

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 28 June 2021	Committee Clerk
Meeting time: 10.30	0300 200 6565
	<a href="mailto:SeneddSubordinateLegislation@senedd.wales">SeneddSubordinateLegislation@senedd.wales</a>

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Informal pre-meeting (10.00–10.30)

- 1 **Motion to elect a temporary Chair under Standing Order 17.22**  
10.30
- 2 **Introductions, apologies and substitutions**  
10.35
- 3 **Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**  
10.35–10.45  
Made Negative Resolution Instruments
  - 3.1 **SL(6)013 – The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021**  
(Pages 1 – 21)  
  
LJC(6)–03–21 – Paper 1 – Report  
LJC(6)–03–21 – Paper 2 – Regulations  
LJC(6)–03–21 – Paper 3 – Explanatory Memorandum  
LJC(6)–03–21 – Paper 4 – Letter from the Minister for Climate Change, 14 June 2021  
Composite Negative Resolution Instruments



**3.2 SL(6)012 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2021**

(Pages 22 – 35)

LJC(6)–03–21 – Paper 5 – Report

LJC(6)–03–21 – Paper 6 – Regulations

LJC(6)–03–21 – Paper 7 – Explanatory Memorandum

Made Affirmative Resolution Instruments

**3.3 SL(6)014 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021**

(Pages 36 – 56)

LJC(6)–03–21 – Paper 8 – Report

LJC(6)–03–21 – Paper 9 – Regulations

LJC(6)–03–21 – Paper 10 – Explanatory Memorandum

LJC(6)–03–21 – Paper 11 – Letter from the First Minister, 18 June 2021

**4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**

10.45–10.50

**4.1 SL(6)008 – The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No.2) Regulations 2021**

(Pages 57 – 60)

LJC(6)–03–21 – Paper 12 – Report

LJC(6)–03–21 – Paper 13 – Welsh Government response

## **SL(6)013 – The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021**

### **Background and Purpose**

Section 81 and Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession. These Regulations extend the period during which increased notice must be given to tenants until 30 September 2021 (from the previous end date of 30 June 2021), and this will apply to tenancies granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996.

Specifically, these Regulations amend Schedule 29 to the 2020 Act (“Schedule 29”). Schedule 29 modifies various statutory provisions, relating to notices that need to be given in order to seek possession of dwellings, during “the relevant period” (as defined by paragraph 1(1) of that Schedule). The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (S.I. 2020/778 (W. 172)) and, in part, the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020 (S.I. 2020/1044 (W. 233)) amended the modifications made by Schedule 29. The provision made by Schedule 29 was originally to end on 30 September 2020 (at the end of the relevant period). Regulation 3 of S.I. 2020/1044 (W. 233) amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 had effect in relation to Wales until 31 March 2021. Regulation 2 of the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (Wales) Regulations 2021 (S.I. 2021/377 (W. 118)) further amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 has effect in relation to Wales until 30 June 2021. Regulation 2 of these Regulations further amends paragraph 1(1)(b)(ii) so that Schedule 29 has effect, in relation to Wales, until 30 September 2021.

### **Procedure**

Negative Resolution.

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 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 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 Julie James MS, Minister for Climate Change, in a letter to the Llywydd dated 17 June 2021. In particular, we note the following in the letter:

*“In the light of the ongoing pandemic, and continuing uncertainties surrounding the impact of the new variants that have recently emerged, the Welsh Ministers have concluded that there remains an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible. Doing so will assist with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need. In order to ensure that the provisions of Schedule 29 continue to apply after 30 June, the Regulations come into force on 30 June.”*

### **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**

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). The Committee note that the Regulations will only extend the relevant period for a specified period (up to 30 September 2021).

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:

Paragraph 4.4 states *“continued longer notice periods should mean fewer people evicted into homelessness, or being at risk of eviction into homelessness. If a person becomes homeless, their potential vulnerability to the virus and the likelihood of them spreading it is increased further (“containing and slowing the virus”).*

*Since the time when the relevant period was last extended, there have been significant and continuing improvements made in relation to the virus and the public health situation no longer remains critical in the same way. The rate at which the virus is now circulating in the community means that delaying evictions is currently unlikely to be playing a significant role in controlling the transmission of the virus. However, at the same time, there remains a considerable degree of uncertainty regarding the trajectory of the pandemic and in particular on the emergence of new variants. With increasing case rates in both Scotland and England, a third wave in Wales appears possible as*



*current evidence suggests that the most recent Delta variant is more transmissible than the previously dominant Alpha variant.*

*This uncertainty relates to transmissibility of new variants but more importantly, the likely effectiveness of the current vaccines in preventing serious illness and hospitalisations in relation to these variants. Although there is, at present, a high degree of optimism in relation to continued effectiveness of the vaccines, it will be some time yet before any degree of certainty is achieved. The protection provided by two doses against this Delta variant appears to be much greater than for one dose, and therefore protection from infection remains limited for many in the population at this point. In the meantime, the virus remains a threat to public health, which would be significantly exacerbated if a new wave of cases, or outbreaks in specific locations, were accompanied by a sudden wave of evictions and a resultant increase in homelessness. In these circumstances, taking continued action to limit the risk of a sudden spike in evictions so that public health continues to be protected, is considered proportionate."*

Taking the above comments into account, the Committee note that Landlords have already had restrictions imposed on them for a significant period of time. The restrictions originally contained in the Coronavirus Act in April 2020 were imposed on landlords until September 30 2020. Whilst the pandemic meant that it was considered proportionate to extend the "relevant period" on two previous occasions, the circumstances have since changed significantly and this has been reflected by legislation that has reduced the alert level for the whole of Wales to alert level 2. This has meant that restrictions in several sectors have been relaxed. For example, in the leisure industry, cinemas are now allowed to be open. Soft-play centres and gymnasiums have opened. Can the Welsh Government provide justification for the extended restrictions on Landlords, whilst restrictions in other areas have been lifted? The Welsh Government state in their Explanatory Memorandum that *"The rate at which the virus is now circulating in the community means that delaying evictions is currently unlikely to be playing a significant role in controlling the transmission of the virus."* In light of these comments in the Explanatory Memorandum, can the Welsh Government provide any evidence to the Committee which demonstrates that tenant evictions pose a greater health risk than allowing citizens to participate and attend other settings where restrictions have been lifted. The Committee consider that such evidence is necessary to demonstrate that the approach taken remains proportionate on grounds of human rights.

### **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**

The Committee note that the Welsh Government have considered other options before deciding to extend the current restrictions for a further 3 months. Option B in the Explanatory Memorandum explores the possibility of taking a more graduated and proportionate action in relation to landlords given the improvement in the general picture of public health.

Paragraph 6.7 states:



*“... recognising that the public health situation has improved, there is an argument that it might be appropriate to start reducing notice periods back towards their pre-Covid length. Under this option, therefore, the regulations extending the relevant period would also reduce notice periods from their current six months to four months. For notices issued under section 21 of the Housing Act 1988, this would be the midpoint between the current six months’ notice period and the pre-coronavirus period of two months. Although, this would still mean that a notice issued in June would expire after that issued in July, it would significantly reduce the extent of that differential and mean that the reversion to pre-Covid notice periods from September onwards would be more graduated.”*

The Committee note that a more graduated approach has been taken in England (not dissimilar to the option considered above) to take into account the improvements made in the risks to public health and to apply a proportionate response to how landlords may evict their tenants. The legislation (The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021) introduces a graduated approach. The Regulations in England are drafted in a way that reduces and tapers down the notice periods from 6 months to 2 or 4 months depending on the circumstances and whether they are fault or no fault evictions. The Explanatory Memorandum for the Regulations in England state that *“this is to ensure that the measures remain proportionate to the public health risks, and to mitigate the risk of a cliff-edge in protections that could encourage a spike in possession claims and create pressures for public services.”*

The Committee note the options and reasons given in the Explanatory Memorandum and would like the Welsh Government to expand on and justify the legislative approach taken in these Regulations. Specifically, can the Welsh Government explain why it did not take a tapered approach similar to that in England.

