



Llywodraeth Cymru
Welsh Government

From:

Name Redacted
Restart Division

Cleared by:

Liz Lalley
Deputy Director - Recovery

Date:

19 November 2020

ADVICE

For decision by: **First Minister**

Copied to: **All Ministers and Deputy Ministers**

Subject	Review of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020
100 word summary	The First Minister is asked to agree to broadly retain the restrictions introduced following the end of the firebreak in Wales on 9 November. The advice recommends some changes in principle to the enforcement provisions following a review of the Fixed Penalty Notice regime and some generally technical amendments.
Timing	URGENT. A decision is required by the end of Thursday 19 November to meet the requirements of the Regulations.
Recommendation	<p>The First Minister is asked:</p> <ol style="list-style-type: none"> 1. To agree to retain the restrictions in The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020, subject to several technical amendments (set out in paragraph 14). 2. Note the review of Fixed Penalty Notices at Doc 5 and agree in principle to several amendments to Fixed Penalty Notices provisions (set out in paragraph 12) subject to officials resolving various operational issues in the coming days. 3. The publication of the Chief Medical Officer statement at Doc 1. 4. The draft Written Statement at Doc 2.

Decision report	This decision does not require a Decision Report as it relates to legislation.
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ADVICE

Background

1. The original Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 came into force on 26 March and were subsequently replaced by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 on 10 July.
2. These were in turn revoked and replaced by the Health Protection (Coronavirus Restrictions) (No.3) (Wales) Regulations 2020 which provided for a firebreak period from 23 October until 9 November. Following this firebreak, the Health Protection (Coronavirus Restrictions) (No.4) (Wales) Regulations 2020 came into force and are referred to in this advice as “the principal Regulations”.
3. The principal Regulations impose temporary restrictions on gatherings and the movement of people, and requirements and restrictions on the operation of businesses, including closures, in Wales to help reduce and control the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
4. Regulation 2 of the principal Regulations requires Welsh Ministers to review restrictions and requirements by 19 November. They must then be reviewed every two weeks up to the Christmas period (by 3 December and 17 December). Following the 18 December they must be reviewed every 21 days, in keeping with the requirements in the previous versions of Regulations prior to the firebreak.

Recommendations

5. The 17 day firebreak was designed to be a ‘short and sharp’ intervention to help bring coronavirus back under control following the rapid spread of the virus in many parts of Wales. The principal Regulations aim to provide a set of new national measures which replaced those put in place for the firebreak, including in areas formerly under local restrictions.
6. As with all previous 21 day reviews of coronavirus restrictions, this review considers the effectiveness, necessity and proportionality of all these restrictions on people and businesses in Wales.
7. Cabinet agreed on 16 November the following three overlapping principles be applied to the first review on 19 November:

Stability of restrictions –Scientific advice has always been clear it is unlikely any change in the prevalence of the virus in Wales as a result of the firebreak will become apparent until 2 to 3 weeks after it has ended. It is reasonable therefore to not seek to substantially amend the restrictions in place after only 2 weeks. This is in keeping with the careful approach Ministers said they again wished to take as when we came out of lockdown in the Spring.

Consequence of change - Any early changes in the restrictions are likely to impact on the objective to provide clear and simple national rules following the firebreak. Further changes are likely to result in complicated exceptions, which in turn are likely to reduce public understanding of the restrictions and therefore impact negatively on compliance.

Collective package of measures – Early changes to any element of the restrictions are likely to impact negatively on the credibility of the entire package of restrictions. This package of restrictions was designed to balance protecting people's health with providing as much freedom as possible and allowing educational setting to remain open while the virus remains in circulation. The ambition was this package of rules remained broadly in place until the Christmas period.

8. This approach is generally consistent with the principles used in establishing the firebreak.
9. The Chief Medical Officer agrees there is not yet a clear understanding of the effect on conditions following the firebreak to support any easement of restrictions. It is recommended you agree to the publication of his statement, attached at **Doc 1**.
10. A table setting out the current post-firebreak restrictions is attached at **Doc 3**.

