

# SL(6)003 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 10) Regulations 2021

This note has been prepared to provide information for Senedd Members in relation to plenary business on 26 May 2021.

## Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”).

The amendments—

- provide that the whole of Wales moves from Alert Level 3 to Alert Level 2, meaning that the restrictions and requirements in Schedule 2 to the principal Regulations take effect;
- amend Schedule 2 to change the rule on gathering with others anywhere other than in people’s homes or in holiday or travel accommodation, so that 6 people from different households can meet (rather than 4);
- provide that the principal Regulations expire at the end of the day on 27 August 2021 (rather than 28 May 2021);
- disapply the restriction on leaving Wales to go to a destination outside the common travel area without a reasonable excuse and on presenting an international travel declaration form if doing so;
- relax the rules on service in cinemas, sports grounds and theatres so that customers only have to be seated when consuming food or drink (and not when ordering or being served);
- clarify that, for the purposes of the principal Regulations, an “organised activity” is a “gathering” by renaming it as a “regulated gathering”;
- amend the provision that enables the Welsh Ministers to authorise specific events so that they can authorise events at which any number of people can attend (including a number that is already permitted) and can modify the requirements to take reasonable measures to minimise the spread of coronavirus that would otherwise apply in accordance with regulations 16, 17 and 17A;



- clarify that the exception to the prohibition on large scale events that applies to the showing of a film, a theatrical performance, a market and a religious service only has effect where it takes place in premises ordinarily used for those purposes or outdoors (though at Alert Levels 3 and 4 this change only applies to markets and religious services).

The Regulations also amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 235)) to change their expiry date to 27 August 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.

## Points to note

1. In regulation 2(11), in the Welsh language text, the amendments as drafted make amendments to regulation 55 of the Principal Regulations, not regulation 57 as amended in the English language text. The English language text is correct.

The Welsh Government have indicated that they have identified this error and that the National Archives have been notified and will issue a correction slip in relation to the Welsh language text to rectify this error.

2. In regulation 2(13)(v)(aa), in the English language text, in the text being substituted for “an outdoor organised activity”, the reference should be to “wholly or mainly outdoors” not “wholly or mainly indoors” as shown. The Welsh language text is correct.

The Welsh Government have indicated that they have identified this error and that the National Archives have been notified and will issue a correction slip in relation to the English language text to rectify this error.

3. 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 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. "*

4. We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph 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."*

5. 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.

**Legal Advisers**  
**20 May 2021**

