

SL(5)754 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 3) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) as follows-

- (i) Proprietors of schools are permitted to allow pupils in Year 2 and below to return to school;
- (ii) Proprietors of further education institutions are permitted to allow students to return to the institution if they are studying agriculture, construction, catering, engineering or hospitality and need to attend in order to complete their course; and
- (iii) During the period from 20 February 2021 to 12 March 2021 (but not otherwise) up to 4 people from 2 different households may exercise together outdoors.

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

The Explanatory Note states that a particular effect is achieved by amending Regulation 4(8) of the principal Regulations. The effect is correctly described but the reference to Regulation 4(8) is incorrect. The described effect is, in fact, achieved by adding a new Regulation 4(6A) to the principal Regulations.



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 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."

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.



Welsh Government response

A Welsh Government response is required in relation to point 1.

Committee Consideration

The Committee considered the instrument at its meeting on 1 March 2021 and reports to the Senedd in line with the reporting points above.