#### **4. 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 emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on the purpose and effect these Regulations.”*

#### **5. 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**

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:



*"The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment."*

**6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**

These Regulations extend the period of time (by approximately 12 weeks) during which a landlord will be subject to the extended notice periods that must be given in order to seek possession of their property, and those extended periods will apply where a landlord wishes to seek possession because of unpaid rent. These Regulations, combined with the provisions made by the Public Health (Protection from Eviction) (Wales) Regulations 2021 and the Health (Protection from Eviction) (No. 2) (Wales) Regulations 2021 (which prevent, except in specified circumstances, attendance at a dwelling for the purpose of executing a warrant of possession or of delivering a notice of eviction) mean that landlords will have been subject to a number of restrictions on obtaining possession over a significant period of time. This may lead to financial difficulties for some landlords in the private rented sector, particularly small-scale landlords who may rely on their rental income to cover mortgage payments or as their only source of income. Given that there has been no formal consultation or a thorough regulatory impact assessment undertaken, what, if any action has the Welsh Government taken to mitigate the economic effects of these Regulations on Landlords.

## **Welsh Government response**

A Welsh Government response is required for merits points 2, 3 and 6.

### **Legal Advisers**

### **Legislation, Justice and Constitution Committee**

**23 June 2021**



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 708 (W. 178)**

**HOUSING, WALES**

**The Coronavirus Act 2020  
(Residential Tenancies: Extension  
of Period of Protection from  
Eviction) (No. 2) (Wales)  
Regulations 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend Schedule 29 to the Coronavirus Act 2020 (“Schedule 29”).

Schedule 29 modifies various statutory provisions, relating to notices that need to be given in order to seek possession of dwellings, during “the relevant period” (as defined by paragraph 1(1) of that Schedule).

The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (S.I. 2020/778 (W. 172)) and, in part, the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020 (S.I. 2020/1044 (W. 233)) amended the modifications made by Schedule 29.

The provision made by Schedule 29 was originally to end on 30 September 2020 (at the end of the relevant period). Regulation 3 of S.I. 2020/1044 (W. 233) amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 had effect in relation to Wales until 31 March 2021. Regulation 2 of the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (Wales) Regulations 2021 (S.I. 2021/377 (W. 118)) further amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 has effect in relation to Wales until 30 June 2021.

Regulation 2 of these Regulations further amends paragraph 1(1)(b)(ii) so that Schedule 29 has effect (as amended by S.I. 2020/778 (W. 172) and subsequently



by S.I. 2020/1044 (W. 233)), in relation to Wales, until 30 September 2021.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 708 (W. 178)**

**HOUSING, WALES**

**The Coronavirus Act 2020  
(Residential Tenancies: Extension  
of Period of Protection from  
Eviction) (No. 2) (Wales)  
Regulations 2021**

*Made* 15 June 2021

*Laid before Senedd Cymru* 17 June 2021

*Coming into force* 30 June 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by paragraphs 1(2) and 14(1) of Schedule 29 to the Coronavirus Act 2020(1).

**Title and coming into force**

1.—(1) The title of these Regulations is the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021.

(2) These Regulations come into force on 30 June 2021.

**Extension of the relevant period in Schedule 29 to the Coronavirus Act 2020**

2. In paragraph 1(1)(b)(ii) of Schedule 29 to the Coronavirus Act 2020(2) (meaning of “the relevant

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- (1) 2020 c. 7. The powers conferred by paragraphs 1(2) and 14(1) of Schedule 29 to the Coronavirus Act 2020 are exercisable by the “relevant national authority”. The Welsh Ministers are the relevant national authority in relation to Wales (see paragraph 1(3) of Schedule 29 to that Act).
- (2) As amended by S.I. 2020/1044 (W. 233) and S.I. 2021/377 (W. 118).

period” in relation to Wales), for “30 June 2021”  
substitute “30 September 2021”.

*Julie James*  
Minister for Climate Change, one of the Welsh  
Ministers  
15 June 2021

**Explanatory Memorandum to the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.2) (Wales) Regulations 2021**

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.2) (Wales) Regulations 2021.

Julie James  
Minister for Climate Change  
17 June 2021

## **1. Description**

- 1.1 Section 81 and Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession. These Regulations extend until 30 September 2021 (from the previous end date of 30 June 2021) the period (‘the relevant period’) during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996.

## **2. Matters of special interest to Senedd Cymru**

- 2.1 There is an urgent need to ensure that the relevant period is extended beyond the 30 June. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the continuing effects of the pandemic. Consequently, these Regulations come into force on 30 June 2021 in order to ensure that there is no gap in the protection given to tenants, which means that they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force. The decision to extend the relevant period has been taken at relatively short notice in response to a situation that is still rapidly evolving, and in the light of continuing uncertainties surrounding the impact of new variants of the virus. Taking the decision at short notice has been essential to ensuring appropriate alignment of the measures taken to combat the effects of the pandemic. Complying with the 21 day convention has thus not been possible.
- 2.2 In accordance with section 11A(4) of the Statutory Instruments Act 1946 (inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.3 Even though these Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to these Regulations in that notice periods in existing tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date these Regulations come into force.

## **3. Legislative background**

- 3.1 These Regulations are made under paragraphs 1(2) and 14(1) of Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”).
- 3.2 Section 81 and Schedule 29 to the 2020 Act delay when landlords may evict tenants by either amending the notice period a landlord is required to serve on a tenant or, in some cases, creating a notice requirement when such a requirement does not currently exist. Notices served in respect of protected tenancies, statutory tenancies, secure tenancies, assured

tenancies, assured shorthold tenancies, introductory tenancies and demoted tenancies during the relevant period are subject to an increased notice period. The relevant period, which is set to end on 30 June 2021, may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales) under a power set out in paragraph 1(2) of Schedule 29.

- 3.3 Schedule 29 applies to all landlords who have granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Following amendments made to Schedule 29 of the 2020 Act by the Coronavirus (Assured Tenancies and Assured Shorthold Tenancies; Extended Notice Periods) (Amendment) (Wales) Regulations 2020 and the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020, six months’ notice is currently required for most notices served in respect of protected tenancies; statutory tenancies; secure tenancies; assured tenancies; assured shorthold tenancies; introductory tenancies; and demoted tenancies. For all tenancies where the ground or reason for giving notice relates to antisocial behaviour (ASB) or domestic violence, notice periods have returned to their pre-Coronavirus levels.
- 3.4 Paragraph 14(1)(a) of Schedule 29 states that regulations made under Schedule 29... “may be exercised more than once,”. Paragraph 14(3) states that a statutory instrument containing regulations of the Welsh Ministers under paragraph 1 is subject to annulment in pursuance of a resolution of the Senedd (i.e. the negative resolution procedure).

#### **4. Purpose & intended effect of the legislation**

- 4.1 The Regulations amend Schedule 29 of the 2020 Act to ensure that until 30 September 2021 tenancies are subject to a six month notice period for termination of the tenancy, except where the reason for seeking to end the tenancy relates to ASB or domestic violence.
- 4.2 From the evidence available, the scale of potential evictions in the private rented sector is likely to be significant. Without a longer period to offer support, address rent arrears, and for landlords and tenants to prepare for potential eviction local authorities could struggle to meet the demand for temporary accommodation which could lead to a large number of people potentially sleeping rough.
- 4.3 In the light of the above, the extension to the relevant period is intended to support three of the overarching aims of the 2020 Act, that is:
- containing and slowing the virus
  - easing the burden on frontline staff; and,
  - supporting people.
- 4.4 It does this through:

- **Reduced homelessness** - continued longer notice periods should mean fewer people evicted into homelessness, or being at risk of eviction into homelessness. If a person becomes homeless, their potential vulnerability to the virus and the likelihood of them spreading it is increased further (“*containing and slowing the virus*”).

Since the time when the relevant period was last extended, there have been significant and continuing improvements made in relation to the virus and the public health situation no longer remains critical in the same way. The rate at which the virus is now circulating in the community means that delaying evictions is currently unlikely to be playing a significant role in controlling the transmission of the virus. However, at the same time, there remains a considerable degree of uncertainty regarding the trajectory of the pandemic and in particular on the emergence of new variants. With increasing case rates in both Scotland and England, a third wave in Wales appears possible as current evidence suggests that the most recent Delta variant is more transmissible than the previously dominant Alpha variant.

This uncertainty relates to transmissibility of new variants but more importantly, the likely effectiveness of the current vaccines in preventing serious illness and hospitalisations in relation to these variants. Although there is, at present, a high degree of optimism in relation to continued effectiveness of the vaccines, it will be some time yet before any degree of certainty is achieved. The protection provided by two doses against this Delta variant appears to be much greater than for one dose, and therefore protection from infection remains limited for many in the population at this point. In the meantime, the virus remains a threat to public health, which would be significantly exacerbated if a new wave of cases, or outbreaks in specific locations, were accompanied by a sudden wave of evictions and a resultant increase in homelessness. In these circumstances, taking continued action to limit the risk of a sudden spike in evictions so that public health continues to be protected, is considered proportionate.

