

SL(5)706 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020. They impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus.

Since being made, they have been twice amended. The amending Regulations will be subject to separate reports.

Originally, the Regulations came into effect on 21 December 2020. However, by virtue of amending Regulations they, in fact, came into force on 20 December 2020. They will expire at the end of the day on 31 March 2021. They must be reviewed by 7 January 2021, again between 8 and 28 January 2020, and at least once in every subsequent period of 21 days.

There are 9 Parts to the Regulations, summarised below.

Part 1 sets the coming into force, review and expiry dates of the Regulations.

Part 2 imposes restrictions on gathering with other people, on travel and on the use of premises of certain specified businesses. This part establishes 4 different levels of restrictions which will apply according to circumstances.

Schedule 1 sets out the level which has the fewest restrictions (Alert Level 1).

When Alert Level 1 restrictions apply to an area: gatherings indoors in people's homes are allowed only between up to 6 people, or more if all present are members of the same household or an extended household consisting of up to 3 households and a single adult household. Other gatherings indoors are limited to 6 people or the members of one household if higher. Gatherings outdoors are limited to 30 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, up to a maximum of 100 people, in various prescribed circumstances. Larger scale events may also be allowed with the consent of the Welsh Ministers. Travel is allowed (i) within a Level 1 area (ii) to and from another Level 1 area and (iii) to or from a Level 2 areas. Travel from a Level 1 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Travel from a Level 3 or a Level 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 1 area is not allowed.



Most business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may not do so after 10.00 p.m. and must close no later than 10.20 p.m.

Schedule 2 sets out the next level (Alert Level 2).

When Alert Level 2 restrictions apply to an area: gatherings indoors in people's homes are allowed only between members of an extended household consisting of up to 2 households and a single adult household. Other gatherings indoors are limited to 4 people or the members of one household if higher. Gatherings outdoors are limited to 4 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, up to a maximum of 30 people, in various prescribed circumstances. Larger scale events may also be allowed with the consent of the Welsh Ministers. Travel is allowed (i) within a Level 2 area, (ii) to and from another Level 2 area, and (iii) to and from a Level 1 area. Travel from a Level 2 area to any area of Wales which is at Level 3 or 4, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Similarly travel from a Level 3 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 2 area is not allowed.

Most business premises that are ordinarily open to the public may continue to be open but premises licensed to sell alcohol may only serve alcohol with meals and may not serve alcohol after 10.00 p.m. (closing no later than 10.20 p.m.).

Schedule 3 sets out the next level (Alert Level 3)

When Alert Level 3 restrictions apply to an area: gatherings in people's homes are allowed only between members of an extended household consisting of up to 2 households and a single adult household. Other gatherings indoors are limited to 4 people or the members of one household if higher. Other gatherings outdoors are limited to 4 people or the members of one household or an extended household if higher. Children under the age of 11 are not counted for these purposes.

Different rules apply to gathering for activities that are formally organised, allowing up to 15 30 people, to meet in various prescribed circumstances. Travel is allowed within a Level 3 area but travelling from a Level 3 area to any other area of Wales, or to any areas of high incidence of coronavirus elsewhere in the UK, is not allowed. Travel from a Level 1, 2 or 4 area, or from any areas of high incidence of coronavirus elsewhere in the UK, to a Level 3 area is not allowed.

Most premises that are ordinarily open to the public may continue to be open but premises used for entertainment or hospitality must either be closed or may open until 6.00 p.m. only and premises licensed to sell alcohol may not sell alcohol for consumption on the premises.



Schedule 4 sets out the most restrictive level (Alert Level 4)

When Alert Level 4 restrictions apply to an area: there is an overarching requirement to stay at home and not to travel to the area. Most premises ordinarily open to the public are required to be closed. The ability to come together for events and formally organised activities, and for premises to be open to the public, is subject to the need to take all “reasonable measures” to minimise the spread of, and exposure to, the coronavirus.

Schedule 5 prescribes the areas which are subject to an Alert Level. Since the Regulations were made, Schedule 5 has been amended and the whole of Wales is subject to Alert Level 4 as at the date of this report.

Schedule 6 sets out a relaxation of the restrictions for the period of 23 to 27 December 2020. Since the Regulations were made, they have subsequently been amended so that the relaxation only applies to 25 December 2020.

Part 3 imposes requirements on people who have tested positive for coronavirus and their close contacts. Adults and children who have tested positive for coronavirus must not leave the place where they live for 10 days (except in limited circumstances). People who have had “close contact” with someone who has tested positive for coronavirus must not leave the place where they live for 10 days (except in limited circumstances). An exception is provided for those who regularly test negative in accordance with a formal scheme.

Part 4 makes provision for the purpose of minimising risk of exposure to coronavirus in premises open to the public and in workplaces. All reasonable measures must be taken to ensure that a distance of 2 metres is maintained between persons on the premises.

Part 5 provides that face coverings must be worn on public transport, including in taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 6 provides for circumstances in which schools may be required to be open when they may otherwise be closed to allow children of critical workers or children who are vulnerable to attend.

Part 7 relates, together with **Schedules 8** and **9**, to the enforcement of the restrictions and requirements.

Part 8 makes provision about offences and penalties.

Part 9 sets out defined terms, revokes previous Regulations and makes a consequential amendment.

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 or 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 Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental 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 these Regulations.

Each of these are qualified rights, which permit 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 implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the 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 or 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 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.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 16 December the Welsh Government’s intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.”

3. 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 regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

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

We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

“The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government’s [Technical Advisory Cell](#) and available on the gov.wales website. The latest briefing, dated 11 December, sets out the seriousness of the public health position.

The Chief Medical Officer recommends that an appropriate response to the public health situation is that Wales move to Alert Level 4 ...”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2021

