

# SL(6)139 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022

## Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to remove restrictions on outdoor gatherings and events that apply in relation to Alert Level 2, which were introduced on 26 December 2021 and amended on 15 January 2022. The restrictions removed are:

- the limit on numbers for regulated outdoor events of 500 people;
- the limit on numbers and the offence for gathering outdoors in excess of 50;
- the additional reasonable measures for outdoor hospitality (the rule of six, and the table service requirement).

These Regulations make amendments:

- related to the Alert Level 2 changes, including removing the offence of participating in a gathering of more than 50 people outdoors in a private dwelling; and
- so that the requirement to control entry to premises and for customers to be seated when ordering food or drink only applies to indoors parts of the premises.

These Regulations took effect from 6:00a.m. on 21 January 2022.

## 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 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.*

...

*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 arising 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, First Minister, in a letter to the Llywydd dated 20 January 2022.

In particular, we note that the letter says:

*“This is necessary in order to ensure that the principal Regulations’ restrictions and requirements continue to be proportionate.”*

**4. 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.**



It is noted that there are no consequential amendments made to Schedule 1 to the principal Regulations, which set out restrictions which apply to Alert Level 1. This has the consequence, in relation to outdoor gatherings and events, of making the restrictions which apply to Alert Level 2 less onerous than those that apply to Alert Level 1. This could cause confusion to those looking at the Alert Levels with an intention of understanding possible measures that could be adopted for each of the Alert Levels.

Although Welsh Government can bring forward regulations to correct these inconsistencies if Alert Level 1 were to be adopted, doing so necessitates additional amending regulations. The Committee notes that, including these Regulations, there are 30 amending regulations relating to the principal Regulations. Increasing the number of amending regulations could reduce the clarity, specifically this increases the number of instruments that a person needs to review in order to understand the position at any one time. That could lead to confusion and ambiguity. It is acknowledged that Welsh Government currently publishes a consolidated version of the principal Regulations.

Welsh Government are asked:

- if any consideration is being given to producing a new consolidated set of regulations?
- whether consideration could be given to using explanatory material (Explanatory Notes and Explanatory Memorandums) to include additional explanations to aid clarity, such as explaining which Alert Level and corresponding Schedule is in force, and clarifying that the reader should not contrast and compare Schedules?

## Welsh Government response

A Welsh Government response is required in relation to the fourth merits point.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**27 January 2022**



Senedd Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
—  
Welsh Parliament  
**Legislation, Justice and Constitution Committee**