

SL(6)034 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021

Background and Purpose

These Regulations provide that from 7 August 2021, no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations¹ apply. The effect is that:

- there are no specific limits on the number of people who can gather together, including in private homes and in public places;
- there are no specific limits on the number of people that may attend regulated events at any time;
- there are no requirements for any particular types of businesses or services to close.

However, other restrictions continue to apply, including requirements on persons responsible for regulated premises to take reasonable measures to minimise the risk of exposure to coronavirus at the premises, and requirements to wear face coverings on public transport and in particular indoor public places.

Despite the relaxation of the rules on people gathering and attending events, the reasonable measures that continue to be required on regulated premises mean that those responsible for the premises may need to set limits on the numbers of people who can gather, and on the capacity of events.

These Regulations also amend the requirement for a person to isolate after being notified by a contact tracer that they have had close contact with a person who has tested positive for coronavirus. The Regulations insert a new exemption so that adults are no longer required to isolate after such a notification if they have completed, in the United Kingdom, a course of doses of an authorised vaccine at least 14 days before they had the close contact, or are participating in a clinical trial in the United Kingdom of a vaccine against coronavirus. Also, there is no longer a requirement for persons aged under 18 to isolate after such a notification.

There is no change to the requirements for persons to isolate after being notified that they have tested positive for coronavirus.

¹ The Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020 (S.1. 2020/1609)



The Regulations also:

- provide that the principal Regulations expire at the end of the day on 26 November 2021 (rather than 27 August 2021);
- remove the specific requirement for the person responsible for regulated premises to take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons indoors on the premises (but the person responsible must continue to take all reasonable measures, based on a risk assessment, to minimise the risk of exposure to coronavirus at the premises, which may include physical distancing);
- remove the requirement to wear a face covering in indoor public areas of premises where food or drink is sold for consumption on the premises (but where different types of businesses also operate from such premises, face coverings must still be worn in those parts of the premises where food or drink is not sold for consumption on the premises).

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 two 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 paragraph in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the 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 preventing the spread of coronavirus.

These amending Regulations further 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 continued 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

12 August 2021

