, or continuation of, a requirement or restriction has to satisfy the following conditions:
 - A. It must be for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination.
 - B. There must be a threat to public health.
 - C. The restriction has to be a proportionate thing to do considering what the restriction is intended to achieve.
7. An ongoing review process has been put in place to consider the applicability and proportionality of the requirements and restrictions set out in the Regulations as soon as issues arise or situations change. This has been put in place to

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ensure that restrictions can be lifted as soon as they are no longer necessary and do not rely on this three-week review cycle. This is particularly important where evidence suggests there are no health benefits from retaining restrictions.

8. The focus of the three week reviews is to consider the entire suite of measures, requirements and restrictions and their interactions as a package with the overall health objectives. This is informed by the latest scientific evidence from SAGE and the Welsh Government's Technical Advisory Cell, as well as the advice from the Chief Medical Officer for Wales.
9. The extent to which restrictions are necessary to contain the coronavirus is the most fundamental assessment. It considers the ongoing level of threat to public health and the purpose of the measures, requirements and restrictions in delivering this objective. These are described in this advice as pre-conditions, which determine whether there remains scope for adjustments (with technical amendments to be considered on an ongoing basis through the ongoing regulatory review process). This assessment of pre-conditions also incorporates the mitigation measures that are in place that would allow for restrictions to be mitigated, such as testing and tracing capability, healthcare capacity and availability of PPE.
10. The proportionality of the response needs to be tested for different interventions and combinations of interventions, where there are clear health impacts from removing them. The complex interactions and interdependencies between those interventions makes it impossible to assess individual restrictions in isolation and outside of a wider strategy for moving out of lockdown. A number of single restrictions assessed in isolation might each be considered disproportionate (given prevailing underlying conditions), but in aggregate are proportionate. The restrictions were imposed as a package because of their aggregate impact on containing the virus, and the easing of restrictions should also consider the aggregate and route out of lockdown. Relaxing measures one-by-one based solely on the proportionality of the individual restriction risks worsening other harms by lacking a strategic direction.
11. The testing of these wider impacts is evolving as we begin to test more complex scenarios and packages of potential easements. Following the publication of *Leading Wales out of the coronavirus pandemic: a framework for recovery* work is ongoing to refine these considerations of the impact of proposals on the four harms and the impacts on environment, social, environmental and equality impacts. These have been considered in this advice and further work will be undertaken to continue to strengthen that analysis.

Summary / Recommendations:*When to begin lift restrictions*

12. When to begin lifting any restrictions will need to be driven by the underlying conditions and ability to deliver against the public health objectives for which the lockdown and associated requirements and restrictions were imposed. The evidence suggests that **some limited increased economic activity, attendance at schools, activity outdoors and some restarting of public services, including additional healthcare**, could take place without

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undermining the public health objectives under which measures, requirements and restrictions were introduced. Preparatory work should also be undertaken over coming weeks to put in place phased plans and protocols with stakeholders to prepare for the safe wider opening of economic and social activity, when the time is right to do so.

What measures, requirements and restrictions to lift

13. What measures, requirements and restrictions to lift and in what order will first and foremost need to reflect the ability to do without undermining public health objectives and their subsequent re-imposition. Once there is sufficient headroom to begin lifting measures, requirements and restrictions (eg. testing, surveillance, contact tracing in place) the choice of which to lift and in what order will need to balance a wide range of factors from economic to social and wellbeing to equality and more. It is clear any easements will need to be introduced cautiously and in a phased manner, not least to instil confidence in the safety of doing so.
14. In line with SAGE advice and wider consideration of economic, social and wellbeing objectives, some areas have been identified where activity could resume without materially affecting the rates of transmission and public health objectives. These are mostly within the scope of existing restrictions, with some minor amendments required. Encouraging some more activity, supported by minor easements could strengthen adherence to the remaining measures, requirements and restrictions. The areas recommended to be taken forward as a result of this review are:

- A. **Improving health and wellbeing by allowing greater use of outside spaces for the purposes of exercise, health and wellbeing.** The latest SAGE advice is that, subject to continued physical distancing and not gathering in groups, outdoor activity represents limited risk of increasing community transmission rates. Outdoor activity has significant health and wellbeing benefits for everyone and could reduce indirect harms associated with lockdown. In relation to the regulations this points to removing the restriction on the number of times allowed for exercise. Associated guidance would need to be updated. These changes are likely to be required by Monday 11 May to align with the approach in England.

