

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) Regulations 2020.**

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 19) Regulations 2020.

**Mark Drakeford**  
**First Minister**

16 October 2020

## **1. Description**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus

### European Convention on Human Rights

Whilst the principal Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and that the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health. The Government therefore considers that the Regulations are proportionate.

The restrictions and requirements in the principal Regulations as amended by these Regulations will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of assembly and association); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property).

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

The Government considers that the restrictions imposed by the amendments made by these Regulations to the principal Regulations, are proportionate. The amendments balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

Among other things, the amendments impose restrictions on travel between areas of low prevalence of coronavirus in Wales and areas with high prevalence of coronavirus in the rest of the UK. Because of the nature of the restrictions, the amendments require the Welsh Ministers to review the restrictions’ proportionality by 23 October 2020 and at least once every seven days thereafter.

### **3. Evidence base**

*Reasonable excuse of participating in or facilitating organised activities for the development or well-being of children*

These Regulations amend the principal Regulations to provide that a person may have a reasonable excuse to enter or leave a local health protection area to participate in or facilitate organised activities for the development or well-being of children. In this respect–

- there is relatively little evidence of the likely effect on the R rate of permitting persons to enter or leave local health protection areas and the additional mixing of people that this could entail;
- empirical evidence from schools reopening is that with current restrictions (hygiene, distancing depending on age, limiting contact numbers through bubbles, face coverings where required) there has been almost no evidence of transmission in the school setting by under 18s;
- this is evidenced by the majority of school student confirmed cases being single cases and not clusters;
- it is clearly understood that children’s participation in sporting and other developmental activities is beneficial to their mental and physical health and well-being.

### **Travel Restrictions**

The Regulations also amend the principal Regulations to restrict travel from areas of lower incidence rates of coronavirus in Wales to areas of high incidence in England, Scotland and Northern Ireland with high incidence rates of coronavirus and to prevent people from those areas of high incidence entering low incidence areas in Wales.

Evidence from public health professionals suggests coronavirus is moving from east to west across the UK and across Wales. As a general rule, it is concentrating in urban areas and then spreading to more sparsely populated areas as a result of people travelling. The paper SARS-Cov-2 Genomic Insights (October 2020) demonstrates the spread of infection geographically and supports the case for travel restrictions as a means of controlling spread. To prevent further spread in areas where there is still a relatively low prevalence of the virus, there is an urgent need to limit non-essential travel across the UK. The amendments will achieve this goal.

<https://gov.wales/sites/default/files/publications/2020-10/sars-cov-2-genomic-insights-october-2020.pdf>

### **4. Legislative background**

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

## **5. Purpose and intended effect of the legislation**

The principal Regulations were made in response to the serious and imminent threat to public health posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

These Regulations amend the principal Regulations to-

- provide that a person living in a local health protection area may have a reasonable excuse to travel to other local health protection areas to participate in or facilitate organised activities for the development or well-being of children. This may include sporting, cultural, music, drama, and faith activities;
- restrict travel into areas of Wales not designated as local health protection areas from areas of high prevalence elsewhere in the UK, based on relevant provisions in Coronavirus Regulations in force in the other UK nations. The amendments also restrict travel from areas of Wales not designated as local health protection areas to the areas of high prevalence elsewhere in the UK. The areas of high prevalence are those designated as follows by the relevant authority in that part of the UK:
  - England – all Tier 2 “high” and Tier 3 “very high” areas
  - Scotland – protected areas subject to additional temporary measures
  - Northern Ireland – currently the entire territory;
- make minor and consequential amendments. These ensure consistency in the terms used in the principal Regulations and update the full title of “Menai (Bangor)” ward in paragraph 1 of Schedule 4A to the Principal Regulations.

The Regulations come into force at 6.00 p.m. on 16 October 2020. The restrictions and requirements introduced by these amendments in relation to travel must be reviewed on or before 23 October 2020, and at least once every seven days thereafter.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that introducing these requirements and restrictions by means of the amendments made to the principal Regulations is proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

## **6. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

More widely, representative groups along with individuals and businesses have been informed about the relaxation of the restrictions through wide scale and ongoing public information broadcasts across the UK, including by myself.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations.

## **7. Regulatory and other impact assessments**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.