**Reduced pressure on services** - Fewer people would be evicted into homelessness, or be at risk of being evicted into homelessness, at a time when local authorities are less able to respond to these situations as a result of continued pressures on services created by the lasting effects of the pandemic. These pressures include finding suitable homes for those currently residing in temporary accommodation. Diverting resources away from other vital aspects of local authorities’ response to the impact that Covid-19 has had will potentially weaken the effectiveness of that response and undermine recovery (“*easing the burden on frontline staff*”). This is of particular relevance as hospitality has re-opened and many Local Authorities have been utilising closed hotels for temporary accommodation. These hotels will be keen to revert back to their core business as restrictions are lifted and the supply to

local authorities will be reduced, thus further exacerbating current pressures. Local authorities are under considerable pressure in relation to homelessness presentations – currently circa 1000 people are presenting as homeless.. They will struggle to accommodate a significant rise in numbers presenting as homeless which may lead to a significant increase in the numbers of those who become homeless and who may end up sleeping rough.

- **Increased security and reduced anxiety** - Those renting their homes will continue to benefit from the knowledge that they will not face the threat of eviction at short notice.

As well as increased security, this will reduce levels of anxiety amongst tenants who are already disproportionately affected in other ways by the ongoing financial and economic uncertainties caused by the pandemic (*“supporting people”*) (not least because young people and those in low income groups, who have been most at risk of their employment as a result of the pandemic, are over-represented in the rented sector). Reducing anxiety in the general population (the ONS has found that nearly 50% of people have experienced elevated levels of anxiety at times during the pandemic) also has a clear public health benefit and reduces pressures on public services including mental health services (*“easing the burden on frontline staff”*) and will better enable those services to deal with the consequences of any new outbreaks of the virus. Being made homeless, threatened with sleeping rough, placed potentially a long distance from their home and support networks and, if they have children, from children’s friends and support networks will increase stress and anxiety.

- **Increased scope to support individuals at risk of eviction –** Maintaining an extension to the relevant period, with continued increased notice periods, would also continue to provide additional time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears which may accrue as a result of the coronavirus outbreak (*“supporting people”*).

## **5. Consultation**

- 5.1 Given the emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on the purpose and effect these Regulations.

## **6. Regulatory Impact Assessment**



- 6.1 The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative description of the likely impacts.

## **Options**

- 6.2 Three options have been considered:

*Option A – Do nothing*

*Option B – Extend the relevant period until 30 September 2021, but reducing notice periods currently set at six months to four months*

*Option C - Extend the relevant period until 30 September 2021 and retain all current notice periods*

## **Costs and Benefits**

*Option A – Do nothing*

- 6.3 If no action is taken, from 1 July 2021, the arrangements for notice periods will revert to those that applied before the temporary amendments introduced by Schedule 29 of the 2020 Act. This will mean different things in relation to different tenancies, but in most instances (that is, excluding the current exemptions relating to ASB and DV) will mean that the period given to a tenant will be less than it is currently. For example, in relation to assured tenancies, the period of notice required under section 8 of the Housing Act 1988, where the notice is given under the mandatory rent arrears ground, would reduce from six months to two weeks. In relation to assured shorthold tenancies, the period of notice required under section 21 of the Housing Act 1988 would reduce from six months to two months.
- 6.4 Although there are no immediate additional costs associated with this option, nor any costs at all to landlords, it will not achieve any of the benefits set out in 4.4 above. Furthermore, on the basis of surveys undertaken by organisations both representing both landlord and tenant interests, it is reasonably clear that the financial hardship resulting from the effects of the pandemic has had a damaging impact on the ability of some tenants to pay rent. As a result of the latter, there will be a potentially significant medium to longer term cost, both in terms of potential harm to public health and the financial impact on services, if there is a sudden upturn in evictions or the threat of evictions caused by an immediate and premature return to pre-Covid notice periods.
- 6.5 In addition, this option would not address the perverse situation that a notice issued at the end of June may come to an end months later than an equivalent notice issued at the beginning of July.

*Option B – Extend the relevant period until 30 September, but reduce notice periods from six months to four months (except those relating to ASB or DV to which pre-Covid notice arrangements apply).*

- 6.6 Under this option, regulations would be made that extend the relevant period until 30 September 2021 so as to cover a period when it is expected that the impact of the pandemic will continue to be significant. Consequently, the benefits of extending the period over which additional protections are applied, as outlined under 4.4, would be realised for an additional three months (and for the remaining period during which the vaccination of adults in Wales is expected to be completed). There would also be a saving to local authorities and organisations providing support to individuals faced with eviction with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.
- 6.7 However, recognising that the public health situation has improved, there is an argument that it might be appropriate to start reducing notice periods back towards their pre-Covid length. Under this option, therefore, the regulations extending the relevant period would also reduce notice periods from their current six months to four months. For notices issued under section 21 of the Housing Act 1988, this would be the midpoint between the current six months' notice period and the pre-coronavirus period of two months. Although, this would still mean that a notice issued in June would expire after that issued in July, it would significantly reduce the extent of that differential and mean that the reversion to pre-Covid notice periods from September onwards would be more graduated.
- 6.8 The administrative and transitional costs to landlords of extending the relevant period are expected to be negligible. However, where a landlord is seeking possession of property on the rent arrears grounds, there is a potential additional cost arising from the extra delay there would be to the landlord making a claim to the court and the arrears that may build up during that time. This in turn may lead to financial difficulties for some landlords in the private rented sector – particularly small-scale landlords who may rely on their rental income to cover mortgage payments or as their only source of income. However, any financial difficulties which landlords may incur necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service, local authorities and other organisations, of a sudden increase in evictions occurring.

*Option C – Extend the relevant period until 30 September and retain notice periods for all types of tenancies at six months (except those relating to ASB or DV to which pre-Covid notice arrangements apply).*

- 6.10 As with Option B, regulations would be made that extend the relevant period until 30 September 2021 so as to cover a period when the impact

of the pandemic will continue to be felt, with the benefits as identified in paragraph 4.4.

- 6.11 And again, as with Option B, the extension would help to ensure tenants in both the private and social rented sector remain in their homes and have enough time to find alternative accommodation during the period of planned transition back to normality and the economy is fully opened up. Ensuring that tenants remain protected until the end of September will continue to help reduce pressure on essential public services.
- 6.12 However, under this option six-month notice periods would be retained for all notices for which the notice period is currently set at that length. This would not provide for the more graduated reversion to pre-coronavirus notice periods set out in Option B. Given the ongoing uncertainties caused by the emergence of new variants and the extent to which the wider effects of the pandemic on the economy and society continue to be felt, retaining sixth month notice periods is likely to best support the objectives of containing and slowing the virus, easing the burden on frontline staff and supporting people. In particular, concerns relating to a potential third wave arising as a consequence of the increased transmissibility of the Delta variant and the significant proportion of the population who have yet to have both doses of the vaccine and for whom protection is therefore still limited, supports a more cautious approach. At the same time, consideration is also being given to what further support can be provided to the rented sector to mitigate the impacts of the pandemic. For these reasons, the Welsh Ministers consider Option C is the more appropriate option to pursue at this time.

### **Competition Assessment**

- 6.13 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, the changes are being applied to all landlords that rent out a property as a home. This broad application means that no changes to the overall structure or size of the private rented sector are expected. In addition no change is expected in terms of competitiveness of businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition.

### **Specific Impact Tests**

#### **6.14 *Equalities***

The extension of the relevant period for a further three months whilst still retaining longer notice periods of six months (as opposed to allowing notice periods to return to their pre-Covid position), will positively impact on those same people with protected characteristics; it may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction who, if the regulations were not extended, might be forced to find alternative accommodation at short notice during the current public

health emergency. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the private rented sector and therefore more vulnerable to eviction, e.g. some Black, Asian and Minority Ethnic groups. Whilst robust data on the protected characteristics of landlords in Wales is limited<sup>1</sup>, officials are unaware of any negative implications of the Regulations which would disproportionately affect people with protected characteristics.

#### 6.15 *Children's rights*

No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. Given that a significant proportion of households in the rented sector are families with dependent children, extending the relevant period may help reduce the disruption caused to children by a home move – including potentially having to change school – by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

#### 6.16 *Welsh language*

These Regulations should not give rise to any negative impacts in relation to cultural wellbeing or the Welsh language.