This activity could be further supported through engagement with responsible authorities about the latest advice and supporting the opening of public spaces (e.g. closed parks, gardens or nature reserves), where this can be done safely and for the benefit of local residents. Honeypot sites would remain closed to deter tourists. These are decisions already allowable within the Regulations, and are to be made by those responsible authorities.

There is still work required to understand whether wider leisure activity for health and wellbeing purposes can be allowed without weakening the purpose of the Regulations, in particular given social distancing would need to be maintained. There is not enough evidence about the potential behavioural change that allowing this additional activity will have and it would become unenforceable in practice. Further advice will be prepared on this as proposals for regulatory changes are put forward, considering further how a four-nation approach to this issue could be maintained.

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- B. Increasing some economic activity in areas already allowed to open (but not choosing to do so) and allowing some currently closed economic activity outdoors to resume.** SAGE have modelled this kind of activity would not materially affect transmission rates in Wales. There are significant benefits associated with resuming economic activity by reducing social and economic indirect harms as well as on wellbeing and health benefits. Continued physical distancing and safe working practices remain essential and people who can work from home should continue to do so. The risk associated with work is lowest in outdoor locations if physical distancing is maintained. This suggests both an initial focus on encouraging those businesses that involve working outdoors to resume economic activity (e.g. construction, conservation) and removing restrictions on others that prevent them opening (e.g. outdoor markets). Amendments to the Regulations would be required to remove outdoor markets from the list of businesses required to close under Schedule 1, Part 2 and potentially amending the businesses operating under restrictions in Schedule 1, Part 4. These changes are likely to be required by 11 May to align with England.

Most of the areas of economic activity under this recommendation are not currently closed by the Regulations (other than the duty to put in all reasonable measures to ensure 2m distancing). The Welsh Government already has guidance in place linked to the 2m distancing requirement and is working with businesses, trade unions and business representative groups to develop more specific guidance and protocols. This work will be accelerated to support safe economic activity. Increased numbers of people returning to work could also increase the use of schools for those already allowed to attend, but this has also been considered by SAGE as not likely to cause rates of community transmission to rise above 1. For those businesses that are required to stay closed, our emphasis should be on preparing now for future safe working (e.g. developing guidance, protocols and adaptations) when the time is right.

- C. Resumption of some limited public services, starting with libraries and household waste and recycling centres:** Advice from TAC indicates these activities could be introduced within this review period, and they could be signalled as something we will work with stakeholders to trial in advance of the next review period of 28 May. Changes would need to be made to the reasonable excuses in the Regulations to allow for accessing public services and libraries would need to be relisted in Part 4 of Schedule 1 to the Regulations, which would require other amendments.
- D. A continued and gradual increasing of essential non-Covid activity in the healthcare system:** there remain significant constraints in the healthcare system, but a continued but gradual building of capacity for non-Covid essential activity (eg. A&E, cardiac, cancer treatment, elective surgery) would allow safe thresholds for future activity to be established. The maintenance and further scaling up of activity will continue to be dependent upon workforce availability, PPE and testing. This does not require any changes to the Regulations.

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15. It should be noted that the areas set out above fall within the scope of a number of different responsible authorities who would need to be closely involved in determining appropriate lead-in times, including possible wider implications (e.g. on staff, testing, enforcement). This includes engagement with the police, enforcement bodies, local authorities, businesses, trade unions and others to explore fully risks and mitigating actions for any change in approach and to identify potential unintended consequences. Any easing of requirements and restrictions will need wider coordination and clearer communication, which in turn is reliant on a more detailed forward plan for future review periods. A number of these changes are in part driven by the timetable of the UK Government in order to maintain a four-nations approach and ensure clarity of message. We will endeavour to coordinate changes to Regulations with counterparts across the UK to maintain a four-nation approach as far as possible, given similar amendments are under consideration in each nation.

How to ease measures, requirements and restrictions

16. How measures, requirements and restrictions are eased will need to vary dependent on the situations concerned, reflecting differences in settings, places, and capacity. Adaptations will be required to settings and places, protocols and guidance developed in partnership, staffing pressures considered, wider resources pressures understood (e.g. finance or transport), and public reassurance and clear messaging established. Lead-in times will therefore vary, and preparatory work should begin now for not just the areas recommended for change, but also those that will come in the future. This approach would be consistent for calls from a wider range of stakeholders for appropriate preparatory time, including businesses and trade unions, as well as the National Police Chiefs Council call for 'no surprises' and the need to be clear about responsibilities and messaging (including the role of different agencies).
17. In particular we will need to ensure we at least replicate the broad areas of guidance the UK Government (UKG) intends to publish next week and work is underway at pace by the UKG on a number of these. Our approach to the 7 May Review (in the absence of 4-nation guidance or Welsh equivalents) could signal that wider engagement will take place in these areas, and more, to understand how activity can resume safely when the time is right to do so. The UK guidance documents can provide a useful starting point for some of those broader discussions in areas like the public realm and transport. We can already point to being more advanced in some areas, such as the statutory duty imposed on persons responsible for work to take all reasonable measures to ensure 2m distance is kept as well as a duty to have regard to the guidance published by the Welsh ministers under regulation 7A. As a minimum we would need to work with stakeholders on:
- A. How to open up all different types of **business and workplace** safely, building on the 2m physical distancing duty and guidance and experience to date across Wales and beyond.
 - B. How to operate **transport systems** safely as capacity is built up and more people seek to use different services or ways to travel, with an opportunity to promote active travel.

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- C. How to deliver **education and childcare** provision under a 'new normal' and how this can be carefully phased over time, including in school settings, HE/FE institutions, other education and learning settings, and childcare settings.
- D. How to adapt the **public realm** under a 'new normal' so the public can access services and travel safely, including pedestrian movement (e.g. pavements and high streets), public facilities (e.g. toilets, parking), shopping centres; taking into account the need for specific adaptations for disabled people.
- E. How **recreation** might resume in a safe way, including sports and other leisure activities (note: golf courses are considered in the assessment on opening public spaces as an area where opening could be supported safely).

Advice from the Chief Medical Officer for Wales and Technical Advisory Cell

18. Advice from the Chief Medical Officer for Wales (CMO) is critical to inform all three of these areas (when, what and how). A statement from the CMO is provided in **Doc 1**, setting out his advice for this review period. The full advice from the TAC on the scientific evidence informing this review is also provided at **Doc 3**.

Compliance

19. Compliance with existing restrictions appears to be positive (albeit with a slight recent decline) and there is widespread support for measures from citizens, businesses, social partners and the wider public sector at this time. Enforcement to date appears to be proportionate with compliance through guidance and advice proving effective and limiting the need for extensive use of penalty notices so far. Compliance with wider measures could be reinforced by easing some areas where there is limited risk of transmission rates increasing. Evidence from EHOs on compliance and enforcement is provided in **Doc 4** and compliance information from survey data at **Doc 5**.

Summary of evidence considered in making recommendations*Pre-conditions for coming out of lockdown¹*

20. The latest evidence on the headroom we have to make steps to move out of lockdown reflects the impacts not only of the lockdown measures implemented through policy and the requirements and restrictions set out in the Regulations, but also a wider change in behaviour by the public, businesses and other organisations. This goes beyond what is technically required by the measures, requirements and restrictions put in place. The public messaging, and the linked behavioural response, is likely to have a significant impact on the underlying conditions against which assessments are made about releasing measures or relaxing requirements and restrictions. Latest SAGE modelling (05 May) indicates the increase in economic activity, take-up of school provision, and use of outdoor

¹ PILLAR 1: Measures and evidence; PILLAR 3: Strand 1 (Surveillance) and Strand 2 (Case identification and contact Tracing)

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spaces set out in the recommendations would not lead to a significant increase of community transmission, nor a return to exponential growth.

21. A summary of the pre-conditions is provided at **Doc 6. This indicates an improving situation, but limited headroom for significant changes.**

Surveillance systems, case identification and contact tracing are essential, but not yet fully operational, in order to create additional headroom to support wider easements of lockdown measures. The headlines from this analysis are:

- A. Rate of Rt: estimated at 0.87 for Wales, though this could be lower. Good progress, but limited scope for easements that would increase rates of transmission. Different rates evident for different epidemics, with care home epidemic likely to have Rt above 1.
- B. NHS and care home capacity: Improving and theoretically NHS able to cope with short-term surge, but significant constraints remain. Capacity much more limited in care homes, with the peak lagging that for community and hospital/healthcare settings, in which it is not clear it has been reached.
- C. Surveillance, case identification and contact tracing: Major constraint on any substantive easement beyond the recommendations set out. Some progress on testing availability, but current estimates are that capacity to track, trace and isolate will not be ready in Wales until 31 May.
- D. PPE availability: improving situation, but constantly changing picture. Increased demand from any significant increase of infection likely to be exacerbated by wider demands should other sectors open or broader activity resume requiring PPE. Work is in hand to model demand and establish whether supply is sufficient for social care.

'Circuit-Breaker' mechanism

22. In order to monitor any future easements of measures, requirements and restrictions we need to agree trigger points to determine if they may need to be re-imposed. Those trigger points would also inform whether additional restrictions are required not currently in place (e.g. should compliance break down or additional economic activity create a surge in Wales not anticipated by modelling). As knowledge about disease transmission increases (for instance the contribution of children, the contribution of fomites vs. aerosols), more precise measures may be considered. We are seeking a four-nation approach to these indicators and Wales is leading these discussions via SAGE.

23. Based on available data the following trigger points are being proposed and discussed across the UK:

- A. If a reliable estimate of Rt (median) for the population of Wales is greater than or equal to 1.1.
- B. If the doubling rate for new hospital admissions (all Wales community acquired) is shorter than 30 days and decreasing for consecutive measurements, and/or current occupancy for suspected and confirmed patients is above 1200

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- C. 3. If the total critical care bed occupancy (for COVID and non COVID patients) is above 180 and COVID numbers are increasing for 7 consecutive days
 - D. 4. If the critical care occupancy for suspected and confirmed COVID patients above 120 and increasing for 7 consecutive days.
24. These indicators will be shared with SAGE and SPI-M with the ambition of informing indicators that may be suitable for monitoring covid-19 and may be adapted as part of a four nations approach. These will be further developed and a consensus reached for inclusion in the next review.
25. Additional indicators will also be considered to track NHS staff absences as a potential predictor of Covid-19 hospital admissions, and data on care homes. Once testing capacity is increased and effective surveillance systems in operation, we may be able to incorporate testing data and from the Zoe Symptom tracker app.

Assessing options against the seven tests²

26. There is a broad international and scientific consensus that restrictions should be lifted gradually, informed by likely impacts on transmission rates. This suggests restrictions on the use of outdoor spaces could be early ones to be lifted when possible, which could help reinforce compliance with remaining measures. Relaxation of outside activities (but not children's playgrounds or outdoor gyms with hard surfaces) is not thought to increase R significantly and could prove beneficial for mental and physical health. In Wales this may also point to reconsidering restrictions on exercise or use of public paths and land.
27. The First Minister sought views from Cabinet colleagues on what the priority areas would be to move out of lockdown. Based on likely impact on transmission rates, the returns from departments, and views on likely priorities for the UK Government and other Devolved Administrations, the following areas were identified for early consideration: opening up public spaces; increasing economic activity; increasing essential healthcare services. Views from policy leads and analysts are summarised in Docs 8, 9 and 10 in light of the seven questions and other considerations. These have informed the recommendations in this advice.
28. The desire for a four-nations approach will inevitably sometimes drive timetables, in order to ensure consistency of message and support compliance and understanding. Our preference would be to announce proposed areas for future easements in advance (e.g. for the next review period), which would allow for related protocols and implementation arrangement to be developed in good time and in close partnership with stakeholders. To mitigate against the quickly evolving nature of the evidence base and different approaches across the UK we should instead engage in as many areas as possible with stakeholders in order to have guidance and protocols development for when the time is right (rather than waiting for the time to be right before doing that work). This would mitigate against significant changes in the evidence base, which could mean earlier

² PILLAR 2: Principles to evaluate changes to the restrictions

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easements are possible, but requires staff resources to be redirected accordingly to support this process. While we would prefer a lead-in time of at least two weeks will allow for engagement with stakeholders, development of any necessary protocols and guidance, any adaptations, legislative implications to be fully assessed and addressed, and for equality and other impact assessments to be carried out this may not always be possible. As much as can be done in advance will shorten those lead-in times.

