

SL(6)001 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) 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”) so that from 3 May 2021 the whole of Wales is fully at Alert Level 3. Schedule 3 to the principal Regulations, therefore, apply. The temporary modifications set out in Schedule 3A are revoked.

These Regulations provide that from 3 May 2021-

Gyms, fitness facilities, leisure centres, spas (but not steam rooms) and swimming pools are permitted to reopen their indoor premises. Children’s indoor activities for the purposes of their development or well-being are allowed. Organised indoor activities for up to 15 people (not counting those under the age of 11) are allowed. Community centres are permitted to open their indoor premises.

A household may agree to be treated as an extended household with one other household, or with two other households if one of those households is a well-being needs household.

The Regulations also make a minor consequential amendment to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, and a minor revocation to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2021; the latter were made on 23 April 2021.

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

11 May 2021

