

SL(5)619 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (**the Principal Regulations**).

The amendments—

- (a) provide that in premises licensed for the sale of alcohol for consumption on the premises, food or drink may only be served to customers who are seated (subject to certain exemptions for buffets, workplace canteens and premises in educational establishments such as university canteens), and customers must be seated when consuming the food or drink,
- (b) provide that premises licensed for the sale of alcohol (whether for consumption on the premises or off the premises) may not serve or supply alcohol after 10.00 p.m. (and may not serve or supply alcohol again before 6.00 a.m. the following morning);
- (c) provide that premises licensed for the sale of alcohol for consumption on the premises must close at or before 10.20 p.m. (and may not reopen before 6.00 a.m. the following morning);
- (d) remove the exemption from the requirement to wear a face covering applicable in premises where food or drink is sold, replacing it with a reasonable excuse for customers not to wear a face covering while seated.

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 three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

The Committee notes that these Regulations introduce a general tightening of restrictions in respect of premises that sell food and drink in Wales.

We also note the Welsh Government's justification for any potential interference with human rights. The Explanatory Memorandum to these Regulations states:

"The Regulations impose restrictions and requirements in relation to licensed premises including times after which alcohol may not be sold, opening and closing times, with some exceptions albeit in such cases premises will be prohibited from selling alcohol, and the operation of a seated service becoming a specific reasonable measure under the duty of those responsible for premises to take reasonable measures to minimise the risk or exposure to, and spread of, coronavirus. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and 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 both in these areas and more widely and is proportionate to that aim."

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 public consultation on these Regulations and what the First Minister says in the Explanatory Memorandum regarding informing the public about these particular Regulations:

"I outlined the intention to impose the restrictions and requirements achieved through these Regulations in a televised broadcast on the evening of 22 September; the proposed changes have been widely reported by the media."

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 make these points with regard to the Principal Regulations as a whole, rather than the Principal Regulations as specifically amended by these Regulations.

2.1 We note that keeping up to speed with all the changes is becoming increasingly difficult and confusing for members of the public. We note in particular the following recent news



story that highlights the confusion in Blaenau Gwent: <https://www.bbc.co.uk/news/av/uk-wales-54269020>

We are concerned that similar confusion is happening across Wales.

2.2 We also note, generally in respect of the Principal Regulations, that:

- (a) Deleting regulation 12B(3)(b) of the Principal Regulations means that regulation 12B(5) is no longer required. However, regulation 12B(5) remains in the Principal Regulations.
- (b) Regulation 4(2) of the Principal Regulations placed a duty on the Welsh Ministers to review the need for local restrictions by 24 September 2020 and then every 7 days. The local restrictions in Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport (**the No.11 Restrictions**) were slotted into the Principal Regulations on 22 September 2020. It is unclear what the Welsh Government's approach was to reviewing the No.11 Restrictions within the pre-existing timescale of 24 September 2020.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response to the third merits point is required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 September 2020

