

# SL(6)101 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 21) Regulations

## Background and Purpose

These [Regulations](#) are made in response to the threat to public health which is posed by the incidence and spread of COVID-19.

These Regulations make specific provision to respond to the emergence of the Omicron variant of COVID-19, which was designated a variant of concern by the World Health Organisation on 26 November.

These Regulations enable NHS Wales Test, Trace, Protect contact tracers to require people to self-isolate as a result of close contact of a case suspected or confirmed as having the Omicron variant.

The provisions for domestic self-isolation have been updated to reflect the emerging situation and to slow community transmission of the disease. The Regulations reflect changes being introduced by the UK Government for England. The existing provision exempting close contacts from self-isolation providing they have completed a full course of an authorised vaccine, have taken part in a clinical vaccine trial, are medically unable to be vaccinated or are under the age of 18, will not apply if a person is notified that they are a close contact of a suspected or confirmed case of the Omicron variant.

As a result, anyone in Wales who is notified by NHS Test, Trace, Protect (or other specified bodies) that they are a close contact of a suspected or confirmed case of the Omicron variant will be legally required to self isolate regardless of their age or vaccination status.

These Regulations amend The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the "Principal Regulations"), with effect from the beginning of 3 December 2021, to provide as follows:

- where an adult has been notified that they had close contact with a person who has tested positive for coronavirus which is or may be the Omicron variant, the adult must self-isolate for 10 days (unless regulation 10 of the Principal Regulations apply) regardless of their vaccination status.
- where an adult is notified that a child for whom they are responsible has been a close contact of someone who has tested positive for coronavirus which is or may be the Omicron variant, the child must isolate for 10 days (unless regulation 10 of the Principal Regulations apply).



The Principal Regulations are also being amended to clarify that a “contact tracer” includes Public Health Wales NHS Trust and the Secretary of State so that they may notify people of positive test results.

## 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 dissolved or 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**

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 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.”*

## **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 paragraphs 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 there is no equality impact assessment for these Regulations and 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 point 3, above.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**8 December 2021**

