

SL(6)124 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 2021

Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

[The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) \(No. 25\) Regulations 2021](#) (“the Regulations”) are made in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act in response to the threat to public health which is posed by the incidence and spread of COVID-19.

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

The Regulations amend the principal Regulations, with effect from 6:00 a.m. on 26 December 2021, so that:

- Wales moves from Alert Level 0 to Alert Level 2 meaning that the restrictions and requirements in [Schedule 2](#) to the principal Regulations take effect;
- persons responsible for “regulated premises” (i.e. workplaces, premises open to the public and public transport vehicles) are required to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, except between members of a permitted group comprising of no more than 6 persons or members of the same household at Alert Levels 1 and 2, or members of the same household at Alert Levels 3 and 4;
- in determining the extent it is reasonable to take a particular measure to ensure that a distance of 2 metres is maintained between persons on the premises, the person responsible for the premises may have regard to other measures taken to mitigate the risk of exposure to coronavirus on the premises;
- specific provision is made about the measures that must be taken to minimise the risk of exposure to coronavirus on licensed premises, including a requirement to control entry to the premises and for customers to be seated when ordering food or drink (subject to exceptions);



- specific provision is made about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises, including a requirement to control entry to the premises, to provide hand sanitisation products, to undertake additional sanitisation of baskets and trolleys etc., and to provide signs and make announcements to remind people of the 2 metre rule and to wear a face covering;
- face coverings must be worn in premises where food or drink is sold, or otherwise provided, for consumption on the premises, other than when seated;
- people playing in a team sport event or involved in coaching a team at an event are to be treated as working at the event and do not count towards any limit on numbers at the event (in the same way as referees and others involved in running the event);
- the restrictions on gathering in private dwellings and in holiday accommodation are removed, subject to it being an offence to participate in a gathering of more than 30 people indoors or more than 50 people outdoors in these places;
- the exemption to the restriction on events is changed to enable any number of people to attend a celebration of a marriage or civil partnership or a celebration of a recently deceased person held at regulated premises (subject to the maximum numbers permitted on the premises in accordance with the risk assessment and other reasonable measures taken under regulation 16 of the principal Regulations);
- adult entertainment venues and ice rinks are omitted from the list of businesses whose premises have to close. (The businesses that must close include nightclubs, discotheques, dance halls or other venues authorised for the sale or supply of alcohol where live or recorded music is provided for members of the public or members of the venue to dance.)

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.

Technical Scrutiny

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



Merits Scrutiny

The following 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 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 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 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 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 that 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 prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."



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 that a regulatory impact assessment has not been prepared. In particular, we note the following paragraph in the Explanatory Memorandum:

“A regulatory impact assessment has not been yet in relation to these Regulations due to the need to put them in place to deal with a serious and imminent threat to public health. However, summary impact assessments are in preparation which will include the impacts of Wales moving to Alert Level 2.”

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 10 January 2022 and reports to the Senedd in line with the reporting points above.