Phasing and monitoring of easements

29. It takes at least three weeks (three to four weeks depending on data sources) for the impact of any changes in approach to appear in the data. Different countries have adopted very different approaches to easing restrictions, with some opting for a rolling series of easements (e.g. France has announced weekly easements in advance) and others a more phased approach (e.g. Ireland has announced 3-weekly packages of easements).
30. In order to attempt to understand the impact of easements, whilst also bringing online as much economic and other activity as possible, our approach will need to be sequenced in line with the developing continuity and recovery plan. It will also need to consider phasing approaches across the UK, with which there may be benefits in aligning where objectives continue to align. Irrespective of this sequencing, engagement should continue at pace, or start where it has not done so, to consider how different sectors can operate safely under a 'new normal' and the incremental steps needed to get there. This should feed directly into the continuity and recovery plan and the cycle of 21-day reviews. This could mean:
- A. Setting out an indicative continuity and recovery plan or route-map as soon as possible, split into phases in which complimentary packages of easements can be signalled well in advance. This would give a broad outline to inform planning for different sectors (e.g. education, tourism or non-essential retail may be longer-term considerations).
 - B. Using the period around the review dates to signal those areas in which we expect easements to begin by the next review date. This allows for implementation and monitoring arrangements to be put in place and broad stakeholder engagement, including for any enforcement measures.
 - C. Implementing packages of agreed easements, should conditions remain favourable, in at least three-week cycles. If this is aligned with the review dates there should be sufficient information available to inform viability of the announcement of future easements.
31. We also need to consider the potential need to re-impose restrictions should underlying conditions deteriorate beyond acceptable parameters. This should be done as soon as possible should the indicators under the 'circuit-breaker' mechanism be triggered. The ongoing review of the Regulations outside of the review periods also allows for adjustments to be made to the Regulations, guidance, or introduction of new legislation as required.

Coordination across the UK

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32. The recommendations set out in this advice are broadly consistent with those we understand to be considered by the UK Government and other Devolved Administrations. This should allow for a consistent four-nations approach to be maintained over the course of the bank holiday weekend and the remainder of this review period. The biggest risk of divergence appears to be in terms of the strength of the message from the UK (as yet unknown) and the changes being considered by 1 June (following 28 May review). We need to be clear in our own preparations which areas we want to build evidence for by the beginning of next week to allow sufficient time to build the evidence based for what could be a much more complex decision (and higher risk of divergence from England).
33. The UK Government (UKG) has been working at pace over the last week to develop a suite of guidance and communications plans to prepare for the easing of restrictions. Significant resource has been directed by UKG to these activities over a very short period, which it is impossible to keep pace with. There is also limited visibility of this work. The most urgent activity has been under the banner of the 'safer places' programme. This has five key strands, for which guidance is in preparation and targeted engagement activity taken place:
- A. Workplaces (BEIS): Seven guidance documents on different types of workplaces, developed with a selected group of stakeholders, including businesses, trade unions and trade bodies. Officials were offered the opportunity to comment on Sunday 3 May. These are high-level frameworks rather than detailed guidance and have attracted public criticism from unions with delays expected, as PPE concerns are addressed.
 - B. Transport (DfT): We do not know what the content of the guidance will look like and DfT were waiting on advice from SAGE on the applicability of the 2m rule on public transport and the potential mitigations that could be put in place.
 - C. Public spaces (MHCLG): Guidance was in development over the last weekend in order to have something ready for publication. This will cover adaptations to the public realm including flows of people on pavements and high streets, communal surfaces in public facilities like toilets and car parks, and settings like parks, green spaces, or shopping centres.
 - D. Education (DfE): Guidance on the adaptations to different education settings and ways of working, with discussions between officials to date focussed on schools. There appear to be many unanswered questions about how social distancing can operate and numbers managed, how education settings might be adapted, how teaching staff can feel safe, logistics for travel to and from school and ramping up operations (eg. cleaning, food services), etc.
 - E. Recreation (DCMS): No contact has been made in this area, but we expect this to include guidance on individual sporting and leisure activity. Internationally some attention has been paid to professional sports introducing training and preparing for behind-closed-doors activity. Guidance might cover sport and leisure where social distancing is more viable, such as golf or outdoor sporting / leisure activity (e.g. tennis courts, bowling greens, etc.).

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34. All these UKG departments are preparing guidance for possible publication from 7 May (though potentially not until 10 May) and over the course of next week. There has been some engagement on some of these, but predominantly on the scope and process. The pace of the work has meant guidance is still in development and has not been shared with the Devolved Administrations (with the exception of the workplace guidance shared for comment on Sunday 3 May, prior to submission to the SoS on Monday).
35. The Devolved Administrations have all expressed a preference for a four-nation approach to guidance where possible, but this has not been feasible given the pace at which guidance is in preparation and the approach being adopted. The expectation is that most of the above guidance will be published from 7 May onwards. It is not clear what the status of this guidance will be, but given the limited engagement process we might expect these to change as further engagement takes place. In any case these documents could provide a basis for opening discussions with Welsh stakeholders where we do not currently have guidance. In addition, and if those UKG documents evolve, the opportunity potentially opens up, should Ministers wish, to seek to covert some of them into four-nation documents by incorporating the views of the Welsh Government and Welsh stakeholders.
36. In terms of work settings the Welsh Government has already amended the Regulations to impose a duty on those responsible for work to take all reasonable measures to ensure 2m is kept between persons in places (indoor or outdoor) where and when work is being carried out. Guidance has been published to which those responsible must have regard and the Welsh Government continues to work with stakeholders, so is arguably already ahead of the UKG in this area.
37. What little UKG guidance we have seen is generally broad and flexible and does not conflict with advice already in the public domain, including our own on the 2m rule. The different pieces of advice will have different cross-UK implications and there are question marks over the interaction with the Welsh position given the statutory duty which applies here, but not elsewhere in the UK. Those on workplaces and transport in particular will have most impact across the border as businesses will operate in both England and Wales, and transport services cross the border. These are the areas in which we will want as close an alignment as possible as divergence will be difficult to manage, and may not even be possible in areas like travelling on trains when services cross the England-Wales border.

Next Steps

38. We expect there to be a COBR(M) to consider the latest evidence before the UK Government announces the outcome of its review. It is not expected that any major changes to restrictions will be announced immediately, but we do expect the Prime Minister to set out forward guidance on Sunday as to when the public and businesses can expect to see different elements of the lockdown lifted. The UKG will also almost certainly publish a suite of guidance and we will want to signal our intention to work in partnership with stakeholders across Wales to develop plans for easing lockdown when the time is right.

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39. A cross-Government group of senior officials has been established to oversee the work of the 21-day reviews. It will continue to meet at least once a week to plan and prepare for the next review period (28 May).
40. A forward schedule of possible easements will be developed, drawing on the responses to the First Minister's letter and the work of the continuity and recovery board Chaired by the Counsel General. This will inform the next set of measures to be assessed against the four harms and seven tests set out by the First Minister. Further advice will need to follow the detail of specific legislative actions in relation to amending regulations or issuing directions to ease the restrictions
41. Our forward schedule will also be driven in part by the development and pace of work by UKG, with a need to keep pace to maintain a four-nation approach where possible. This may involve prioritising those areas where divergence would be most difficult to manage, such as broadening economic activity or increasing transport capacity. The UKG appears to have Monday 18 May as a key date for announcements with the NHSX app launch, contact tracing capacity, and an increase in rail capacity all scheduled for this date.
42. The assessment approach being developed under Doc 11 will be developed further with policy leads, legal services and analysts to address weaknesses in the data and wider evidence. Any areas Ministers want to progress for easement to be implemented by the next review date (28 May) will be prioritised for impact assessments and legislative consideration. Where easements are planned to be introduced, monitoring plans will be drawn up to track their impact.
43. We will continue to review and develop the 'circuit breaker' conditions to act as a trigger for the reintroduction of any eased measures before any substantive easements are introduced. Officials in KAS, COVID Project Team and TAC will continue to consider these indicators in light of feedback and developments in data sources.
44. A programme of engagement led by policy departments is urgently required to develop the detail of how lockdown measures can be lifted gradually and protocols developed, to feed into both future reviews and the Continuity and Recovery Plan.
45. Key stakeholders, including business representatives, trade unions, the police and fire services, and the WLGA have been engaged in outline terms on this advice. All are supportive of a cautious approach, and emphasise the need for close engagement to develop plans further. Their ongoing engagement will be critical in further developing advice and in ensuring that easements can be effectively implemented. There is due to be a meeting of the Shadow Social Partnership Council in the week commencing 18 May, with the intention to augment membership with attendees who can give a broader perspective on Covid-19 recovery. This meeting will be an opportunity to explore the issues involved in easing lockdown and taking a view on the best overarching approach to stakeholder engagement and developing sector advice in social partnership

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

Financial Implications

47. There are wide-ranging and significant financial implications of the lockdown itself, in particular restrictions around economic activity and the support being made available by the Welsh Government. This is a fast-moving and rapidly-developing situation and detailed financial analysis of the implications has not been possible. The key objective of these Regulations is the protection of public health.
48. The financial implications of the impact of the epidemic are being considered across Welsh Government. The Regulations require the termination of any requirement or restriction no longer necessary to respond to the prevention, protection, control or public health response to the incidence or spread of infection in Wales. This advice outlines a process to ensure a continuous review of requirements and restrictions in the Regulations, or parts of them, so they can be lifted as soon as possible, based on evidence on the effectiveness of measures on the spread of infection. This will limit the economic and financial impact as far as possible, without putting the public health response at risk.
49. A specific concern linked to any future divergence in approach is the significant levels of support provided by the UK Government, in particular the Job Retention Scheme. Should this be stopped or phased out in line with UK Government policy choices around lockdown (e.g. opening up economic activity and limiting or stopping support for those sectors) before Wales is ready or willing to do so we can expect Wales-based businesses to seek equivalent support from the Welsh Government. At present this is not an issue given the similar progression of the epidemic and scientific evidence for releasing measures, requirements and restrictions in Wales and England, but could become an issue as decisions become more complex in the future.

Legal issues, powers & statutory duties

50. The Welsh Ministers are required by regulation 3(2) to 'review the need for restrictions and requirements imposed by these Regulations every 21 days, with the first review being carried out by 16 April 2020'. The key tests applicable are:
- i. Whether the restrictions or requirements are still needed for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection of the coronavirus in Wales; and
 - ii. Whether the restrictions or requirements remain a proportionate response to that purpose.

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51. Consideration will specifically be needed to be given to the ongoing effect and therefore necessity and proportionality of the restrictions and requirements in preventing, protecting against, controlling and providing a public health response to the incidence and spread of the coronavirus, based on the medical evidence of their effect.
52. As part of that decision-making process, there are other statutory to be met, in particularly as set out in the public sector equality duty as well as ensuring compliance with rights under the European Convention on Human Rights. Further advice on risk is set out in Legal Advice in Doc 12.
53. This MA makes reference to the seven tests, those being set out in Pillar 2 of the framework for recovery recently published by the Welsh Government. Many of the questions or tests set out in the framework will inevitably inform the decision-making around the necessity and proportionality of restrictions and requirements imposed by the Regulations, albeit as a whole the framework will inform the wider programme for recovery from the pandemic.

The legislative vehicle for altering the lockdown restrictions

54. Our preference is to use our powers under section 45C of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") to amend the Regulations.
55. Any amending regulations must meet the requirements in the enabling powers in the 1984 Act:
- a) The provisions of the regulations must be for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection.
 - b) If restrictions are continued to be imposed, they must be in response to a threat to public health.
 - c) The restriction must be proportionate to what they are intended to achieve (i.e. preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection of COVID-19).
56. However, the Regulations themselves also have in-built provision about terminating the restrictions imposed by them.
57. Regulation 3(3) imposes a duty on the Welsh Ministers to publish a direction terminating a restriction as soon as it is considered "no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection".
58. Regulation 3(4) confers a power on the Welsh Ministers to terminate restrictions by direction in relation to—
- i. a specified business or service or a specified description of business or service;
 - ii. a specified description of persons;
 - iii. a specified part of Wales
59. The Regulation 3(3) duty was included in the Regulations to provide protection for the public against restrictions remaining in place longer than necessary and

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therefore disproportionately interfering with individual rights. This was thought to be particularly important in late March when there was doubt as to when the Senedd would begin to sit again and be able to provide democratic oversight of the Welsh Ministers use of the powers in the 1984 Act.

60. The power in Regulation 3(4) complements that duty. If the lockdown restrictions were to be lifted by Ministerial direction, it was felt sensible to have this flexibility available.

61. There are 3 issues with the provisions about terminating by ministerial direction—

- I. **The procedure lacks democratic oversight** – Terminating restrictions is a fundamental element of lifting the lockdown. Yet doing so by direction excludes the Senedd from having a role in agreeing or otherwise to the lifting of lockdown restrictions. In contrast, making amending regulations means the Senedd is required to decide whether to approve any changes to the lockdown restrictions (even if that approval is sought retrospectively under the emergency procedures which allow regulations to be made urgently).
- II. **It raises other rule of law issues** – A termination direction does not formally revoke or amend the provision in the Regulations. Anyone reading the Regulations would not know that a restriction no longer had effect. And a termination cannot be reversed by simply withdrawing the direction. Any re-imposition of a terminated restriction would require amending regulations to be made.
- III. **The duty to terminate “as soon as” a restriction is no longer necessary is problematic.** It is a blunt test which does not reflect the more nuanced nature of the enabling powers. By requiring termination as soon as a restriction (as currently in force) is no longer necessary we may be fettering our ability to amend and adjust restrictions as the response to pandemic shifts over time and our view as to what constitutes a proportionate response shifts.

We could find ourselves in the difficult position where we want to substantively amend one of the lockdown restrictions but, by doing so, it could be argued that the restriction as unamended must therefore be considered to be no longer necessary and we are therefore under a duty to terminate the restriction by direction. A revised restriction would then have to be introduced by new regulations.

62. In light of the above, we do not consider there to be a case for retaining the provisions enabling termination by ministerial direction and we therefore propose that they are removed at the earliest opportunity.

63. As our response to the pandemic has developed, it has become clear that out and out lifting of the restrictions on the basis of a simple decision as to their necessity is not an appropriate way to approach a gradual lifting of the lockdown. The existence of a duty to terminate on that basis is therefore a hindrance to a more sophisticated approach based on an evolving view of what constitute proportionate measures.

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64. In addition, the Senedd is now sitting regularly and there is less of a case for taking action without the opportunity for the Senedd to formally approve it.
65. Removing the duty to terminate unnecessary restrictions could be argued to dilute the protections inherent in the Regulations against a disproportionate interference in people's rights. Having said that, amendments to the Regulations must satisfy the conditions in the enabling act (including the proportionality test) and the Welsh Ministers have an ongoing obligation to consider the proportionality of existing provisions from an ECHR perspective. Ministers could give a clear undertaking to the Senedd that any adjustments to the Regulations would take account of the proportionality and necessity of the restrictions as an effective public health response to the pandemic. To reflect that undertaking, the duty to review the regulations could be adjusted to require proportionality to be an explicit consideration in each review.
66. Furthermore, the Regulations will expire on 26 September 2020. The restrictions cannot continue beyond that date unless new regulations are made or amending regulations are made to change the expiry date.
67. In short, we think the existence of the provisions relating to termination of restrictions by direction is more trouble than it is worth and we would recommend removing them alongside other amendments being made to the Regulations as part of the current review.

Communications and media handling

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

Annex 1: ASSURANCE AND COPY RECIPIENTS

CLEARANCE TRACKING

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

DIRECTOR, STATEMENT OF ASSURANCE

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

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

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

COPY LIST

All mandatory copy recipients for Policy MAs.

Additional copy recipients specifically interested in this advice:

<ul style="list-style-type: none"> • All Ministers & Deputy Ministers • All Special Advisors • Chief Medical Officer • Andrew Goodall • Tracey Burke • Andrew Slade • Des Clifford • Reg Kilpatrick • Debra Carter • Zowie Hay • Jo Trott • Toby Mason 	<ul style="list-style-type: none"> • Rob Orford • Name Redacted • Fliss Bennee • Helen Lentle • Dylan Hughes • Neil Buffin • Terry Kowal • Jo-Anne Daniels • Chrishan Kamalan 	<ul style="list-style-type: none"> • Name Redacted • Peter McDonald • Neil Surman • Jo Salway • Name Redacted • Andrew Jeffreys • Will Whiteley • Government Plenary Business
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