

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

For further information contact:

Video Conference via Zoom

P Gareth Williams

Meeting date: 28 March 2022

Committee Clerk

Meeting time: 13.30

0300 200 6565

SeneddLJC@senedd.wales

Remote – Supplementary pack 2

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(13.35 – 13.45)

Made Affirmative Resolution Instruments

3.6 SL(6)185 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) Regulations 2022

(Pages 1 – 4)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 28 – Draft report

LJC(6)-11-22 – Paper 29 – Letter from the First Minister to the Llywydd, 25
March 2022

3.7 SL(6)186 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2022

(Pages 5 – 8)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)-11-22 – Paper 30 – Draft report

LJC(6)-11-22 – Paper 31 – Letter from the First Minister to the Llywydd, 25
March 2022

SL(6)185 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) Regulations 2022

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to provide that those Regulations expire at the end of the day on 18 April 2022 (rather than 28 March 2022).

The principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations applies (and if future regulations were to move Wales to any of alert levels 1 to 4, the restrictions and requirements in Schedules 1 to 4 to the principal Regulations could be amended before taking effect).

These Regulations also amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to change their expiry date to 18 April 2022.

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 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 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 point 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 paragraph 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 extension 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 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 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.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

27 March 2022





Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

25 March 2022

Dear Elin,

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) Regulations 2022

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. The Regulations come into force on 26 March 2022. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 12 May 2022 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. As the principal Regulations which these Regulations amend are by virtue of the amendments due to expire during the Senedd's Easter Recess, I intend to hold the plenary debate for this item of subordinate legislation on 29 March 2022, which is the only available opportunity before that Recess. As a result, unfortunately there is very limited time indeed for committee scrutiny.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(6)186 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) 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 March 2022 to–

- omit Part 3 of the principal Regulations, which requires persons to self-isolate if they test positive for coronavirus, or are close contacts of persons who test positive for coronavirus (but self-isolation continues to be recommended in Welsh Government guidance);
- change the principal Regulations’ requirements for face coverings to be worn on public transport and in certain indoor public places so that they now only apply in health and social care premises;
- omit the specific requirement for persons taking part in election campaigning to take reasonable measures to minimise the risk of exposure to coronavirus (but political parties will continue to be required to take such reasonable measures under regulation 16 of the principal Regulations in relation to their activities on regulated premises);
- omit the specific offence in the principal Regulations of being involved in organising a large unlicensed music event.

The Regulations make amendments that are consequential on the amendments set out above and those which have been made to the principal Regulations previously.

They also make a transitional provision to make clear that any legal requirement for a person to self-isolate ceases when these Regulations come into force. Welsh Government guidance will be introduced to be relevant to such persons.

Despite the amendments made by these Regulations, the principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations applies.

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 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 made for them to continue to have effect.

Technical Scrutiny

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Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

27 March 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 7



Elin Jones MS
Llywydd
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Cardiff Bay
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Yours sincerely

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