#### 6.17 *Local Government*

These Regulations may have a limited, positive, impact on local authorities, by lessening the demand on crisis homelessness services.

#### 6.18 *Economic effects*

As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, extending the relevant period, so that notice periods remain at an increased length, could result in tenants accruing greater levels of rent arrears, resulting in financial hardship for landlords in the private rented sector – particularly small-scale landlords who may rely on their rental income to cover mortgage payments, or as their only source of income. However, the financial impact of this may be balanced out by the additional time landlords, tenants and support agencies have to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. In more general economic terms, the greater security of tenure provided by increased notice periods may have beneficial impacts. For example it may provide

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<sup>1</sup> Rent Smart Wales collect data on the protected characteristics of registered landlords but the significant number of those who “prefer not to say” in a number of categories, means that the data is not wholly reliable. For that reason, we have been unable to carry out an Equality Impact assessment in respect of landlords.

tenants with a more stable set of circumstances, improving their ability to secure or sustain employment.

#### 6.19 *Impact on Privacy*

The Regulations do not produce any new requirements relating to privacy or the sharing of information.

#### 6.20 *Rural proofing*

These Regulations will apply to homes rented by people living in rural, as well as urban areas. As such, the impacts – and benefits – will be no different between rural and urban areas.

#### 6.21 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction in the number in the number of people evicted into homelessness during the current pandemic. It is also well-recognised that good quality and secure housing is a significant determinant of individuals' general health and wellbeing. These Regulations should therefore support health and wellbeing for individual tenants by providing reassurance that they will not face eviction at short notice during the pandemic.

#### 6.22 *Wellbeing of Future Generations*

The temporary protections provided through the extension of the relevant period helps to contribute to the achievement of well-being goals, in particular a more equal Wales and a healthier Wales. The five ways of working are embedded in terms of this action being preventative; taking into account the long-term impact on those likely otherwise to be evicted; acting in collaboration with third sector partners, such as Shelter Cymru; taking an integrated approach to health and housing and other areas; and involving stakeholders through stakeholder meetings.

#### 6.23 *Impact on the Justice System*

The net effect of changes resulting from this legislation is expected to be neutral or even positive on the basis that allowing tenants more time to resolve financial issues may result in fewer rent arrears cases proceeding to court.



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

17 June 2021

Dear Elin

**The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.2) (Wales) Regulations 2021**

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006, I am notifying you that this statutory instrument will come into force on 30 June 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The Regulations amend paragraph 1(1) of Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) by extending until 30 September 2021 the relevant period during which Schedule 29 applies.

The effect of these changes will be to extend, for a further three months, the period during which landlords, in most circumstances, will need to provide tenants with increased notice before starting possession proceedings in the courts.

In the light of the ongoing pandemic, and continuing uncertainties surrounding the impact of the new variants that have recently emerged, the Welsh Ministers have concluded that there remains an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible. Doing so will assist with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need. In order to ensure that the provisions of Schedule 29 continue to apply after 30 June,

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

Bae Caerdydd • Cardiff Bay  
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[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@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.

the Regulations come into force on 30 June. Due to their immediacy, the Regulations have not been subject to consultation and there has been insufficient time to carry out a Regulatory impact Assessment in relation to them.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, David Rees MS, Chair of the Interim Subordinate Legislation 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,



**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

# Agenda Item 3.2

## **SL(6)012 – The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021**

### **Background and Purpose**

The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021 (“the Regulations”) amend the Education (Student Loans) (Repayment) Regulations 2009 (“the Principal Regulations”), which make provision for interest to be charged on, and for the repayment of, income contingent student loans in England and Wales. The enabling powers relied upon for the Regulations are sections 22(2)(g), (3)(a), (4)(a) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”).

Section 44 of the Higher Education Act 2004 (‘the 2004 Act’) provided for the transfer to the then National Assembly for Wales of the functions of the Secretary of State in relation to Wales under the relevant parts of section 22 of the 1998 Act.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the then National Assembly for Wales, so far as exercisable in relation to Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999.

The functions of the then National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Welsh Ministers and Secretary of State are required by section 22(4) (a) of the 1998 Act to ensure that the student loan interest rate is either below the prevailing market rate (‘PMR’), or equal to the PMR with better terms and conditions.

Regulation 2(2) of the Regulations makes provision for a temporary reduction of the interest rates on undergraduate loans specified in regulation 21A of the Principal Regulations; regulation 2(3) makes similar provision in respect of postgraduate degree loans specified in regulation 21B of the Principal Regulations. The interest rate reduction is required because the Secretary of State has determined that the prevailing market rate has been below the interest rates specified in regulation 21A or 21B for 3 consecutive months.

The Regulations expire on 30 September 2021. The interest rates reduction is for 3 months, and after expiry of the Regulations, the interest rate on undergraduate loans and postgraduate degree loans will return to the rate specified in the Principal Regulations.

### **Procedure**

Composite negative.

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament. 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. The





United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

## Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh**

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament.

As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

*“The 2021 Regulations are composite regulations and, as such, it should be noted that there are no routine parliamentary processes in place to lay bilingual regulations before Parliament. Therefore, the amending regulations are made in English only.”*

## Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**15 June 2021**



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S T A T U T O R Y   I N S T R U M E N T S

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**2021 No. 677**

**EDUCATION, ENGLAND AND WALES**

**The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2021**

<i>Made</i> - - - -	<i>7th June 2021</i>
<i>Laid before Parliament</i>	<i>9th June 2021</i>
<i>Laid before Senedd Cymru</i>	<i>9th June 2021</i>
<i>Coming into force</i> - -	<i>1st July 2021</i>

The Secretary of State and the Welsh Ministers, in exercise of the powers conferred by sections 22(2)(g), (3)(a), (4)(a) and 42(6) of the Teaching and Higher Education Act 1998(a), make these Regulations.

**Citation, commencement and expiry**

- 1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2021 and come into force on 1st July 2021.
- (2) These Regulations expire at the end of 30 September 2021.

**Amendment of the Education (Student Loans) (Repayment) Regulations 2009**

- 2.—(1) The Education (Student Loans) (Repayment) Regulations 2009(b) are amended in accordance with paragraphs (2) and (3).
- (2) In regulation 21A (interest rate on post-2012 student loans)—
- (a) in paragraph (2), after “(2F),” insert “(2G),”;
  - (b) in paragraph (2A), for “and (2C)” substitute “, (2C) and (2G)”;
  - (c) in paragraph (2D), for “and (2F)” substitute “, (2F) and (2G)”;
  - (d) after paragraph (2F) insert—
    - “(2G) The maximum annual percentage rate charge determined under paragraph (2), (2A), or (2D) is—

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(a) 1998 c. 30; section 22(4)(a) was amended by section 76(1) of the Education Act 2011 (c. 21). Section 43(1) of the Teaching and Higher Education Act 1998 defines “prescribed” and “regulations”. The functions of the Secretary of State under section 22(2)(g), (3)(a) and (4)(a) of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004. The functions of the Secretary of State under section 42(6) of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The section 22(2)(g), (3)(a), (4)(a) and 42(6) functions which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(b) S.I. 2009/470, amended by S.I. 2012/1309, 2013/607, 2013/1881, 2017/831, 2018/599, 2019/189; there are other amending instruments but none is relevant.

- (a) 5.3% for the period beginning with 1 July 2021 and ending with 31 August 2021; and
- (b) 4.2% for the period beginning with 1 September 2021 and ending with 30 September 2021.”;
- (e) in paragraph (4), for “During” substitute “Subject to paragraph (4A), during”;
- (f) after paragraph (4) insert—
  - “(4A) The annual percentage rate charge determined under paragraph (4) is—
  - (a) 5.3% for the period beginning with 1 July 2021 and ending with 31 August 2021; and
  - (b) 4.2% for the period beginning with 1 September 2021 and ending with 30 September 2021.”.
- (3) In regulation 21B (interest rate on postgraduate degree loans)—
  - (a) in paragraph (1), for “The” substitute “Subject to paragraph (1A), the”;
  - (b) after paragraph (1) insert—
    - “(1A) The interest rate for postgraduate degree loans determined under paragraph (1) is—
    - (a) 5.3% for the period beginning with 1 July 2021 and ending with 31 August 2021; and
    - (b) 4.2% for the period beginning with 1 September 2021 and ending with 30 September 2021.”.

7th June 2021

*Michelle Donelan*  
Minister of State  
Department for Education

7th June 2021

*Jeremy Miles*  
Minister for Education and the Welsh Language, one of the Welsh Ministers

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”), which make provision for the repayment of income-contingent student loans in England and Wales. The Regulations expire on 30 September 2021.

