

SL(6)009 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 11) Regulations 2021

Background and Purpose

These Regulations move the whole of Wales to Alert Level 1. This means that the restrictions and requirements in Schedule 1 to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (as amended by these Regulations) apply in Wales from 6.00 a.m. on 7 June 2021.

Schedule 1 sets out restrictions and requirements relating to, for example:

- gatherings in people's homes;
- gathering outdoors;
- gathering in holiday accommodation;
- attending weddings, funerals and places of worship;
- taking part in gatherings organised by clubs and charities;
- organising events;
- the authorisation of events by the Welsh Ministers;
- the closure of certain businesses such as nightclubs and ice skating rinks.

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, including Schedule 1, are available here: <https://www.legislation.gov.uk/wsi/2020/1609/contents/2021-05-17>.

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 3 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.

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."

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.”

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 that the Explanatory Memorandum to these Regulations makes no reference to an equality impact assessment. We ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

Welsh Government response

A Welsh Government response is required to merits point 3.

Legal Advisers

Interim Subordinate Legislation Committee

9 June 2021



Senedd Cymru

Pwylgor Is-ddeddfwriaeth Dros Dro

—

Welsh Parliament

Interim Subordinate Legislation Committee