Fixed Penalty Notices

11. Ministers have been clear that Fixed Penalty Notices (FPNs) should be retained as the primary enforcement tool for most Covid-related offences, where other tools such as engagement and education have not proved effective. Ministers are asked to note the review of fixed penalties at Doc 1 and agree in principle to regulatory changes to larger penalties and to the penalties for businesses who do not take all reasonable measures. If Ministers agree to these in principle, a draft Explanatory Memorandum and regulations to provide for these changes will be submitted to Ministers next week.
12. Ministers are asked to agree in principle that:
 - a) The fixed penalty of £10,000 for unlicensed music events is replaced with a requirement for criminal prosecution. The penalty for this offence would instead be an unlimited fine issued by a court.
 - b) The £1000 fixed penalty for failing to self-isolate as required following international travel is reduced to an initial £200, rising on second and subsequent offences. This change would apply to the main offence of failing to self-isolate without a reasonable excuse, and also to the offences of obstructing or failing to comply with a direction from an enforcement officer under the International Travel Regulations.
 - c) Local authorities be given the power to issue penalty notices as an alternative or precursor to closure when required set at £1000.

- d) The fixed penalty for international travel operators for failing to provide information about quarantine requirements is reduced from £4000 to £1000.

13. This issue is set out in more details in paragraphs 41 to 48.

Technical amendments

14. It is recommended Ministers agree some generally technical changes to the principal regulations. Specifically:

- a) The principal Regulations should be amended to provide that information on parents can be shared, if necessary, in instances where a child is required to self-isolate.
- b) The 'sunset clause' of the regulations which provide local authorities with various powers to close premises etc. be amended to 19 February 2021, to be consistent with the principal Regulations.
- c) The local authority functions regulations should also be amended so that local authorities must have regard to the restrictions in the principal Regulations, including the prohibition on organising an event of more than 15 people indoors or more than 30 people outdoors, when exercising powers on the holding of events.
- d) The local authority powers regulations should be amended to allow local authorities to bring prosecutions themselves.

15. These proposed amendments are set out in more detail in paragraphs 48 to 56. Draft regulations to provide for these changes will be included with any changes to FPNs next week.

Issues to note

16. Ministers are asked to note issues regarding the provision for extended households that will likely be revisited at the next review, due by 3 December. These are set out in paragraphs 56 to 62.

17. Ministers are also asked to note potential next steps to require businesses to display specified information, such as the level of coronavirus risk and specific risk factors associated with their premises in a prominent place. This is described in paragraphs 63 to 67.

18. Finally, Ministers are asked to agree the draft Written Statement at **Doc 2**.

Public health situation

Coronavirus spread and impact

19. Early indications are that the firebreak has led to a reduction in the numbers of daily confirmed cases. This reduction in case numbers is encouraging, but should be treated with caution, as this could be a result of many factors, including different testing patterns. Positivity rates have fallen, but remain high

across Wales, and hospital occupancy is similar to the April peak (TAC briefing 13 November).