Regulation 2(2) makes provision for a temporary reduction of the interest rates on undergraduate loans specified in regulation 21A of the Principal Regulations; regulation 2(3) makes similar provision in respect of postgraduate degree loans specified in regulation 21B of the Principal Regulations. The interest rate reduction is required because the Secretary of State has determined that the prevailing market rate has been below the interest rates specified in regulation 21A or 21B for 3 consecutive months. The interest rates reduction is for 3 months. After expiry of the Regulations, the interest rate on undergraduate loans and postgraduate degree loans will return to the rate specified in the Principal Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was also considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can

be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

The Explanatory Memorandum laid before Parliament is published alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021**

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister for Education's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and the Welsh Language  
09 June 2021

## **Part 1**

### **1. Description**

The Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470), as amended (“the 2009 Regulations”), provide the basis for the repayment of student loans made by the Welsh Ministers. The 2009 Regulations include provision for interest to be charged on student loans.

The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021 (“the 2021 Regulations”) amend the 2009 Regulations to reduce the rate on student loans, resulting in a lower rate of interest being charged to Welsh borrowers with Plan 2 or Plan 3 loans. Plan 2 loans are post 2012 undergraduate loans and Plan 3 loans are postgraduate degree loans. The rates will apply for a fixed period of three months, when they will be re-assessed.

### **2. Matters of special interest to Senedd Cymru**

The repayment of student loans is a complex legal area due to the nature of the devolution settlement and the division of functions between the Welsh Ministers and the Secretary of State for Education. Repayment of loans is provided for in the 2009 Regulations which are made on a composite basis by the Secretary of State and, in respect of those functions transferred to them, by the Welsh Ministers. The Welsh Ministers legislate in relation to Wales in respect of those functions transferred to them and the Secretary of State in relation to England and, insofar as the Secretary of State retains functions, Wales.

The 2021 Regulations are composite regulations and, as such, it should be noted that there are no routine parliamentary processes in place to lay bilingual regulations before Parliament. Therefore, the amending regulations are made in English only.

### **3. Legislative background**

Sections 22 and 42 of the Teaching and Higher Education Act 1998 enable the Welsh Ministers to make regulations relating to the provision of financial support to students ordinarily resident in Wales who are enrolled on designated courses of higher education, including provision for the repayment of loans.

The 2009 Regulations provide the basis for the repayment of student loans made by the Welsh Ministers and include provision for interest to be charged on student loans. The enabling powers for the 2021 Regulations are sections 22(2)(g), (3)(a), (4)(a) and 42(6) of the Teaching and Higher Education Act 1998.

The Welsh Ministers and Secretary of State are required by section 22(4) (a) of the Teaching and Higher Education Act 1998 to ensure that the student loan interest rate is either below the prevailing market rate ('PMR'), or equal to the PMR with better T&Cs.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State in relation to Wales under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(j), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) of the 1998 Act to be exercisable concurrently with the National Assembly for Wales in relation to Wales.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

In addition to the duty on the Welsh Ministers and Secretary of State as outlined above, student loan interest rates must also be below the PMR, or equal to the PMR with better T&Cs, to remain exempt from the Consumer Credit Directive ('CCD'). While student loans are exempt from the CCD, they do not have to show on borrower's credit files meaning that student loans will not affect a borrower's credit rating. If the CCD exemption were removed, student loans would have to be included within a customer's credit file, potentially affecting their credit rating.

Student loan interest rates are set according to the 2009 Regulations (as amended) and currently give no consideration to the PMR. The interest charged on Plan 2 loans is set out in regulation 21A of the 2009 Regulations and varies from the "*standard rate*"

to the “*standard rate plus the additional rate*” to the “*standard rate plus 3%*”. The standard rate is the greater of 0% and an amount equal to the percentage increase between the retail prices all items index published by the ONS for the two Marches immediately before the commencement of the academic year. The rate charged on Plan 3 loans is set out in regulation 21B of the 2009 Regulations as RPI+3%. “RPI” is defined for these purposes as “*the percentage increase between the retail prices all items index published by the National Office for Statistics for the two Marches immediately before the commencement of the academic year*”. The regulations leave the potential for the student loan interest rate to exceed the PMR, which, as set out above, would be unlawful.

The PMR has generally been declining over recent months. The PMR has now declined to a point where for three consecutive months it has been below the current maximum Plan 2 and Plan 3 student loan interest rates.

At the point of monitoring, for the months of February 2021, March 2021 and April 2021, the Bank of England’s effective interest rate dropped 0.1 percentage points, or more, below the current maximum, Plan 2 and the Plan 3 student loan interest rate. As this has occurred for three consecutive months, it has been agreed with UK Government for amending regulations to be made, to implement the PMR cap on interest rates for three months.

The 2021 Regulations alter the interest rate for Plan 2 and Plan 3 loans for a fixed period of three months, to bring the student loan interest rates in line with PMR. For Plan 2 student loans, this will mean a maximum interest rate equal to PMR. For Plan 3 loans, this will mean an interest rate equal to PMR.

The interest rate reduction will remain in place for 3 months from 1 July 2021. After expiry of the Regulations on 30 September 2021, the interest rate on undergraduate loans and postgraduate degree loans will return to the rate specified in the 2009 Regulations, unless they remain above the PMR.

The student loan interest rate is revised in September each year (based on the annual percentage increase in RPI of the preceding two Marches). The timing of this change means that a separate maximum interest rate will be set for the period before September (5.3% for 1 July to 31 August) and for the period after (4.2% for 1 September to 30 September). This will ensure that borrowers with affected loans will receive the same reduction to the applicable interest rates regardless of this change falling across the next academic year.



## **5. Consultation**

No consultation has been undertaken.

## **Part 2 – Regulatory Impact Assessment**

An RIA has been conducted for the 2021 Regulations.

## **6. Options**

### *Option 1: Business as usual*

If the 2021 Regulations are not made, Welsh Ministers will be in breach of their duty to ensure that the student loan interest rate is either below the prevailing market rate (PMR), or equal to the PMR with better T&Cs.

In addition, student loans would no longer be exempt from the Consumer Credit Directive and, as such, will show on borrowers credit file and may affect their credit rating.

### *Option 2: Make the Regulations*

Making the 2021 Regulations ensures that the consequences outlined above are avoided.

## **7. Costs and benefits**

### *Option 1: Business as usual*

There would be no additional costs or particular benefits in continuing with business as usual.

Leaving the existing regulations in place would mean Welsh Ministers will be in breach of their duty to ensure that the student loan interest rate is either below the PMR, or equal to the PMR with better T&Cs.

Student loans would no longer be exempt from the CCD and, as such, will show on borrowers credit file and may affect their credit rating.

### *Option 2: Make the Regulations*

Making the 2021 Regulations would ensure that there is no breach of Welsh Ministers' duty in relation to the student loan interest rate (section 22(4)(a) of the Teaching and Higher Education Act 1998).

Under the 2021 Regulations, the effect of a temporary decrease in the prevailing market rate below the maximum student loans interest rate would be to temporarily reduce the interest rate applied to the loans of some student loan borrowers in Wales. The affected categories of student loan borrower would be: all Plan 3 borrowers (both in-study and post-study); all in-study Plan 2 borrowers; and some post-study Plan 2 borrowers. The latest estimates suggest that approximately 1,300 (or 1.5% of) post-study Plan 2 borrowers will benefit from the temporary reduction in maximum interest rates between 1 July and 30 September 2021. The majority of post-study Plan 2 borrowers would remain unaffected unless the prevailing market rate were to drop below the minimum Plan 2 interest rate, which is considered to be highly unlikely. Further detail on the proportion of post-study Plan 2 borrowers that may be affected by the changes is presented in Technical Annex A.

The potential changes to student loan interest rates associated with making the 2021 Regulations may have a small cost impact on the Welsh Government. The Resource Accounting and Budgeting (RAB) charge is the estimated cost to Government of borrowing to support the student finance system. It is based on predicted future loan write-offs and interest subsidies in net present value terms. A temporary reduction in student loan interest rates would lead to relatively less interest being accrued on some borrowers' student loan accounts, therefore their loan balance would decrease and those borrowers who go on to fully repay their student loan will repay a relatively smaller amount. Predicted repayments may fall overall, and thus the RAB charge, which the Welsh Government must fund, may rise. However, the majority of student loan borrowers (both Plan 2 and Plan 3) are predicted to repay less than the principal of their loan before the loan is written off. Any reduction in the interest rate would have no impact on the predicted repayments of this majority; therefore the potential impact on the overall RAB charge is expected to be relatively small.

