

# SL(6)125 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 26) Regulations 2021

## Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”). These Regulations, with effect from the beginning of 31 December 2021:

- amend regulations 6 and 7 of the principal Regulations to provide that persons testing positive for coronavirus are now required to self-isolate for a 7-day period (rather than a 10-day period);
- provide that where a person was under a requirement to isolate immediately before these Regulations come into force, the end of the isolation period is to be determined in accordance with regulation 6 or 7 as amended by these Regulations;
- make a minor amendment in consequence of the changes made by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 2021.

## Procedure

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 4 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 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 MS, the First Minister, in a letter to the Llywydd dated 30 December 2021. In particular, we note what the letter says regarding the breach of the rule:

*“Not adhering with the 21-day convention allows the Regulations to come into force at the earliest opportunity to ensure that individuals are being asked to isolate in accordance with public health advice and not longer than needed which will help mitigate the impact of protracted staff absences on essential public services in Wales; and align our position in Wales with that of the UK Government to reduce any cross-border issues or confusion.”*

## **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 the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraphs at page 2 of 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.”*



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

*“Given the need for an urgent public health response, there has been no public consultation in relation to these Regulations.”*

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

The Explanatory Memorandum provides that a summary impact assessment has been prepared in relation to these Regulations, however due to the need to put them in place urgently to deal with a serious and imminent threat to public health this is yet to be published - it will be published as soon as practicably possible.

### **Welsh Government response**

A Welsh Government response is not required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**5 January 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**