

SL(5)815 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) 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”).

The amendments make the following changes—

The whole of Wales becomes an Alert Level 3 area from immediately before the beginning of the day on 27 March 2021. This means that the previous requirements to stay at home, or to stay local, no longer apply. However, restrictions on travelling to or from Wales continue.

Despite moving the whole of Wales to Alert Level 3, the amendments provide that (for a limited period ending at the end of the day on 11 April 2021) the restrictions and requirements applying in Wales are those set out in Schedule 3A to the principal Regulations, not those in Schedule 3 (which would otherwise apply to an Alert Level 3 area).

Schedule 3A is inserted into the principal Regulations by these Regulations. The temporary Alert Level 3 restrictions under Schedule 3A are different in a number of respects from those in Schedule 3. The main differences are that under the temporary restrictions in Schedule 3A—

- (a) up to 6 people (not including children under 11 or carers) from no more than 2 households may gather outdoors, including in private gardens, for any purpose, regardless of whether the people gathering are members of the same extended household;
- (b) only those households that were permitted to form extended households under the Alert Level 4 restrictions that applied in Wales immediately before these Regulations came into force may form extended households under Schedule 3A (i.e. a well-being needs household, including a household in which a person aged under 18 lives alone, and another household);
- (c) gathering outdoors in groups of more than 6 (and with persons from more than 2 households) for an organised activity is only allowed in relation to an outdoor organised activity for the development or well-being of children (for example, in clubs provided for children during school holidays);



(d) no person living outside Wales may, without reasonable excuse, enter or remain in Wales regardless of exactly where outside Wales a person is living), and no person living in Wales may, without reasonable excuse, leave Wales;

(e) nearly all premises that were required to be closed to the public immediately before these Regulations came into force must remain closed, the exceptions being—

- (i) libraries and archive services;
- (ii) the public outdoor areas of premises on which a scheduled monument is situated, and the public outdoor areas of a park or garden that is registered in the register of parks and gardens of special historic interest in Wales;
- (iii) self-contained holiday or travel accommodation: this means that camping sites and holiday sites may open if the only shared facilities are water points and waste disposal points, and accommodation (including holiday apartments and hotels) may open provided that guests do not share facilities and indoor communal areas with anyone outside their household or the limited form of extended household described above in paragraph (b).

The Regulations also amend Schedule 5 to the principal Regulations to make temporary modifications to enable the enforcement of the restrictions in Schedule 3A and make other minor amendments and consequential amendments, including to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 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

22 April 2021

