



Llywodraeth Cymru
Welsh Government

From:

Name Redacted

Cleared by:

COVID-19 Legislation

Date:

Neil Surman

31 July 2020

MINISTERIAL ADVICE

For decision by: First Minister

Minister for Health and Social Services

Copied to: All Ministers, Deputy Ministers and the Counsel General

Subject	Amending the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020
100 word summary	<p>The First Minister is asked to agree the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 3) Regulations 2020.</p> <p>If the First Minister is content the Legislative Codes Office will provide a final version of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.3) Regulations 2020 that he will be asked to make today.</p>
Timing	<p>URGENT.</p> <p>The First Minister is asked to agree the Regulations urgently to enable them to be made and laid before the Senedd today. They will come into force at the beginning of Monday, 3 August 2020.</p> <p>The Minister for Health and Social Services is asked to agree the Explanatory Memorandum for laying today.</p>
Recommendation	<p>The First Minister is asked to:</p> <ol style="list-style-type: none"> 1. Note the current draft of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (Doc 1) and agree to sign the final version on 31 July 2020. 2. Agree the letter (Doc 2) to the Llywydd in order to make her aware that the Regulations have been made. 3. Note the advice on scheduling the debate to approve the Regulations and agree to their being debated on 26 August 2020.

	<p>Subsequently, that the Minister for Health and Social Services is asked to:</p> <p>4. Agree the Explanatory Memorandum (Doc 3) and for this to be laid with the Regulations today.</p>
Decision report	<p>This decision does not require a Decision Report.</p>

ADVICE

Background

1. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “original Regulations”) were revoked and replaced by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the “principal Regulations”) on 13 July 2020.
2. Regulation 4 of the principal Regulations requires the Welsh Ministers to review the need for restrictions and requirements under the Regulations, and their proportionality, every 21 days, with the first review to be carried out by 30 July 2020. This approach follows the review approach established in the original Regulations, which were last reviewed on 9 July 2020.
3. Following the 9 July review, you signalled that if the conditions allowed further changes would need to be made to the principal Regulations to reduce the restrictions and requirements necessary to provide a public health response to the coronavirus pandemic. The principal Regulations have subsequently been amended already, therefore, by:
 - a. the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020, and
 - b. the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020.
4. This advice sets out proposed changes to the principal Regulations, following the review held on 30 July to reflect a further easing of existing restrictions and requirements (as set out in MA/FM/2240/20).

Advice

5. Following consideration of advice and given the steer provided by Cabinet, the Office of the Legislative Counsel have drafted amendments to the principal Regulations. The amendments will:
 - a. allow outdoor gatherings of up to 30 people;
 - b. permit indoor hospitality for pubs, bars, cafes and restaurants to reopen (but not allow venues where dancing is to take place to open for that purpose);
 - c. permit bowling alleys, bingo halls and auction houses to reopen.

Outdoor gatherings of up to 30 people

6. There is a current restriction on members of more than two households gathering outdoors without reasonable excuse, and to prevent mass gatherings there are restrictions which mean that up to 30 people may meet outdoors for an organised outdoor activity (subject to certain requirements). We now propose the restriction on the number of households meeting can be relaxed, such that up to 30 people can gather outdoors. Setting a limit of 30 would be consistent with previous

changes, and will ensure that mass gatherings are still not permitted. It has the benefit of being easy to understand.

7. To achieve this change it will be necessary to amend the Regulations so as to once more make separate provision for gatherings indoors and gatherings outdoors. The indoor gatherings provision will stay the same, but there will be a new regulation for gathering outdoors.
8. This is necessary because there continues to be a need for a reasonable excuse for gathering indoors with someone from one other household. But these circumstances are not required for gathering outdoors in a group of less than 30. Despite moving to a simpler and more flexible position outdoors, it is still considered necessary for there to be a reasonable excuse – in very limited circumstances – where you can go beyond 30. We are proposing this is limited to the need to:
 - a. work or provide voluntary or charitable services;
 - b. where the person is an elite athlete, train or compete;
 - c. meet a legal obligation;
 - d. access or receive public services;
 - e. access childcare or participate in supervised activities for children.

We do not propose including escaping harm or danger because it seems to us that people escaping a fire in a block of flats say are probably not “gathering” (and even if they are it is clearly reasonable for them to do so and it doesn’t need to be said).

