

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

WELSH STATUTORY INSTRUMENTS

2020 No. 1100 (W. 250)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>at 3.50 p.m. on 9 October 2020</i>
<i>Laid before Senedd Cymru</i>		<i>at 6.00 p.m. on 9 October 2020</i>
<i>Coming into force</i>	- -	<i>12 October 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984⁽¹⁾.

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) in Wales.

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020 and they come into force on 12 October 2020.

⁽¹⁾ 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). 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, is the Welsh Ministers.

Amendment of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020(2) are amended as follows.

(2) For regulation 7 substitute—

“Public place directions

7.—(1) A local authority may give a public place direction in respect of any public place in the authority’s area.

(2) For the purposes of these Regulations, “public place” means an outdoor place to which the public have or are permitted access, whether on payment or otherwise, including—

- (a) land laid out as a public garden or used for the purpose of recreation by members of the public;
- (b) land which is “open country” as defined in section 59(2) of the National Parks and Access to the Countryside Act 1949(3), as read with section 16 of the Countryside Act 1968(4);
- (c) any highway to which the public has access;
- (d) a public path;
- (e) access land.

(3) A public place direction may impose prohibitions, requirements or restrictions in relation to—

- (a) access to the public place (including, in particular, prohibiting access at specified times);
- (b) activities carried on in the public place (including, in particular, prohibiting or restricting the consumption of alcohol).

(4) But a public place direction may not—

- (a) impose prohibitions, requirements or restrictions—
 - (i) in relation to access to a public path or access land (see instead regulation 14);
 - (ii) on the consumption of alcohol in premises in the public place which are authorised for the sale or supply of alcohol;
- (b) impose prohibitions or requirements in relation to access to the public place or an activity carried on in the place if such a prohibition or requirement has effect in relation to the place by virtue of a public spaces protection order made under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014(5).

(5) Where—

- (a) a byelaw imposes a prohibition, requirement or restriction relating to access to, or an activity carried on in, a public place, and
- (b) access to, or the carrying on of that activity in, the public place is prohibited or restricted by, or subject to a requirement in, a public place direction,

(2) S.I. 2020/1011 (W. 225).

(3) 1949 c. 97.

(4) 1968 c. 41. Section 16 has been amended by section 111 of the Transport Act 1968 (c. 73), Schedule 27 to the Water Act 1989 (c. 15) and S.I. 2012/1659. There are other amendments to section 16 which are not relevant to these Regulations.

(5) 2014 c. 12.

the prohibition, requirement or restriction imposed by the bylaw is of no effect in relation to the public place for so long as the public place direction has effect.

(6) A public place direction must describe the public place in sufficient detail to enable its boundaries to be determined.

(7) A local authority which gives a public place direction must take such steps as are reasonably practicable—

- (a) where the direction prohibits or restricts access to the public place, to prevent or restrict such access (including by erecting and maintaining notices in prominent places informing the public of the direction);
- (b) where the direction prohibits, restricts or imposes requirements on the carrying on of an activity in the public place, to bring the direction to the attention of members of the public who may be in the public place (including by erecting and maintaining notices in prominent places informing the public of the direction);
- (c) to give prior notice of the direction to persons carrying on a business from premises within the public place;
- (d) to ensure that the direction is brought to the attention of any person who owns, occupies or is responsible for premises in the public place.

(8) Where a public place direction prohibits or restricts access to the public place, any person, other than a local authority, who owns, occupies or is responsible for premises in the public place must take such steps as are reasonably practicable to prevent or restrict public access to the premises in accordance with the direction.

(9) No person may, without reasonable excuse—

- (a) enter or remain in a public place;
- (b) carry on an activity in a public place,

in contravention of a prohibition, requirement or restriction imposed by a public place direction.

(10) A local authority may not give a public place direction in respect of a public place which includes property to which section 73 of the Public Health (Control of Disease) Act 1984(6) (Crown property) applies.

(11) But a local authority may give a public place direction in respect of such a place if the authority has entered into an agreement under section 73(2) with the appropriate authority (within the meaning given by that section) that—

- (a) section 45C of the same Act, and
- (b) these Regulations,

apply to the property (subject to such terms as may be included in the agreement).

(12) For the purposes of this regulation—

- (a) “access land” has the meaning given in regulation 14(7)(c),
- (b) “alcohol” has the meaning given by section 191 of the Licensing Act 2003(7);
- (c) “public path” has the meaning given in regulation 14(7)(b), and
- (d) premises are authorised for the sale or supply of alcohol where the premises have been granted or given an authorisation under the Licensing Act 2003, and “authorisation” has the meaning given by section 136(5) of that Act.”

(3) In regulation 10(b), for “regulation 7(5)” substitute “regulation 7(6)”.

(6) Section 73 has been amended by Schedule 11 to the Health and Social Care Act 2008 (c. 14).

(7) 2003 c. 17. Section 191 has been amended by section 135 of the Policing and Crime Act 2017 (c. 3) and S.I. 2006/2407.

- (4) In regulation 16—
- (a) in paragraph (1)(b), for “7(7)” substitute “7(8)”;
 - (b) in paragraph (5), after “direction” insert “imposing a prohibition, requirement or restriction in relation to access to the place”;
 - (c) after paragraph (5) insert—

“(5A) Where a constable has reasonable grounds for suspecting that a person in a public place is acting in contravention of a public place direction imposing a prohibition, requirement or restriction in relation to the carrying on of an activity in the place, the constable may take such action as the constable considers necessary to prevent the person from continuing to act in contravention of the direction (including removing the person from the place).”;
 - (d) in paragraph (6)—
 - (i) in sub-paragraph (a), for “or (5)” substitute “, (5) or (5A)”;
 - (ii) in sub-paragraph (b), for “or (5)(b)” substitute “, (5)(b) or (5A)”;
 - (e) in paragraph (7), for “or (5)” substitute “, (5) or (5A)”.
- (5) In regulation 18(1)—
- (a) in sub-paragraph (a), for “7(8)” substitute “7(9)”;
 - (b) in sub-paragraph (b), for “7(7)” substitute “7(8)”.
- (6) In each place it occurs in the provisions listed in paragraph (7)—
- (a) for “revoking” substitute “withdrawing”;
 - (b) for “revocation” substitute “withdrawal”;
 - (c) for “revoke” substitute “withdraw”;
 - (d) for “revoked” substitute “withdrawn”.
- (7) The provisions are—
- (a) regulations 8, 9 and 13 including, where relevant, their headings;
 - (b) the headings to Chapters 1 and 3 of Part 2.

At 3.50 p.m. on 9 October 2020

Mark Drakeford
First Minister, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

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) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020. The Regulations—

- (a) expand the power conferred on local authorities to issue public place directions such that a direction may prohibit specified activities in a public place as well as restrict access to it;
- (b) make minor and consequential amendments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.