

SL(6)120 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 24) Regulations 2021

Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

[The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) \(No. 24\) Regulations 2021](#) (“the Regulations”) are made in exercise of the powers conferred by sections 45C(1) and (3)(c) and 45P(2) of the 1984 Act in response to the threat to public health which is posed by the incidence and spread of COVID-19.

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “principal Regulations”), with effect from 12:00 on 22 December 2021 in relation to isolation requirements relating to close contacts of persons testing positive for coronavirus.

The amendments made will revert to existing provision within the legislation which exempts close contacts from self-isolation providing they meet one of the specified criteria.

The principal Regulations are now amended as follows:

- All close contacts, regardless of the variant of coronavirus concerned, will not be required to self-isolate if they:
 - are children,
 - have completed a course of doses of an authorised vaccine at least 14 days before the close contact takes place,
 - are participating in a clinical trial in the United Kingdom, or
 - are participating in a testing scheme.
- The Regulations also provide that where a person comes within these categories but was under a requirement to isolate immediately before the start of the day on 22 December 2021 as a result of having close contact with a known or suspected Omicron case, the isolation requirement ends at the start of the day on that date.



The Explanatory Memorandum states that the Welsh Government will issue guidance to advise exempt contacts to take 7 days of lateral flow tests. The requirement to take such lateral flow tests will be contained in guidance only and persons will not be under a legal obligation to take such tests.

Procedure

Made Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

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 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 spread 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 that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."

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 the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Mark Drakeford, the First Minister in a letter to the Llywydd dated 21 December 2021.

In particular, we note the following:

"These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the principal Regulations"). The Regulations come into force on 22 December 2021, within 21 days of their laying.

Not adhering with the 21-day convention and bringing the Regulations into force before they are laid before the Senedd also allows the Regulations to come into force at the earliest opportunity to a. mitigate the impact of protracted staff absences on essential public services in Wales b; align our position in Wales with that of the UK Government to mitigate any cross-border issues or confusion; c simplify our approach to self-isolation to aid public messaging and compliance."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2022



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Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
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Welsh Parliament
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