20. It is estimated that the daily growth rate of infections could be between -3% and +2% per day in Wales (12 November). The latest estimate of R for Wales from SAGE is between 0.9 and 1.2. Public Health Wales have also estimated R_t for Wales using data on the number of positive cases. As of 8th November 2020, R_t in Wales is estimated to be 0.78 (95 % confidence interval 0.77 – 0.80). This is down from last week's estimate of 1.07 (TAC briefing 13 November).
21. The seven-day incidence rate for Wales between 9 to 15 November has come down to 163.5 cases per 100,000 people. This has fallen from 206.2 per 100,000 people in the previous 7 days, and from 274.7 per 100,000 people around the start of the fire break (26 October to 1 November). However these rates are still high across most of Wales, with Conwy, Gwynedd and Anglesey the only Local Authorities below the red threshold for incidence (50 cases or higher per 100,000) (PHW, 18 November).
22. The seven day incidence rate up to 15 November continues to show significant variation across Wales, with Blaenau Gwent (334.9) and Merthyr Tydfil (270.2) recording the highest incidence rates, and Anglesey the lowest at 28.6. The test positivity rate over the same period remains high at 13.1% for Wales as a whole, with rates ranging from 2.8% to 19.6% across local authorities.
23. In the 7 days to 12 November 2020, an average of 91 people a day were admitted to hospital as confirmed or suspected with COVID-19; broadly similar to the 7 days to 26 October (93). 1,156 beds were occupied with COVID-19 related patients in the 7-day period to 12 November; this is an increase from 791 in the 7-day period to 26 October prior to the fire break. The number in ICUs with COVID-19 is 60, which is higher than it was for the 7-day period to 26 October (44). The summary at **Doc 4** provides a table and charts of the progress of key indicators.
24. The growth in the number of new cases across the UK is starting to slow following the introductions of lockdowns across all four nations, however this has yet to result in a fall in new cases (with 20,051 confirmed cases on 17 November). The growth rate per day estimated by SAGE across England is between 1% and 4% (TAC briefing 13 November).
25. Globally total cases exceed 54m worldwide and deaths now over 1.3m. Europe continues to account for nearly half of all new infections worldwide, while North America's share grows to around 25% of worldwide cases. In response, many comparative European countries have introduced full or partial lockdowns and of these countries only Austria and UK have yet to see a fall in new cases (FCDO Global Covid 19 dashboard, 16 November).

Mitigations

26. There are no immediate concerns with **PPE availability** but **increasing pressure on NHS capacity is a significant concern** as the numbers in hospitals continue to increase. Indicators linked to NHS capacity are annexed.

27. The turnaround of tests for Test Trace Protect (TTP) in all centres remains high compared to historical trends, and the proportion of tests returned within one calendar day has increased compared to the previous week. On contact tracing, between 1 and 7 November, 79% of positive cases eligible for follow-up were reached within 48 hours, while 71% of close contacts eligible for follow-up were successfully contacted and advised accordingly within 48 hours (Covid-19 Data Monitor 16 November).
28. The latest Ipsos MORI survey results coinciding with the end of the fire-break (from fieldwork taking place 6-9 November) show that while many continue to report broad compliance with regulations, some responses suggest many are not complying with certain restrictions. For examples, the proportion of respondents wearing face coverings remains high (87%) and around three quarters (74%) report trying to keep 2 metres apart from people when out; these have remained stable for the past few waves. However only 48% reported only meeting indoors with their own household (or temporary extended household for single parents and those living alone) in line with fire break regulations. Ratings of the Welsh Government's performance to contain the virus have increased since the start of the fire break to 71%, while ratings of the UK Government are at their lowest level yet.
29. The Welsh Government commissioned two focus groups to take place on 11 November. Each group consisted of 6-7 participants. The first group consisted of residents of Pembrokeshire and Carmarthenshire. The second from Monmouthshire.
30. In line with previous groups, participants described feeling bored, frustrated and isolated. However, some reported feeling more optimistic following the end of the firebreak. Participants praised the Welsh Government for quickly taking decisive action and introducing the firebreak. However, there continues to be concerns that the 2-week duration of the firebreak lockdown was not long enough to have a considerable impact, especially now this can be compared to the longer lockdown in place in England. Many also voiced frustration that there is not a joined-up approach across England and Wales.
31. Awareness of the new rules in place in Wales was limited, although these focus groups took place just two days after the new restrictions came in to force. When asked to list the new rules, participants listed the previous restrictions before the firebreak, such as the rule of 6 and meeting up to 30 people outside. In addition, social distancing and wearing a face mask was top of mind for most. When prompted further, only a few participants mentioned the rule of 4 and being able to meet in pubs from different households.

