

SL(5)708 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to commence those Regulations at the beginning of 20 December 2020 (with the exception of Part 6) and to move Wales into Tier 4 from the same date.

These Regulations also make changes to Schedule 6 to the principal Regulations in respect of arrangements for forming extended households over the Christmas period.

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

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 2(5)(d) makes amendments to paragraph 4 of Schedule 6 to the principal Regulations (which in turn makes modifications to paragraph 3 of Schedule 4 to those regulations) so that restrictions that were initially applicable over the “Christmas period” now only apply on 25 December.

Regulation 2(5)(d)(ii) of these Regulations removes paragraph 3A of Schedule 4 to the principal Regulations. However, a reference to paragraph 3A remains in paragraph 3(5)(a) of Schedule 4.

We consider that the amendments made by regulation 2(5)(d) of these regulations should include a deletion of the reference to paragraph 3A contained in paragraph 3(5)(a) of Schedule 4 of the principal Regulations, as the reference is redundant.



2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Welsh text, in the paragraph inserted by regulation 2(5)(g)(ii) of these Regulations, the word “cyn” is missing from the part of the sentence “yn union 25 Rhagfyr 2020”. We consider that it should read “yn union cyn 25 Rhagfyr 2020” [*emphasis added*].

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 Regulations came into force before being laid before the Senedd. The First Minister notified the Llywydd of this in a letter dated 19 December 2020. In particular, we note the following in the letter:

“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease.”

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 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. The changes to the extended household provisions, in particular engage, Article 8.

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."

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

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."

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 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared for the principal Regulations and will be published on the gov.wales website:

<https://gov.wales/impact-assessments-coronavirus>.

5. 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 principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated Coronavirus Control Plan, placed Wales into Alert Level Four on Christmas Day and provided for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December).

Since making those Regulations, the Chief Medical Officer recommended that an appropriate response to the public health situation was that Wales moved to Alert Level 4 from the beginning of 20 December. This was in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease, in particular as a result of a new variant of the virus.



For the same reasons, the Welsh Ministers have also decided that the exceptions to the restrictions provided for in Schedule 6 relating to Christmas should now only apply to 25 December 2020."

Welsh Government response

A Welsh Government response is required in relation to the technical reporting points raised.

Legal Advisers

Legislation, Justice and Constitution Committee

6 January 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee