

SL(6)147 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) Regulations 2022

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the Principal Regulations”), with effect from 6:00am on 28 January 2022, to provide that no alert level applies to Wales (also known as alert level zero). This means that none of the restrictions and requirements in Schedules 1 to 4 to the Principal Regulations apply. The effect is that:

- There are no specific limits on the number of people who can gather together;
- There are no specific limits on the number of people that may attend events at any time;
- There are no requirements for any particular types of businesses or services to close.

The Regulations also revoke:

- Regulation 18B of the Principal Regulations, which provides that no person may leave the place where they are living for the purposes of work where it is reasonably practicable for the person to work from home;
- Regulation 42A of the Principal Regulations, which provides for the enforcement of regulation 18B;
- Specific provisions in regulation 16 of the Principal Regulations relating to allowing or requiring persons who ordinarily work from home, and provisions requiring the person responsible for regulated premises to ensure that a distance of 2 metres is maintained between persons indoors on the premises;
- Regulations 16ZA and 16ZB of the Principal Regulations, which make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on licensed premises and retail premises.

The requirements to wear face coverings on public transport and in particular indoor public places continue to apply, as do the restrictions and requirements in other parts (aside from the provisions set out above and Schedules 1 to 4) of the Principal Regulations. However, these Regulations amend the Principal Regulations to provide that a person is no longer required to wear a face covering in premises where food or drink is sold or otherwise provided for consumption on the premises.

The Regulations also change eligibility for being present in certain premises under regulation 16A of the Principal Regulations (commonly known as a “COVID Pass”) to include persons with evidence that, for medical reasons, they cannot be vaccinated or take a qualifying test for coronavirus.



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

“Given the ongoing threat 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”.

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 MS, the First Minister, in a [letter](#) dated 27 January 2022.

In particular, we note the following paragraph in the letter:

“In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force at 6.00 a.m. on 28 January 2022, less than 21 days after it has been laid. This is necessary in order to ensure that the restrictions and requirements of the principal Regulations remain proportionate.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

31 January 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee