

Explanatory Memorandum to the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales 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, Business Closure) (Wales) Regulations 2020.

Vaughan Gething, Minister for Health and Social Services
23 March 2020

1. Description

These Regulations require the closure of businesses selling food or drink for consumption on the premises, and the businesses listed in the Schedule, to protect against the risks to public health arising from coronavirus.

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 National Assembly for Wales. 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.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the National Assembly for Wales.

3. Legislative background

The Regulations are made under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the 1984 Act.

The 1984 Act and regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The Regulations require the closure of businesses selling food or drink for consumption on the premises, and businesses listed in the Schedule, to protect against the risks to public health arising from coronavirus. They also make provision for enforcement of these restrictions.

Under the Regulations a person who is responsible for carrying on a business which is listed in Part 1 of the Schedule must close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and cease selling food or drink for consumption on its premises. If the business sells food or drink for consumption off the premises it must cease selling food or drink for consumption on the premises.

A person responsible for carrying on a business which is listed in Part 2 of the Schedule must cease to carry on that business.

The Welsh Ministers are required to keep the need for the restrictions under review every 28 days. As soon as the Welsh Ministers consider that the restrictions are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction. Closure of the businesses, therefore, lasts until a direction is given by the Welsh Ministers.

These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared on 11 March 2020 by the World Health Organisation as a Public Health Emergency of International Concern, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer of the Welsh Government together with the other Chief Medical Officers across the UK assess the risks to public health stemming from coronavirus to be high. The number of transmissions and admissions to hospital in Wales has been increasing and an urgent response is essential.

The Welsh Ministers consider that restrictions and requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

The restrictions form part of the UK response to coronavirus. Corresponding restrictions have been put in place by regulations made by the Secretary of State in relation to businesses in England.

5. 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.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.