Economic, social, environmental impact

32. There remain harms associated with the long-term social and economic impact of continued restrictions. It is evident that the fourth harm from COVID-19 in Wales (the potential long-term economic and societal impacts of COVID-19) is likely to be significant. The Office for National Statistics (ONS) estimated that in Quarter 3 2020 the level of gross domestic product (GDP) in the UK was still 9.7% below where it was at the end of 2019. Furthermore, latest monthly GDP estimates show a slowing of growth in September, coinciding with the

introduction of further restrictions in some areas. It is likely that there will be a further hit to GDP in future data, due to the impact of further local restrictions and lockdowns in all parts of the UK, including Wales' firebreak. Although regional GDP figures for that period have not yet been published for that same period, the size of the contraction observed in Wales is likely to be consistent with the UK as a whole.

33. There is survey data indicating that many businesses are still being significantly impacted by restrictions. Results from the Business Impact of Coronavirus Survey (BICS) covering 5 to 18 October found that of businesses currently trading, nearly half (45%) reported their turnover had decreased below what is normally expected for this time of year. Different industries are affected to different extents, and results show that accommodation and food service activities (72%) and the arts, entertainment and recreation (69%) show the highest proportion of businesses with turnover below what is normally expected. In Wales' context, tourism is aligned to these industries, and businesses relying on tourism are being significantly affected by the ban on people travelling into Wales.
34. There is evidence to show that the economic downturn is now starting to have an impact on the labour market. In Wales the unemployment rate was 4.6% between July to September 2020, compared to 3.2% between January and March 2020. In addition, the BICS data covering 5 to 18 October shows that 8% of the workforce in the UK were on furlough leave, down from 30% in June. This data would suggest that businesses may have made redundancies in anticipation of the end of the Coronavirus Job Retention Scheme. While the extension of the scheme to March may help to slow the growth in unemployment, there are likely to be further rises in future months.
35. While all industries have been affected by restrictions to some extent, certain industries have been hit harder and many workers in these industries are low paid. The BICS data show the arts, entertainment and recreation (27%) and the accommodation and food services activities (18%) industries had the highest proportion of its workforce on partial or full furlough leave. These industries have relatively low pay; ONS data from the Annual Survey of Hours and Earnings for 2020 estimates median hourly pay for employees at £8.41 in the accommodation and food services industry and £9.09 in the arts, entertainment and recreation industry. This is less than the median hourly pay for all Welsh employees of £12.42.
36. Evidence from previous recessions indicates that the young, the low paid, those with lower levels of qualification, those in temporary and part time employment, the disabled, women, and those from minority ethnic groups are the ones that are most likely to suffer adverse effects throughout the crisis and in its aftermath. There is some early evidence that this is also the case for the current crisis. A report conducted by the Resolution Foundation finds that half of those furloughed during lockdown had returned to work by September, 9% of those previously furloughed were no longer working by September. The likelihood that a previously furloughed worker was not in work in September was disproportionately high for workers aged 18-24 (19%) and BAME workers (22%) (Jobs, jobs, jobs report Resolution Foundation 27 October).