9. Organised outdoor activities, including team sports and classes, up to a maximum of 30 people will still be expected to carry out risk assessments as responsible bodies for those gatherings, in order for them to take all reasonable measures to minimise risk of exposure to coronavirus. This will not be a requirement set out in the Regulations, but will be emphasised in our guidance on gatherings.

Reopening indoor hospitality

10. From 13 July pubs, bars, cafes and restaurants have been permitted to open outdoors. You have indicated that if this limited reopening goes well and if the state of the virus allows, indoor opening for pubs, bars, cafes and restaurants would resume from 3 August.
11. There has been limited re-opening in terms of numbers, but the consensus amongst the industry and other key stakeholders, has generally been a positive response to re-opening outdoor hospitality across Wales. Operators, staff and customers are generally observing the guidance and respecting social distancing and the other Covid-19 safety measures we have put in place.
12. The recommendation to fully re-open pubs, bars, cafes and restaurants on 3 August would align with the further re-opening of tourism that has taken place and the UK Government’s ‘Eat Out to Help Out’ scheme (which begins on 3 August).

13. By opening such venues up for indoor hospitality brings with it questions as to whether certain types of places that have a bar would still need to be closed. The Regulations for England provide that “nightclubs”, “sexual entertainment venues” and “hostess bars” still have to be closed. They also make provision about the closure of “discotheques”, “dance halls” and “other venues” that are open at night, have a dance floor and provide music to dance.
14. It therefore seems that (from a public health perspective) the mischief here is primarily dancing and noise. This is because of increased exertion, high likelihood of social distancing not being followed and people having to talk or shout over music (again leading to people coming closer or expelling more droplets).
15. We consider that the type of venue is not particularly relevant, instead it is clearer if the activity is targeted, and therefore propose requiring venues where music (live or recorded) is provided for the purposes of dancing, and sexual entertainment venues¹, to be closed. This means venues which would normally be open for dancing can still open for other reasons (in practice nightclubs etc. have to be closed unless they decide to redesign themselves as a pub/restaurant).

Reopening bowling alleys, bingo halls and auction houses

16. Based on the preparation of guidance, the mitigations presented and the state of readiness following engagement, the recommendation from officials is that bowling alleys should be allowed to reopen.
17. Officials have also engaged extensively with the industry and are content that bingo halls and auction houses have put in place the appropriate mitigations to enable them to now open safely.
18. For Bingo Halls officials are content for member companies to utilise the Bingo Associations key principles for COVID secure operating guidance, which has been adapted for Wales. The Bingo Association guidance is based on a version produced by DCMS for English Clubs which was approved by DCMS and PHE. The Bingo Associations’ guidance will go on the Association web site and copies will be sent to all operators in Wales and all four operators in Wales have signed up to use of the Guidance.
19. For Auction Houses in Wales there is a loose association to the National Association of Auctioneers and Valuers (NAVA). Officials have liaised, through NAVA with Welsh auction houses, and it is understood that the sector will likely opt to principally operate online auctions for the foreseeable future and take viewings by appointment.
20. Where the intention is that Auctions Houses become fully open to the public on a general basis, officials will work with NAVA to ask members in Wales to conform to two separate pieces of guidance in order to ensure that the sector is aware of the mitigations and practices that need to be implemented and observed to allow

¹ “Hostess bars” seem to be a specific phenomenon in legislation that applies to London only, we consider that only “sexual entertainment venues” need to be referenced in our Regulations

such activity to take place in a way which reduces the risk of virus transmission. These guidance documents are *Coronavirus (COVID-19) social distancing guidance for everyone in Wales* and *Keep Wales safe at work: Workplace guidance for employers and employees during the coronavirus (COVID-19) pandemic*.

Technical amendments

21. In consequence of these changes we also need to make some minor and technical amendments, and will take the opportunity to correct minor errors in the Welsh language text of the Regulations.

Coming into force

22. All of the proposed amendments will come into force in at the beginning of Monday, 3 August 2020.
23. A letter from you to the Llywydd is at Doc 2; this notifies her that the amending Regulations have been made.
24. An Explanatory Memorandum has been prepared (Doc 3) and is provided to the Minister for Health and Social Services for agreement, in advance of the amending Regulations being laid before the Senedd later today.

Guidance

25. Amendments to guidance are being made to support the regulatory changes. The core guidance documents will be submitted to your office shortly and subsequently published on the GOV.wales website.