In this instance, where the maximum Plan 2 and Plan 3 interest rate is to be reduced by 0.3 percentage points from 1 July to 30 September 2021, the latest modelled estimates suggest a negligible impact (less than £0.1 million) on the amount of non-cash provision required for the 2021-22 financial year.

In general, the anticipated potential expenditure associated with any future interest rate reductions, should the PMR remain below the maximum student loans interest rate over the coming months, can be met from within existing resources.

The new arrangements under the 2021 Regulations will also have implications for Welsh student loan borrowers. These will be positive, as affected borrowers would see a reduction in their loan balance as a result of the change. However, it would only be those who fully repaid their loan who would see an impact in terms of the repayments made against the loan.

Student loans would remain exempt from the CCD and, as such, the current position where student loans do not show on a borrowers credit file would be maintained.

## **8. Competition Assessment**

The making of the 2021 Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

## **9. Post-Implementation Assessment**

The 2021 Regulations implement the PMR cap on interest rates for three months. Monitoring of the level of the PMR will be carried out on a monthly basis. Further amending regulations will be made if, at any point, the Bank of England's effective interest rate drops 0.1 percentage points, or more, below the current maximum, Plan 2 and the Plan 3 student loan interest rate for three consecutive months.

## **Summary**

The making of the 2021 Regulations is necessary to ensure that there is no breach of Welsh Ministers' duty in relation to the student loan interest rate (section 22(4)(a) of the Teaching and Higher Education Act 1998).

## Technical Annex A

It was explained in Section 7 that under the 2021 Regulations, the effect of a temporary decrease in the prevailing market rate below the maximum student loans interest rate would be to temporarily reduce the interest rate applied to the loans of: all Plan 3 borrowers (both in-study and post-study); all in-study Plan 2 borrowers; and some post-study Plan 2 borrowers. This Technical Annex provides further detail on the proportion of post-study Plan 2 borrowers that may be affected by the changes.

Under the current student loans terms and conditions, the post-study interest rate applied to Plan 2 student loans is equal to RPI plus X percentage points, where X is calculated for each individual borrower on a sliding scale between 0 and 3 percentage points, based on the borrower's gross income above the Plan 2 repayment threshold. The highest-earning Plan 2 graduates are charged an interest rate of RPI plus 3 percentage points, while those who earn below the repayment threshold are charged an interest rate of RPI.<sup>1</sup>

For illustrative purposes, Table 1 shows the approximate proportion of post-study Plan 2 borrowers whose student loan interest rate would be reduced if the prevailing market rate falls to certain levels (in percentage point terms) below the maximum Plan 2 interest rate, and if a cap is implemented accordingly. The analysis is based on administrative data from the Student Loans Company (SLC), which show the variable interest rates applied to Welsh Plan 2 borrowers' accounts as at 30 November 2020. The 0.3 percentage point reduction, as is to be applied between 1 July and 30 September 2021, will benefit 1.5% of post-study Plan 2 borrowers, and is emboldened in Table 1.

**Table 1: Approximate proportion of post-study Plan 2 borrowers whose student loan interest rate would be reduced under the 2021 Regulations, if the maximum Plan 2 interest rate were to be reduced by various increments**

Percentage pt. reduction in maximum Plan 2 interest rate	Proportion of post-study Plan 2 borrowers affected
0.10%	1.2%
<b>0.30%</b>	<b>1.5%</b>
0.50%	1.8%
1.00%	2.9%
2.00%	8.4%
3.00%	21.5%
more than 3.00%	100.0%

It is clear from Table 1 that a slight reduction in the maximum Plan 2 interest rate would affect only a small proportion of post-study Plan 2 student loan borrowers; and the majority of the borrowers would be unaffected by a decrease in the prevailing market rate as long as the PMR does not fall below the minimum Plan 2 interest rate, equal to the RPI rate. This is because the majority of Plan 2 graduates earn an income below

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<sup>1</sup> For the 2021-22 financial year: the Plan 2 repayment threshold is set at £27,295 per annum; and individual Plan 2 borrowers are charged a post-study interest rate of RPI plus 3 percentage points if their gross income is more than £49,130 per annum.

the Plan 2 repayment threshold or are otherwise not required to repay their student loan. The case in which the PMR falls to a level below the minimum Plan 2 interest rate is considered to be highly unlikely.

# Agenda Item 3.3

## **SL(6)014 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021**

### **Background and Purpose**

These Regulations further amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the Principal Regulations”) to replace regulation 16 of the Principal Regulations. The new regulation 16 requires the person responsible for “regulated premises” to take an updated four-step approach as set out in the new regulation, including:

- Undertaking a risk assessment of exposure to coronavirus at the premises (Step 1);
- Providing information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus (Step 2);
- Take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, except as otherwise specified (such as members of the same household or, at Alert Levels 1 and 2, groups consisting of no more than 6 people not counting any persons under the age of 11 or carers) (Step 3);
- Take reasonable measures to mitigate the risk of exposure to coronavirus that arises where persons gather in close proximity to each other (Step 4).

The Regulations also amend Schedule 1 to the Principal Regulations (which sets out the restrictions and requirements that currently have effect in Wales as an Alert Level 1 area) to:

- Remove the previous limit of 30 on the number of people that are allowed to gather at a celebration of a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony, or at a celebration of the life of a deceased person – maximum permitted numbers will now be set in light of relevant risk assessments and the steps and reasonable measures taken;
- Allow primary school children to gather at holiday or travel accommodation (for example, for overnight stays) where the gathering is regulated and relates to the development or well-being of children;
- Clarifies the effect of the prohibition on organising events does not apply to an entertainment performance held in premises ordinarily used for that purpose (such as small music and comedy venues), and where no more than 200 people are in attendance or where it is held outdoors. They also clarify that indoor hospitality facilities can be provided at an outdoor event without changing the status of that event.

The Regulations also clarify the effect of the prohibition on organising events in relation to areas in Alert Level 2.



## 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: (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 2 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 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."*

Further information about the engagement of rights is set out in the Explanatory Memorandum to these Regulations.

### **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 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."*

## Welsh Government response

A Welsh Government response is not required.



**Legal Advisers**  
**Legislation, Justice and Constitution Committee**  
**22 June 2021**



Senedd Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
Welsh Parliament **Pack Page 38**  
**Legislation, Justice and Constitution Committee**



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 722 (W. 183)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 5) (Wales)  
(Amendment) (No. 13) Regulations  
2021**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2A of the Public Health (Control of Disease) Act 1984 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.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”).

The Regulations replace regulation 16 of the principal Regulations. The new regulation 16 requires the person responsible for “regulated premises” to take the following steps.

Step 1 – undertake an assessment of the risk of exposure to coronavirus at the premises.

Step 2 – provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.

Step 3 – take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, except between the members of a group, comprising of no more than 6 persons or members of the same household at Alert Level 1 and 2, or at Alert Levels 3 and 4, comprising of members of the same household.

Step 4 – take reasonable measures to mitigate the risk of exposure to coronavirus that arises where persons gather in close proximity to each other. The measures may include seeking to prevent persons experiencing symptoms of COVID-19 from entering the premises, ensuring that people gather outdoors instead of indoors where it is practicable to do so, limiting close face-to-face interaction, seeking to ensure that the premises are well ventilated, and maintaining good hygiene. They may also include measures such as not carrying on certain activities and collecting contact information from persons at the premises.

In determining the extent to which it is reasonable to take a particular measure under Step 3, the person responsible for the premises may have regard to measures taken under Step 4 to mitigate the risk of exposure to coronavirus when a person is within 2 metres of another person.

The Regulations also amend Schedule 1 to the principal Regulations (which sets out the restrictions and requirements that currently have effect in Wales as an Alert Level 1 area) to—

- remove the previous limit of 30 on the number of people that are allowed to gather at a celebration of a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony, or at a celebration of the life of a deceased person – maximum permitted numbers will now be set in light of the risk assessment undertaken under regulation 16 of the principal Regulations, and the steps and reasonable measures taken under that regulation;
- allow primary school children to gather at holiday or travel accommodation (for example, for overnight stays) where the gathering is related to a regulated gathering for the development or well-being of children, such as those provided for children outside of school hours and during school holidays at places such as outdoor education centres, or is related to a gathering at which the children are participating for the purpose of accessing or receiving education;

- clarify that the prohibition on organising events does not apply to an entertainment performance held in premises ordinarily used for that purpose, and where no more than 200 people are in attendance or where it is held outdoors.

The Regulations also amend Schedule 2 to the principal Regulations (which relates to Alert Level 2 areas) to clarify the effect of the prohibition on organising events, including that it does not apply to an entertainment performance held in premises ordinarily used for that purpose, and where no more than 200 people are in attendance or where it is held outdoors.

They also make other minor and consequential amendments to the principal Regulations, including amending regulation 57 to clarify that an event does not cease to be classed as being “outdoors” just because indoor facilities are provided for the consumption of food and drink.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 722 (W. 183)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 5) (Wales)  
(Amendment) (No. 13) Regulations  
2021**

*Made* at 1.39 p.m. on 18 June 2021

*Laid* before Senedd  
*Cymru* at 4.00 p.m. on 18 June 2021

*Coming into force* 21 June 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984<sup>(1)</sup>.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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<sup>(1)</sup> 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

#### **Title and coming into force**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021.

(2) These Regulations come into force on 21 June 2021.

#### **Amendment to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020**

**2.**—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020<sup>(1)</sup> are amended as follows.

(2) For regulation 16 substitute—

#### **“Requirement to take all reasonable measures to minimise the risk of exposure to coronavirus**

**16.**—(1) For the purposes of minimising the risk of exposure to coronavirus at regulated premises, or the spread of coronavirus by those who have been at regulated premises, the responsible person must take the following steps—

##### *Step 1*

Undertake a specific assessment of the risk of exposure to coronavirus at the premises, and in doing so consult persons working on the premises or representatives of those persons.

##### *Step 2*

Provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.

##### *Step 3*

Take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons on the

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(1) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40), S.I. 2021/210 (W. 52), S.I. 2021/307 (W. 79), S.I. 2021/413 (W. 133), S.I. 2021/502 (W. 150), S.I. 2021/542 (W. 154), S.I. 2021/583 (W. 160), S.I. 2021/668 (W. 169) and S.I. 2021/686 (W. 172).

premises, except between members of a permitted group;

- (b) where persons are required to wait to enter the premises, that a distance of 2 metres is maintained between them, except between members of a permitted group.

*Step 4*

Take reasonable measures to mitigate the risk of exposure to coronavirus that arises where persons gather in close proximity, such as—

- (a) seeking to prevent the following persons from being present at the premises—
  - (i) any person who has tested positive for coronavirus in the previous 10 days,
  - (ii) any person who has had close contact in the previous 10 days with a person who has tested positive for coronavirus,
  - (iii) any person experiencing symptoms associated with COVID-19;
- (b) ensuring that persons gathering at the premises gather outdoors where this is practicable;
- (c) limiting close face-to-face interaction between persons on the premises, for example by—
  - (i) changing the layout of premises including the location of furniture and workstations;
  - (ii) controlling the use of entrances, passageways, stairs and lifts;
  - (iii) controlling the use of shared facilities such as toilets and kitchens;
  - (iv) otherwise controlling the use of, or access to, any other part of the premises;
  - (v) installing barriers or screens;
- (d) limiting the duration of time for which persons may be present on the premises;
- (e) seeking to ensure that the premises are well ventilated;
- (f) maintaining good hygiene on the premises;
- (g) providing or requiring use of personal protective equipment.

(2) In determining the extent to which it is reasonable to take a particular measure under Step 3, regard may be had to measures taken under Step 4 to mitigate the risk of exposure to coronavirus that arises when any person is within a distance of 2 metres of another person.

(3) Measures that may be taken under paragraph (1) include—

- (a) not carrying out certain activities;
- (b) closing a part of the premises;
- (c) allowing and enabling a person who ordinarily works at the premises to isolate due to testing positive for coronavirus or having had close contact with somebody who has tested positive, for a period—
  - (i) recommended in guidance published by the Welsh Ministers;
  - (ii) specified in a notification given to the person by a contact tracer;
- (d) collecting contact information from each person at the premises and retaining it for 21 days for the purpose of providing it to any of the following, upon their request—
  - (i) the Welsh Ministers;
  - (ii) a contact tracer;
- (e) taking reasonable measures to ensure that such contact information is correct.

(4) An assessment under Step 1—

- (a) must satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999<sup>(1)</sup> (the “1999 Regulations”), and
- (b) must be undertaken—
  - (i) whether or not the responsible person has already undertaken an assessment under that regulation, and
  - (ii) whether or not that regulation applies to the responsible person.

(5) For the purposes of paragraph (4)—

- (a) regulation 3 of the 1999 Regulations is to be read as if the words “by or under the relevant statutory provisions”, in both places it occurs, were substituted by the words “by regulations 16, 17 and 17A of the Health Protection

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<sup>(1)</sup> S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

- (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020”, and
- (b) if regulation 3 of the 1999 Regulations would not, but for paragraph (4)(b)(ii), apply to a responsible person—
- (i) that regulation is to be treated as applying to the person as if the person were an employer, and
  - (ii) persons working at the premises are, for the purposes of that regulation as it applies by virtue of paragraph (4)(b)(ii), treated as being employed by the responsible person.
- (6) For the purposes of Step 3, “permitted group” means—
- (a) where the premises are in an Alert Level 1 area or an Alert Level 2 area, a group which—
    - (i) consists of no more than 6 people, not counting any persons under the age of 11 or any carer of a person in the group, or
    - (ii) consists of members of the same household and any carer of a member of the household;
  - (b) where the premises are in an Alert Level 3 area or an Alert Level 4 area, a group which consists of members of the same household and any carer of a member of the household.”
- (3) In regulation 17(1), after “responsible person” insert “under Step 4 of that regulation”.
- (4) In regulation 17A, in the words before sub-paragraph (a), after “responsible person” insert “under Step 4 of that regulation”.
- (5) In regulation 57—
- (a) in paragraph (1), after sub-paragraph (g) insert—
    - “(ga) “COVID-19” is the official designation of the disease which can be caused by coronavirus;”;
  - (b) in paragraph (9)(a) for “of food and drink to be consumed outdoors” substitute “or consumption of food and drink”.
- (6) In Schedule 1—
- (a) in paragraph 2(5)—
    - (i) in paragraph (e), for “of no more than 30 people at regulated premises, not counting persons under the age of 11 or persons working at the premises,” substitute “at regulated premises”;



- (ii) after paragraph (k) insert—
  - “(ka) participating in or facilitating a regulated gathering of primary school children in holiday or travel accommodation, where the gathering relates to—
    - (a) a regulated gathering described in paragraph (k), or
    - (b) a gathering in which the children are participating for the purpose described in sub-paragraph (4)(i);”;
- (b) after paragraph 2(5) insert—
  - “(6) For the purposes of this paragraph and paragraph 4—
    - (a) “primary school child” means a child who is in year 6 or below in a school in Wales or would be in year 6 or below if the child attended a school in Wales,
    - (b) “school” has the meaning given by section 4 of the Education Act 1996,
    - (c) “school year” has the same meaning as in section 579(1) of that Act,
    - (d) “year 6” means a year group in which the majority of children will, in the school year, attain the age of 11, and
    - (e) “year group” means a group of children at a school, the majority of whom will, in a particular school year, attain the same age.”;
- (c) in paragraph 4—
  - (i) in sub-paragraph (2)—
    - (aa) in paragraph (e), omit “where no more than 30 people are in attendance,”;
    - (bb) after paragraph (g) insert—
      - “(ga) a regulated gathering of primary school children in holiday or travel accommodation, where the gathering relates to—
        - (a) a regulated gathering described in paragraph (g), or
        - (b) a gathering in which the children are participating for the purpose of accessing or receiving educational services in accordance with paragraph 2(4)(i);”;
    - (cc) in paragraph (h)—
      - (i) in the words before sub-paragraph (i), after “regulated premises” insert

“(other than at holiday or travel accommodation)”;

(ii) in sub-paragraph (ii), omit “or, if the regulated premises are holiday or travel accommodation, the same extended household”;

(dd) after paragraph (i) insert—

“(ia) an event that is any of the following, where it is held in premises ordinarily used for that purpose—

(i) the showing of a film,

(ii) an entertainment performance where no more than 200 people are in attendance or where it is held outdoors,

(iii) a market, or

(iv) a religious service;

(ib) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services for the event;”;

(ee) after paragraph (j) insert—

“(k) an event that is held to any extent indoors at holiday or travel accommodation and at which all of the people in attendance are members of the same household or extended household.”;

(ii) in sub-paragraph (3), omit paragraphs (c) and (d).