37. There is a wealth of survey evidence pointing to the social harms from lockdown measures, including significant negative impacts on mental health and wellbeing. The latest PHW Public Engagement Survey on Health and Wellbeing (6 to 9 November) found that while most (68%) of people coped well emotionally during the firebreak, one in ten said they coped badly. However young people appear to have coped worse than older people, with only 54% of under 35s reporting they coped well emotionally during the fire break. These harms are particularly acute for the young, and those less able to understand the necessity of a change in routine such as young children or people with autism. There are also social harms associated with the economic downturn; around 1 in 5 of respondents are worried about their jobs, paying bills and being able to provide for the household.
38. There is likely to be an overall negative environmental impact as people travel more due to the continuation of looser restrictions. In the week ending 12 November, road traffic, bus and rail receipts all increased back towards the levels seen before the firebreak. Road traffic increased by 6 percentage points compared to the previous week and stands at 64% of the levels seen on 13 March. In addition, with people still being encouraged to work from home, demand for energy to heat homes is likely to be higher than normal for this time of year. Data from Google shows that residential mobility (the amount of time people spend at home) remains higher than in February, albeit slightly down from the firebreak period (Covid-19 Data Monitor 5 October).
39. Local authority enforcement data shows there have been a minimal number of prosecutions initiated by local authorities in relation to Covid non-compliance. Since 5th June, 4 prosecutions have been initiated; 3 in relation to business closure requirements and 1 in relation to social distancing. This compares with a total of 26 fixed penalty notices; 15 served for business closure offences and 11 for social distancing offences.
40. Between 8 August and 30 October, 51 Premises Improvement Notices (PINs) and 17 Premises Closure Notices (PCNs) were served. This is a decrease from the previous 3 week period when 125 PINs and 42 PCNs were served. (This decrease could be explained partly by the introduction of the Firebreak which started on 23rd October.) During the last three week period, the highest proportion of PINs (65%, 33/51) and PCNs (65% 11/17) were served in the hospitality sector.

Detailed assessment of recommendations in this review

Fixed Penalty Notices

41. At its last meeting, the Cabinet Sub-Committee on Justice asked officials to conduct a review of Fixed Penalty Notices (FPN's) within the coronavirus regulations. This has been conducted through examination of available statistical evidence, some collection of stakeholder views and discussion between officials.
42. Regulatory changes are recommended as a result of the review, which is at **Doc 5**. A table of all offences carrying FPNs under Covid regulations, with the current and proposed penalties, is also provided at **Doc 6**. Officials are

considering the operational implications for some of these proposed changes at pace. Subject to these issues being resolved, Ministers are recommended to agree in principle to:

- **Remove the ability to issue FPNs of £10,000 to the organisers of unlicensed music events. The penalty for this offence would instead be an unlimited fine issued by a court.**
 - **Reduce the value of the FPN for breaches of the quarantine requirements for international travellers from £1000 to an initial £200, rising on second and subsequent offences.** This would bring it into line with the other highest penalties available by FPN for private individuals under Welsh Covid regulations. This change would apply to the main offence of failing to self-isolate without a reasonable excuse, and also to the offences of obstructing or failing to comply with a direction from an enforcement officer under the quarantine regulations.
43. These recommendations respond to concern about fairness, in light of the risk that individuals may feel pressured to accept very large penalties when a court might have found their actions to be lawful. The review also identified equality concerns about unexplained discrepancies between the likelihood of FPNs being received by different socioeconomic groups.
44. The rationality for the current significant divergence between amounts of penalties for conduct of similar degrees of seriousness is also questionable. There is also little countervailing evidence that the level of penalties is currently having a significant deterrent effect on high risk behaviour.
45. The view of Policing in Wales is that until the current public health crisis has abated, the scope to utilise the £10k fine for UMEs/Raves should remain, both as a deterrent and as one means of dealing with these offences whilst not resorting to other criminal justice routes.
46. The review also recommends a rationalisation of penalties for offences that would generally be committed by businesses. In keeping with the penalty for various other offences committed by businesses having been set at £1000, the review recommends
- **That enforcement officers are empowered to issue FPNs for failures to take reasonable measures to prevent the spread of coronavirus [set at/limited to] £1000** as an alternative or precursor to closure when required. This might, for example, be more proportionate and effective in a large workplace like a department store where the offence could be a single manager requiring a staff member to be in the workplace who should be isolating. Some workplaces are probably also too socially important to close under all but the most extreme of circumstances (eg the sole shop in an isolated village, or a care home).
 - **The FPN for international travel operators for failing to provide information about quarantine requirements is reduced from £4000 to £1000.**

