

SL(5)821 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2021

This note has been prepared to provide information for Senedd Members in relation to plenary business on 26 May 2021.

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) by temporarily modifying how Alert Level 3 operates in Wales. The period of the temporary modifications (already in place) has been extended until the end of the day on 2 May 2021.

During the period until 2 May 2021, Wales continues to be subject Alert Level 3. Schedule 3 to the principal Regulations would, ordinarily, apply. However Schedule 3 is to be treated as though replaced by Schedule 3A.

The principal changes are as follows.

The restrictions on gathering with others outdoors are relaxed by removing the requirement that those gathering may only come from two different households. This means that any 6 people can now gather outdoors. Carers and children under the age of 11 are not counted in these figures (in the case of children this applies so long as they do not come from more than 6 households). This change takes effect on 24 April 2021.

In addition, from 26 April 2021, people may gather outdoors for the purposes of participating in formally organised activities involving up to 30 people. Formally organised activities may also include protesting and picketing, which can take place without a limit on the number of people present at all Alert Levels apart from Alert Level 4.

Specific provision is made to allow gatherings outdoors, of up to 30 people, to celebrate the solemnisation of a marriage, the formation of a civil partnership or an alternative wedding ceremony that took place on or after 26 March 2020. And, similarly, outdoor gatherings of up to 30 people are allowed to celebrate the life of a deceased person whose funeral is held on or after 26 March 2020. This change also takes effect on 26 April 2021.

Certain businesses will be allowed to reopen their premises for outdoor activities. This includes food and drink businesses, visitor attractions and swimming pools. This change has effect from the start of the day on 26 April 2021, except for food and drink businesses which may open from 06.00 on that day.



Events which involve more than 30 people may be allowed with the permission of the Welsh Ministers. This will also apply at Alert Level 3 (and is already allowed at Alert Levels 1 and 2).

Amendments are also made to Schedules 1, 2 and 3 (the Schedules that apply at Alert Levels 1, 2 and 3). Other minor changes are also made.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Points to note

1. We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits 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. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."

2. We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



"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."

3. The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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.

Legal Advisers

10 May 2021



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