

SL(6)053 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”).

These Regulations amend the principal Regulations (by inserting a new regulation 16A) to require certain premises to take reasonable measures to ensure that persons aged 18 years or over are only present on those premises if they have evidence that the person:

- has completed a course of doses of an authorised vaccine more than 14 days before the person enters the premises;
- has participated in, or is participating in, a clinical trial of a vaccine against coronavirus carried out in the United Kingdom in accordance with the requirements of the Medicines for Human Use (Clinical Trials) Regulations 2004;
- has a negative result from a qualifying test taken no more than 48 hours before the person enters the premises; or
- has a positive result from a polymerase chain reaction (PCR) test taken no more than 180 days and no less than 10 days before the person enters the premises.

In relation to a person that has completed a course of doses of an authorised vaccine, this evidence must be provided by or on behalf of the Welsh Ministers, the UK Government, the Scottish Ministers or a Northern Ireland department (what is commonly referred to as a “COVID pass”). Provision is made for equivalent evidence to be provided in relation to vaccines administered by a relevant country (EU and EEA countries, Andorra, Monaco, San Marino, Switzerland, the United States of America and Vatican City State).

The requirement to provide evidence applies in relation to:

- nightclubs and other places which serve alcohol and play music for dancing that are open at any time between midnight and 5am;
- premises where an event is being held, if the event is for over 10,000 people and they are all seated;
- premises where an indoor event is being held, if the event is over 500 and they are not all seated; and
- premises where an outdoor event is being held, if the event is over 4,000 and they are not all seated.



There are certain exceptions to the requirements based on the type of event (for example, protests, picketing and mass participation sporting events) and exemptions for certain persons (for example those who are working or volunteering at an event).

These Regulations amend the principal Regulations to create a new offence of providing false or misleading evidence of vaccination or testing status.

These Regulations also amend the principal Regulations to permit enforcement officers to issue premises improvement notices and premises closure notices where a responsible person does not comply with their obligation to take measures of checking evidence under the new regulation 16A.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following four 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 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 is a qualified right, which permits 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 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 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 paragraph in the Explanatory Memorandum:

"Given the threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations."

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 there is no equality impact assessment for these Regulations. We note the following paragraph in the Explanatory Memorandum in relation to a summary impact assessment:

"A regulatory impact assessment has not been prepared 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. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible."

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 the Explanatory Memorandum refers to *"taking into account the scientific evidence"* and that *"SAGE has advised that it is important to act early to slow down a growing epidemic"*. However, the Explanatory Memorandum does not contain any specific reference to the evidence on which Welsh Government relies when making provision under these Regulations.

We would be grateful if the Welsh Government could set out:



1. the evidence which shows that requiring certain settings to check evidence of vaccination, prior coronavirus infection or a recent negative test result will “*slow down a growing epidemic*”; and
2. how the Welsh Government will monitor the effectiveness of requiring certain settings to check evidence of vaccination, prior coronavirus infection or a recent negative test result.

Welsh Government response

Merits Scrutiny Point 2

Whilst there has been no formal public consultation on these Regulations, there has been engagement with key stakeholders on the proposals and feedback has been considered in the drafting of the definitions and on the proposed guidance for businesses and events.

Merits Scrutiny Point 3

We can confirm that an equality impact assessment was carried out and considered by Ministers as part of this 21 day restriction review process.

The Summary Impact Assessment covers the following:

- Wellbeing Impact;
- Economic Impact Assessment;
- Equality Impact Assessment;
- Children’s Rights Impact Assessment (if applicable and not sufficiently covered in the Equality Impact Assessment);
- Human Rights Impact Assessment;
- Welsh Language Impact Assessment.

Merits Scrutiny Point 4

1. In preparing for a potentially difficult autumn and winter for the NHS and the wider care services, SAGE’s very clear advice is that we should act early to slow down a growing epidemic. The advice confirmed that taking early and what it calls “low-cost interventions” now may reduce the need for tougher measures later to control the spread of the virus.

Much of the evidence to date relates to ‘immunity passports or certificates’, which provide proof the holder is fully vaccinated, has had a prior COVID-19 infection or a recent negative test result.



SAGE has considered broader immunity certification in a number of previous papers¹.

SAGE reported that if used, certification of health status in relation to COVID-19 should be seen as just one part of a package of evidence-based measures to reduce transmission of SARS-CoV-2 equitably, including:

- participation in NHS T&T, including supported self-isolation;
- vaccination for COVID-19;
- protective behaviours of social distancing, wearing face-coverings, and hand-washing;
- shared spaces – public and private – that enable protective behaviours and provide sufficient ventilation.

Crucially the introduction of the COVID-pass does not remove the legal requirement to carry out a COVID specific risk assessment and to take other reasonable measures to minimise the transmission and spread of coronavirus. Guidance has been produced for the most effective and suitable mitigating measures these businesses can implement, including physical distancing in high population areas (queuing systems at bar areas etc.), providing good ventilation and hand-washing stations.

However, these higher risk venues may not be able to implement the full range of reasonable measures that other venues and premises can. Therefore the COVID-pass is a practical and easily implementable measure that can help these businesses to operate more safely.

The Regulations requiring the use of the COVID-pass (or other relevant evidence of vaccination) in higher risk events and businesses should be seen as one aspect of a suite of measures which the Welsh Government are deploying to mitigate the spread of COVID through the community, and the associated harms that brings. The other measures announced on 17 September were:

- Starting the vaccination booster campaign
- Offering vaccines to 12 to 15-year-olds
- Reinforcing the importance of working from home
- Raising awareness and enforcing the law about wearing face coverings in indoor public places.

The benefits of the measures that are being introduced need to be considered cumulatively rather than individually. The COVID-pass is part of our suite of measures to manage the

¹ [NERVTAG: Immunity certification, 9 December 2020](#); [SPI-B: Health status certification in relation to COVID-19, behavioural and social considerations, 9 December 2020](#); [Academics: Ethics of certification – briefing paper, 9 December 2020](#); [SPI-B Policing and Security Subgroup: Health status certification in relation to COVID-19 legitimacy and enforcement considerations, 9 December 2020](#); [SPI-B: Behavioural considerations of health certificates in population mass testing, 26 November 2020](#); [NERVTAG: Certifying COVID-19 immunity, 19 November 2020](#)



virus over the autumn and winter – to allow venues to keep operating and for people to keep seeing each other.

2. The Welsh Government is currently working on a plan that will set out a pragmatic programme of work for evaluating the introduction of the COVID-pass in higher risk venues in Wales. The plan will be informed by existing evidence from elsewhere and reflect the challenges of evaluating a complex intervention being implemented at pace. The plan will consider, for example, the assessment of impact, costs/benefits and behavioural issues associated with implementation.

This evaluation will also need to consider the impact of the range of measures that have been implemented since 17 September. As with all coronavirus regulations, these measures are kept under review to ensure they remain proportionate and will be removed as soon as the public health situation allows.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 4 October 2021 and reports to the Senedd in line with the reporting points above.