47. Alongside these amendments, non-regulatory action is also recommended:

- A systematic review is proposed to ensure there is clarity about the respective roles and responsibilities of different enforcing authorities for each offence (for example ensuring there are no settings where certain regulations are unintentionally not being enforced)
- Discussion should also take place with all enforcing authorities to ensure there is a shared understanding of what offences are most serious in the Covid context, and that the law enforcement response is appropriate to the level of seriousness. This might include looking at existing guidance issued by enforcement bodies or the Welsh Government, and considering the circumstances where offending is so serious as to merit criminal prosecution.

Technical amendments

48. In instances where a child is required to self-isolate, it is the parent who is notified by TTP and is required to ensure the child undertakes a period of self-isolation. Legal services advise Regulation 18 does not currently permit information about the child's parent to be shared for purposes of enforcement.

49. Although our approach will still be GDPR compliant, in that TTP will share the minimum of information with the police for purposes of enforcement, **Ministers are asked to agree that the legal framework is amended to provide for information on parents to be shared if necessary.**

50. Ministers are asked to agree to three technical amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, which specifically provide for local authority enforcement powers. **Firstly, are asked to agree regulation 3, which, provides for these regulation to expire on 8 January, be amended to the 19 February 2021.** This would mean the 'sunset clause' in these regulations would be consistent with the post-firebreak principle Regulations.

51. Secondly, regulation 6, provides local authorities with powers to require an event stop or not be held, or imposing restrictions or requirements on the holding of the event. **Ministers are asked to amend this provision so local authorities have regard to the principal Regulations**, including the prohibition to organising an event of more than 15 people indoors or more than 30 people outdoors. (This largely technical amendment was not included in the paper Cabinet considered on 16 November.)

52. Finally, **Ministers are also asked to agree also amend regulation 20 to provide for local authorities to bring prosecutions themselves.** This would be consistent with the approach to enforcement in the general post-firebreak Regulations.

53. The previous firebreak Regulations and regulations covering local health protection areas included restrictions on travel which said a person must not "leave or remain away from" either Wales or the local area respectively. Regulation 9 of the principal Regulations only require "No person living in Wales may leave Wales without a reasonable excuse."

54. Without the words “remain away from” Office of the Legislative Counsel suggest it is possible for a person to leave Wales with a reasonable excuse and then, having completed whatever activity constituted the reasonable excuse, they can remain outside Wales.
55. Cabinet indicated on 16 November they are not minded to amend this provision to be consistent with the previous restrictions given there is no evidence that this change has resulted in any issues, particularly given the current restrictions in place in England.

Extended Households

56. Regulation 5 of the principal Regulations currently provide for two households to be able to join together to form an extended household. When considering the post-firebreak arrangements several issues arose in relation to extended households, including some that Cabinet indicated a desire to return to in future reviews.
57. Firstly, whether restrictions should be eased to allow people from the same extended household to share holiday accommodation. You are currently only allowed to share holiday accommodation, including hotel rooms, with people you live with. The Welsh Government has said holiday accommodation providers, who have a responsibility to ensure Covid Regulations are adhered to, do not have the ability to verify who is in an extended household with each other.
58. Secondly, whether the principal Regulations can be amended so you can meet with people in your garden who are not part of your extended household.
59. Finally, the Regulations currently specifically provide that once you have agreed and joined an extended household, neither household can leave to form a new one. Ministers have discussed whether to provide flexibility to allow people's ability to establish new bubbles, or a sequence of new bubbles with appropriate quarantining. This would address issues for bubbles that have 'broken down', for example due to relationships ending or people moving.
60. The office of the Chief Medical Officer suggests a period of 14 days should be required between people dissolving an extended household and forming a new one. (If any member of the household tests positive during that period, the length of time before establishing the new extended household would be extended in line with wider requirements to self-isolate.) Communications should clearly stress that changing extended households should not be encouraged. Rather, it should only be undertaken in exceptional circumstances.
61. Given previous changes to the rules in relation to extended households, and experience in the last few months, including that from focus groups, further changes on this issue are potentially the most likely to cause confusion among the public. In keeping with the principle to prevent the potential undermining of the wider package of new national restrictions by minimising changes, Cabinet agreed any decision on changes to the rules in relation to extended households and repeated bubbling be postponed to a subsequent review. This would allow any change to be informed in the context of further discussions about potential

further measures, arrangements for the festive period and how the change could be effectively communicated.