(7) In Schedule 2, paragraph 4—

(a) in sub-paragraph (2)—

(i) in paragraph (e), for “of no more than 30 people at regulated premises, or an outdoor gathering of no more than 50 people at such premises, not counting (in either case) persons under the age of 11 or persons working at the premises” substitute “at regulated premises where no more than 30 people are in attendance, or an outdoor gathering at regulated premises where no more than 50 people are in attendance”;

(ii) in paragraph (f)(i), omit “not counting persons under the age of 11 or persons working, or providing voluntary services, at the gathering,”;

(iii) in paragraph (g)(i), omit “not counting persons under the age of 11 or persons working, or providing voluntary services, at the gathering,”;

- (iv) after paragraph (h) insert—
  - “(i) an event that is held at regulated premises, other than at holiday or travel accommodation, and at which—
    - (i) no more than 6 people are in attendance, or
    - (ii) all of the people in attendance are members of the same household;
  - (j) an event that is any of the following, where it is held in premises ordinarily used for that purpose—
    - (i) the showing of a film,
    - (ii) an entertainment performance where no more than 200 people are in attendance or where it is held outdoors,
    - (iii) a market, or
    - (iv) a religious service;
  - (k) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services for the event;
  - (l) an event that is held outdoors at premises that are not regulated premises or outdoors at holiday or travel accommodation and at which—
    - (i) no more than 6 people are in attendance, or
    - (ii) all of the people in attendance are members of the same household or extended household;
  - (m) an event that is held to any extent indoors at holiday or travel accommodation and at which all of the people in attendance are members of the same household or extended household.”;
- (b) after sub-paragraph (2) insert—
  - “(2A) In determining, for the purposes of sub-paragraph (2), the number of persons in attendance at an event, no account is to be taken of—
    - (a) any children under the age of 11,
    - (b) the carer of any person in attendance, or
    - (c) any person working, or providing voluntary services, at the event.”;
- (c) in sub-paragraph (3), omit paragraphs (c) and (d).

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 1.39 p.m. on 18 June 2021

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021**

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021.

**Mark Drakeford**  
**First Minister**

18 June 2021

## 1. Description

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

## 2. Matters of special interest to Senedd Cymru

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

### *European Convention on Human Rights*

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 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.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

### **3. Legislative background**

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

### **4. Purpose and intended effect of the legislation**

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the [Coronavirus Control Plan](#). This plan was updated on 19 March 2021.

On 7 June the whole of Wales began to move into Alert Level 1. The full move to Alert Level 1 was delayed due to increasing prevalence rates of coronavirus, continuing uncertainty about the relationship between cases, hospitalisations and deaths together with the significant growth advantage of the “Delta variant” over the previously dominant “Alpha” strain.

The Government are continuing to move to Alert Level 1 of the Coronavirus Control Plan in a phased way, and these Regulations amend Schedule 1 of the principal Regulations to so as to provide for (i) some moderate relaxation in areas where it is felt that this is proportionate and justifiable, taking account of public health position and social-economic evidence and (ii) to address some anomalies in the Regulations as currently drafted.

#### *Wedding/civil partnership receptions and wakes*

There will no longer be a cap on numbers attending receptions for civil partnerships, weddings and alternative weddings, or celebrations of the life of a deceased person, in regulated premises. Limits will instead be determined based on the size of the venue and its ability to maintain social distance and adhere to other rules that a person responsible for a regulated premise is required to take to minimise the risk of exposure to coronavirus.

This change will bring the arrangements for Wales broadly align with the approaches being taken in England and in Scotland.

#### *Reasonable measures (regulation 16) and the status of 2m distancing*

Amendments are made to regulation 16 (requirement to take all reasonable measures to minimise the risk of exposure to coronavirus) to clarify the relationship between the duty to take all reasonable measures to ensure 2m distance is maintained between

persons on regulated premises and the other reasonable measures that a responsible person must take to minimise the risk of exposure to the virus.

The amendments introduce an updated 4 step approach all of which apply with equal legal standing and need to be taken into account. The steps reflect the statutory guidance and the latest evidence on the hierarchy of controls (including adding ventilation as an important mitigation).

Persons responsible for regulated premises will now be required to take all reasonable measures to ensure that a group that is lawfully gathered on regulated premises maintain a distance on 2m within that group.

Other reasonable measures are still key in ensuring lower risk of spread of the virus and are set out in the Regulations, including a new requirement to seek to ensure that premises are well ventilated.

A requirement to undertake a specific risk assessment is still included in regulation 16 and remains an important aspect of taking all reasonable measures. The risks identified should also be taken into consideration following this risk assessment and when planning what measures to take.

#### *Gatherings for primary school children*

The Regulations are amended so that primary school children may gather (in school contact groups/bubbles) at residential or holiday accommodation, including overnight stays, where this is a regulated gathering for the development or well-being of the children. This will permit, for example, trips to residential outdoor education centres.

#### *Other matters*

The Regulations also make amendments to:

- Provide that small grassroots music and comedy venues are able to operate on the same basis as hospitality venues, such as pubs and cafes, by clarifying that the prohibition on organising events does not apply to an entertainment performance where no more than 200 people are in attendance or where it is held outdoors.
- Clarify that indoor hospitality facilities can be provided at an outdoor event without changing the status of that event.

### **5. Consultation**

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.

### **6. Regulatory and other impact assessments**



A regulatory impact assessment has not been prepared 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. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.



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

18 June 2021

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021**

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, which come into force on 21 June 2021. I attach a copy of the statutory instrument and I intend to lay this and the accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 15 July 2021 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. It may be helpful to know that I intend to include the debate for this item of subordinate legislation in the proposed Plenary business on 29 June 2021.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, David Rees MS, Chair of the Interim Subordinate Legislation 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**

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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)008 - The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021**

### **Background and Purpose**

These Regulations amend the International Travel Regulations, in particular the exemptions from the prohibition on entry to Wales from countries on the red list. Under these Regulations, the exemption for seafarers and inspectors and surveyors of ships arriving in Wales from red list countries is amended to exclude such persons arriving in Wales to work on cruise ships.

These Regulations also extend the expiry date of the International Travel Regulations, the Operator Liability Regulations and the Passenger Information Regulations to 31 May 2022.

### **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 4 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**

These Regulations amend the list of people who are exempt from the prohibition on entry into Wales from a red list country by excluding from the exemption certain persons who arrive in Wales to work on cruise ships.



In a [letter to the Llywydd dated 28 May 2021](#), Eluned Morgan MS, Minister for Health and Social Services, says that the Regulations are necessary and justifiable “in view of the changing evidence on risk in relation to this disease”.

However, there is no explanation of the evidence or the reasons why this particular change is needed and why this particular group of people need to be excluded from the exemption, (while other groups remain exempt).

### **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 the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

*“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.”*

### **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 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.”*

### **4. 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 Eluned Morgan MS, Minister for Health and Social Services, in a [letter to the Llywydd dated 28 May 2021](#).

In particular, we note the following from the letter:

*“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”*

## **Welsh Government response**

A Welsh Government response is required to merits points 1.



## Committee Consideration

The Committee considered the instrument at its meeting on 14 June 2021 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwylgor Is-ddeddfwriaeth Dros Dro**

—

Welsh Parliament

**Interim Subordinate Legislation Committee**

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**Government Response: The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021**

*Merit Scrutiny point 1:*

The rationale for providing a sectoral exemption for the category of seamen and inspectors and surveyors of ships, is to ensure that international shipping and the movement of critical freight can continue during the Covid pandemic. However, the Merchant Shipping Act 1995 defined “seamen” very broadly as a person employed or engaged in any capacity on board any ship (except masters and pilots). Following the re-start of domestic cruising in the UK and the Common Travel Area a number of cruise ship workers from India sought to use this exemption to fly into UK without quarantining on arrival as the definition of “seamen” covered those who provide hospitality services on board cruise ships. This was not the intention of the original exemption.

Since April 23 2021 India has been rated as ‘red’ for travel due to the emergence and rapid spread of the Delta (B.1.617.2) variant. This technical amendment to the exemption covering ‘Seafarers’ and in particular, the exempt categories for “seamen and masters” and “inspectors and surveyors of ships” was changed in relation to red list entrants, so as to remove cruise ship workers. Such individuals would therefore be prohibited from entering Wales if they had been in a red list country within the previous 10 days.