

SL(5)739 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to –

- permit a person living in an Alert Level 4 area (which currently includes the whole of Wales) to leave the place where they are living to exercise with one other person (this is in addition to the existing provision which permits a person to leave their home to exercise with a member of the person’s household or extended household or the person’s carer);
- provide that automatic car washes may continue to be open in an Alert Level 4 area;
- in all Alert Levels, permit a household that has ceased to be treated as part of an extended household to form a new extended household, provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of any other household in the previous extended household;
- make consequential and other minor changes to ensure consistency with the new provisions. This includes correcting a minor drafting point in the principal Regulations identified by this Committee in the report on the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

These Regulations came into force on 30 January 2021.

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 two 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. The Explanatory Memorandum provides that these Regulations reduce the extent in which the restrictions and requirements in the principal Regulations interfere with individual rights. In particular, we note the following paragraphs in the Explanatory Memorandum which provide that:

"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 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 adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the 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.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."



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 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.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

2 February 2021