Senedd debate

26. In accordance with the requirements of the Public Health (Control of Disease) Act 1984, these Regulations are subject to the 'made affirmative' procedure and must be approved by the Senedd within 28 days of being made (this does not include any time the Senedd is in recess for more than 4 days). Therefore, taking account of recess, the Regulations must be approved by 11 October 2020.
27. The Senedd is now in recess but Business Committee has two planned recall dates to allow the Senedd to consider matters relating to the coronavirus pandemic: 5 and 26 August.
28. There are therefore two options available for the Senedd to debate these Regulations:
- a. on 26 August (i.e. in the second recall slot). The first recall date would not be available to debate these Regulations, without suspending Standing Orders; or
 - b. on a date between 14 September and 11 October (i.e. after recess).

29. The First Minister will be aware of the concerns raised by Business Managers recently regarding the delay between the making of Regulations which follow the made affirmative procedure and the debate and vote to approve them. We recommend the first available time for consideration is chosen, namely 26 August.

Legal advice

30. The power to make the Regulations is set out in sections 45C, 45F and 45P of the Public Health (Control of Disease) Act 1984. Any requirement or restriction, or amendment to the same, must be made in response to the serious and imminent threat to public health which is posed by the incidence and spread of the coronavirus and Ministers must be satisfied that they are proportionate to what they seek to achieve, which is a response to that effect. You must therefore be satisfied based on appropriate medical advice, that the Regulations meet that aim and that the lifting of restrictions can be justified on the basis that they are no longer proportionate.
31. Further legal advice on the proposed changes and the risks attaching to decisions to ease restrictions and requirements is set out in MA/FM/2240/20.

Financial implications

32. This advice concerns the making of the Regulations that were originally agreed in MA/FM/1533/20 - Review of lockdown measures, including the requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020. That advice set out the financial implications of the measures.
33. There are no immediate additional financial implications arising from this advice. Costs associated with the development of the Regulations arising have been and continue to be met from within existing administration costs.
34. As advised in MA-L/VG/0809/20, in the event of a very severe pandemic, it was anticipated that there would be a considerable burden on existing health services and other public services. The Welsh Government has already made significant allocations to public services to enable them to deal with the financial implications of the pandemic. As the situation is on-going the true extent of the financial impact is currently difficult to measure.
35. There are unquantified costs for Local Authorities as a result of this advice, which will be considered as part of ongoing discussions with Local Government on support for the cost implications of the COVID-19 pandemic.
36. The Welsh Government has received additional funding in the form of consequentials and these have been allocated to a central Covid-19 Reserve. This reserve has been supplemented by re-prioritised funding which is allocated via the "Star Chamber" process initiated by the First Minister.
37. We are continuing to monitor the financial implications of the pandemic and will undertake further re-prioritisations as necessary whilst also seeking to ensure the UK Government provides the required level of funding to Wales as set out by the Statement of Funding Policy. We have also set in place the processes to identify all expenditure being incurred outside of Covid 19 Reserve allocations within Main

Expenditure Groups. This will enable us to gain a complete picture of the financial implications for Wales to support any future claim against the UK Government reserve.

38. It is not possible at this stage to provide a complete view of the financial implications for the purpose of this briefing. Many measures have been funded but there are still likely to be significant costs to be met over the next few weeks and months. Officials are continually monitoring this and will provide further briefing via the Covid 19 Finance Dashboard and updates to Cabinet.

Communication engagement and media activity

39. Communications handling, including factoring any possible changes to the Welsh Government's overall public health messages are being developed further and proposals being discussed with special advisers and Ministers.
40. A Written Statement to Members of the Senedd and a press release has issued on the forthcoming changes. There will be ongoing social media ahead of the changes coming into force.
41. The new Regulations (and a document showing all of the amendments) 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EPS/FM/15/20
	Cleared by Group Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GH2020/7622
	Cleared by Strategic Budgeting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SB1199/5
	Cleared by Local Government Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	LGF/068/20
Legal	Legal issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	X	<input type="checkbox"/>	<input type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Neil Surman, 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 (as indicated in the guidance).

Additional copy recipients specifically interested in this advice:

- Dr Frank Atherton
- Tracey Burke
- Andrew Goodall
- Desmond Clifford
- Chris Brereton
- Gill Richardson
- Dylan Hughes
- Neil Buffin
- Terry Kowal
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