

SL(6)063 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021 (“the No. 17 Regulations”).

These Regulations amend the principal Regulations to:

- Clarify that a person may leave isolation to prevent illness, injury or other risk of harm to another person (“A”) where it is not possible or practicable for somebody else to assist A, the person is not assisting A as part of the person’s work or through providing voluntary services, and the risk of harm to A is greater than the risk of harm to A that arises from being in the same place as the person who would otherwise have to isolate, or to move to a different place to live to prevent illness to another person;
- Make clear, for the purpose of data protection law, the basis on which contact tracers may access information about a person’s vaccination status;
- Clarify that regulation 57(9) of the principal Regulations, which makes provision in relation to when a gathering or event is not to be treated as being “outdoors”, applies to all gatherings and events; and
- Omit the spent transitional provision in regulation 10A of the principal Regulations (which related to ending certain persons’ isolation on 7 August 2021 if they were within an isolation period and met certain conditions on that date, such as having completed a course of doses of an authorised vaccine, or being a child).

These Regulations also amend the No. 17 Regulations so that the regulation 16A (the COVID-pass requirements) that has been inserted into the principal Regulations is amended to:

- Clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations. In practice, this means that those requirements do not apply to any religious services held in premises ordinarily used as a place of worship;
- Provide consistency with the International Travel Regulations by adding additional countries to the list of acceptable vaccinations for the purposes of the COVID pass.

These Regulations are aimed at providing clarity and ensuring consistency in the principal



Regulations, rather than imposing special restrictions or requirements. Therefore, the negative resolution procedure applies to these Regulations.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following three 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 breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 8 October 2021. In particular, we note the following in the letter:

“The Regulations come into force on 9 October 2021, within 21 days of their laying. Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity. This is necessary in order to amend the new regulation 16A that is to be inserted into the principal Regulations on 11 October 2021, before that regulation comes into force. Regulation 16A(1), commonly known as the COVID-pass provision. [...] The amendments are required to maintain consistency with regulation 2A of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, as amended from 4 October 2021 and 11 October 2021. Regulation 2A provides that a person arriving in Wales from outside the common travel area is subject to reduced coronavirus testing requirements if they have been vaccinated with a qualifying vaccine, and regulation 16A of the principal Regulations provides that evidence of vaccination with the same qualifying vaccine is acceptable for the purposes of regulation 16A(1).

Not adhering with the 21-day convention also allows the Regulations to come into force at the earliest opportunity to a. provide an exception for a person to leave isolation to prevent illness, injury to other risk of harm to another person or to make to a different place to live to prevent illness to another person; b. make clear, for the purpose of the general data



protection Regulation (GDPR), the basis on which contact tracers may access information about a person's vaccination status; c. clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations; and omit the spent transitional provision at regulation 10A."

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 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 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 reduce the rate of transmission of coronavirus, taking into account the scientific evidence."

3. 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 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. However, engagement has taken place with various stakeholders including



the Information Commissioner's Office and the Equalities Division of the Welsh Government."

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 18 October 2021 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee