

SL(6)163 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) Regulations 2022

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “principal Regulations”), with effect from 28 February 2022, to narrow the scope of regulation 20 of the principal Regulations by providing an exhaustive list of the premises to which the requirement to wear face coverings applies.

The requirement now applies to the indoor public areas of the following, when the public have access to the premises:

- Business premises offering goods or services for sale or hire, including premises listed in paragraphs (a) to (m) of paragraph 39 of Schedule 7 to the principal Regulations (including financial service providers, post offices and shopping centres);
- Premises of veterinary surgeons and animal grooming services;
- Storage and distribution facilities, including delivery drop off points;
- Premises of estate or letting agents, developer sales offices and show homes;
- Premises of close contact services (hair salons and barbers, nail and beauty salons including tanning and electrolysis services, and body piercing and tattooing services);
- Premises used for the provision of takeaway food;
- Premises used for the provision of medical or health services;
- Premises used for the provision of a social care service, including care home services, secure accommodation services, residential family centre services and adult day care services.

The amendments mean that the face covering requirement no longer applies to particular types of premises that are open to the public, such as leisure and entertainment premises, and visitor attractions.

The amendments also clarify that the face covering requirement does not apply to residents of the social care premises listed when the residents are on the premises.

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 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 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 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 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 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.”

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 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 24 February 2022.

In particular, we note that the letter says:

“This is necessary in order to ensure that the restrictions and requirements of the principal Regulations remain proportionate.”

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 14 March 2022 and reports to the Senedd in line with the reporting points above.

