

SL(6)196 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2022

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”). The amendments—

- provide that the principal Regulations expire at the end of the day on 9 May 2022 (rather than 18 April 2022);
- omit Part 4 of the principal Regulations, which requires persons responsible for regulated premises to take all reasonable measures to minimise the risk of exposure to coronavirus at the premises (but Welsh Government guidance on minimising the risk of the transmission of coronavirus remains relevant).

The Regulations also make amendments that are consequential on the amendments set out above.

As amended by these Regulations, the principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations apply.

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: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd



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 spread 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, or have from time to time been, 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 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 to that aim. Any interference with these rights also needs to be balanced with the state's positive obligations under Article 2 (right to life). The extension of specific requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances 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 control the rate of transmission of the coronavirus, taking into account the scientific evidence.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

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

Given the ongoing threat arising from coronavirus and the need for a proportionate and prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders.

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 April 2022 and reports to the Senedd in line with the reporting points above.