62. The draft Written Statement accompanying this advice makes clear that Ministers understand the practical challenges and difficult choices people face in relation to extended households.

Potential requirements for businesses to display notices

63. As Cabinet previously agreed, officials have been consulting with businesses to develop options for how they might be required to display specified information, such as the level of coronavirus risk and specific risk factors associated with their premises in a prominent place. These could describe how these risks are being mitigated and set out what people using and working in the premises should do.
64. The consensus view appears to be that a simple scheme would be beneficial for both business and consumers in building trust and confidence in measures businesses have implemented, and helping to inform consumer behaviour and conduct. (The Food Hygiene Rating system was recognised as an exemplar scheme, albeit with recognition it was complex to establish, resource intensive to administer and took over 2 years to implement.)
65. Any requirement could potentially be included as a reasonable measure within regulation 21 of the principal Regulations. Business have however said a scheme should initially be established on a voluntary basis with a review after a number of months of operation to assess its effectiveness, with a view to making it statutory in future if required.
66. Officials have also considered the time needed to develop and launch a statutory scheme; both by businesses to meet new requirements of Regulations, and also Welsh Government human and financial resource available to develop and administer a scheme.
67. Cabinet have indicated they are content for officials to continue to further develop options with business representatives and trade unions, establish a timeline and plan for the detailed development and launch of a voluntary scheme for further consideration by Ministers at the next review of the Regulations on 3rd December.

Financial Implications

68. There remain wide-ranging and significant financial implications of the restrictions, in particular those around economic activity and the support being made available by the UK and Welsh Governments. This is a fast-moving and rapidly developing situation and detailed financial analysis of all the implications has not been possible. The Welsh government established a Covid 19 Reserve which currently stands at around £5 billion, from which we have so far allocated approximately £3.7 billion. We are continuously monitoring the implications of the pandemic and will make further allocations to assist businesses and public services as the situation demands.

69. The direct budgetary implications of specific measures are being monitored by Strategic Budgeting and operations teams. The key objective of the Regulations is the protection of public health and the Regulations require the termination of any requirement or restriction no longer necessary to respond to the prevention, protection, control or public health response to the incidence or spread of infection in Wales. This is intended to limit the economic and financial impact as far as possible, without putting the public health response at risk.

Legal advice

70. The power to make amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 is set out in sections 45C, 45F and 45P of the Public Health (Control of Disease) Act 1984. Any requirement or restriction, or amendments to either set of Regulations, 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 and scientific evidence, that the proposed amendments to the Regulations meet that aim and that the continuance or amendment to these requirements and restrictions can be justified on the basis that they are proportionate.
71. The substantive changes recommended relate to the amendment of fixed penalties, alongside some further more technical amendments. The advice largely recommends that no changes are currently made to the restrictions and requirements imposed by the principal Regulations. You will need to be satisfied that these restrictions and requirements remain necessary and proportionate. In that regard, the evidence of the continuing high level of coronavirus infection across Wales is relevant (notwithstanding falls in certain areas, prevalence remains high). Legal Services note too the advice that the full effect of the firebreak is yet to be witnessed, which would mean that any changes at this stage would be premature. The rationale for imposing a new set of national restrictions under the No. 4 Regulations was based in part on the advice and recommendation by TAC for a set of simple, nationally applicable rules. Legal Services consider that any changes to the existing rules would need clear justification as being no longer necessary or proportionate, particularly given the consequence that any changes, particularly around gatherings or extended households, could give rise to further confusion with the attendant risks of non-compliance.
72. Legal Services note the recommendation to agree to changes to fixed penalties subject to further consideration. With respect to the £10,000 penalties for unlicensed music events Legal Services have previously set out some concerns around both the proportionality of such fines, and the lawfulness of them, insofar as they have been imposed using public health legislation, particularly given fines for organising other gatherings of similar numbers (but without music or licence requirements) to be much lower. They have questioned the rationality of this difference, given any such difference should be justified on public health grounds, namely as a means of controlling the incidence and transmission of coronavirus. Legal Services consider that any step to ensure that such events

