

SL(5)612 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”). The amendments:

- (a) Restrict gatherings indoors of members of an extended household to 6 persons, not including any children aged under 11 (this does not affect the general rule that no person may gather indoors with anyone from outside their household);
- (b) Require face coverings to be worn in the indoor public areas of “open premises” (that is premises open to the public and required to take all reasonable measures to minimise the risk of spread of, coronavirus under regulation 12 of the principal Regulations) and transport hubs, unless an exemption applies or the person has a reasonable excuse for not wearing the face covering;
- (c) Make it clear that under paragraph 4 of Schedule 4A to the principal Regulations, it is not a reasonable excuse to enter a local health protection area for work, or to provide voluntary or charitable services, if it is reasonably practicable to do the work or provide the service outside the area;
- (d) Make minor amendments including amendments consequential on the changes mentioned above and on the making of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

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 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

There has been no public consultation or regulatory impact assessment prepared in relation to these Regulations. However, an integrated impact assessment is being developed and will be published shortly, according to the Explanatory Memorandum.

Regarding the lack of public consultation, the Welsh Government explains in the Explanatory Memorandum that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public response. Furthermore, the First Minister explains that:

“More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I informed Members of the Senedd, in a written statement issued earlier today, of the intention to impose the restrictions achieved in these Regulations. I also led a press conference following which the proposed changes have been reported by the media.”

A regulatory impact assessment has not been prepared in relation to these Regulations “due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.”

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

The Committee notes that these Regulations introduce a tightening of coronavirus (COVID-19) related restrictions. As such, these Regulations fall within the territory of human rights considerations for individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. These must be considered against the necessary ‘proportionality’ test.

The Committee notes the further consideration and explanation provided by the Welsh Government in the Explanatory Memorandum. The Welsh Government states that:

“Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental 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.

[...]

The Regulations, in particular, limit the number of persons who may meet indoors and require face coverings to be worn within open premises, subject to exemptions and exceptions. These restrictions and requirements will, or may, engage rights under Article



8 (right to respect for family and private life); Article 9 (freedom of thought, conscience and religion); Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim. The restriction on indoor gatherings responds to threats to health and the requirement to wear face coverings, in open premises in subject to a number of exemptions and exceptions, including in mental illness or impairment, or, otherwise as a result of difficulties in communicating.”

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

16 September 2020