are enforced by means of prosecution rather than simply a fixed penalty would appear to be a proportionate one, notwithstanding the potential deterrent effect of having a large fixed penalty. If such events are considered to be sufficiently serious and to have sufficiently harmful effects on the community then they would appear to engage the comparable public interest elements of the prosecution code which could point to prosecution being a more appropriate enforcement action.

73. Legal Services note proposals to harmonise to a greater degree the levels of fixed penalties in respect of the requirements to self-isolate in the International Travel Regulations with those in the principal Regulations. Such steps would certainly be more rational, given the requirement to self-isolate under the International Travel Regulations are more precautionary in nature than those under the principal Regulations. In the latter case, people may have actually tested positive and therefore pose a real and significant risk were they to breach self-isolation, than those in quarantine as a result of having been in another country with high levels of coronavirus. Legal Services agree that a fine of £1,000, which people may feel pressurised to pay, as opposed to refusing with the potential consequences of legal proceedings being brought against them, is likely to be disproportionate. They note that there would still remain a disparity between the two offences, but consider that there would be some rationale for not reducing any such fixed penalty to £60, given the potential negative message that could be sent. However, they consider that a risk remains to the extent that there is a different level of fines, with a higher level for people who are statistically less likely to pose a risk than those who are more likely to do so. Legal Services consider that these penalty levels should remain under review.
74. Legal Services note the proposals to enable local authorities to impose fixed penalties on businesses which have failed to comply with requirements under section 21, albeit they have not seen any rationale for the same. If businesses are failing to take reasonable measures they will be committing an offence and be liable to have proceedings brought against them, as well as being subject to receipt of an improvement notice, or in the event of a serious risk arising, or an improvement notice not having been heeded, a closure notice. Legal Services would have concerns that the issuing of both a fixed penalty and a closure notice (and potentially an improvement notice) could amount to a form of double jeopardy (namely that in general terms people cannot be prosecuted twice for the same offence). Notwithstanding that an improvement notice is not a penalty per se, it will be likely to have significant financial consequences for a business, including ones arising from reputation. A closure notice clearly would. Legal Services would question the proportionality of enabling a number of different enforcement actions to be issued, and consider that safeguards would need to be considered to ensure the measures were compliant, particularly with Article 6 of the ECHR (right to a fair hearing).
75. Legal Services whilst acknowledging the penalties constitute an important tool in enforcement (and therefore compliance) would also question the use of a fixed penalty as an alternative to the service of an improvement or closure notice. If local authorities consider that a business is not complying and that the measures set out in a notice are necessary and proportionate, then legal Services consider that in such circumstances it is likely to be more rational to serve an improvement notice, rather than a fixed penalty notice.

Communications and media handling

76. A Written Statement will be submitted with the submission. A draft Written Statement is included at **Doc 1**.
77. If the proposed technical changes are agreed, these will be reflected in our gov.wales content and public facing FAQ.
78. Our communications activity, using all Welsh Government channels, will continue to focus on personal responsibility and behaviour while promoting the new national rules.

ANNEX 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input 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, Liz Lalley, have assured the quality of this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

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

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

COPY LIST

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