
WELSH STATUTORY INSTRUMENTS

2021 No. 57 (W. 13)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus Restrictions)
(No. 5) (Wales) (Amendment) Regulations 2021**

Approved by Senedd Cymru

<i>Made</i>	- - - -	<i>at 12.48 p.m. on 19 January 2021</i>
<i>Laid before Senedd Cymru</i>		<i>at 5.30 p.m. on 19 January 2021</i>
<i>Coming into force</i>	- -	<i>20 January 2021</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force on 20 January 2021.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽²⁾ are amended as follows.

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336).

- (2) In regulation 16—
- (a) before paragraph (1)(a), insert—
- “(za) undertake a specific assessment of the risk of exposure to coronavirus at the premises and in doing so consult persons working on the premises or representatives of those persons;”
- (b) after paragraph (2), insert—
- “(3) An assessment under paragraph (1)(za)—
- (a) must satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999(3) (the “1999 Regulations”), and
- (b) must be undertaken—
- (i) whether or not the responsible person has already undertaken an assessment under that regulation, and
- (ii) whether or not that regulation applies to the responsible person.
- (4) For the purposes of paragraph (3)—
- (a) regulation 3 of the 1999 Regulations is to be read as if the words “by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997”, in both places it occurs, were substituted by the words “by regulations 16, 17 and 17A of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020”, and
- (b) if regulation 3 of the 1999 Regulations would not, but for paragraph (3)(b)(ii), apply to a responsible person—
- (i) that regulation is to be treated as applying to the person as if the person were an employer, and
- (ii) persons working at the premises are, for the purposes of that regulation as it applies by virtue of paragraph (3)(b)(ii), treated as being employed by the responsible person.”
- (3) In regulation 17—
- (a) for paragraphs (1) and (2) substitute—
- “(1) Where regulation 16(1) applies to a person responsible for premises authorised for the sale or supply of alcohol for consumption on the premises, the measures to be taken by the responsible person include (but are not limited to)—
- (a) having a person controlling entry to the premises and allocating a limited time period to customers for which they may stay in the premises;
- (b) requiring customers to be seated in the premises in any place other than at a bar—
- (i) when ordering food or drink,
- (ii) when being served with food or drink, and
- (iii) when consuming food or drink.”;
- (b) in paragraph (4), for “(2)” substitute “(1)”.
- (4) After regulation 17, insert—

“Specific measures applicable to retail premises

17A. Where regulation 16(1) applies to a person responsible for retail premises of a business offering goods or services for sale or hire in those premises (including businesses selling food or drink for consumption off the premises), the measures to be taken by the responsible person must include (but are not limited to)—

- (a) measures for controlling entry to the premises and limiting the number of customers who are on the premises at any one time;
- (b) provision of hand sanitisation products or hand washing facilities for use by customers when they enter and exit the premises;
- (c) measures to sanitise any baskets, trolleys or similar containers provided for use by customers on the premises;
- (d) in order to remind customers to maintain a distance of 2 metres between each other and to wear a face covering—
 - (i) displaying signs and other visual aids;
 - (ii) making announcements on a regular basis.”
- (5) In regulation 18(1), for “or 17(1)” substitute “, 17(1) or 17A”.
- (6) In regulation 25(3)(a)(i), for “or 17(1)” substitute “, 17(1) or 17A”.
- (7) In regulation 26, for “and 17(1)” substitute “, 17(1) and 17A”.
- (8) In paragraph 6(5)(e) of Schedule 1, in the English language text, omit “and is” in the first place it occurs.
- (9) In paragraph 6(5)(e) of Schedule 2, in the English language text, omit “and is” in the first place it occurs.
- (10) In paragraph 6(5)(e) of Schedule 3, in the English language text, omit “and is” in the first place it occurs.
- (11) In Schedule 4, after paragraph 6 insert—

“PART 3A

Restrictions on attending schools and further education institutions

Restriction on attending school premises

6A.—(1) The proprietor of a school in Wales may not permit a pupil to attend the premises of the school.

- (2) But sub-paragraph (1) does not prevent a proprietor from permitting —
 - (a) a pupil to attend a school’s premises—
 - (i) to undertake an examination or other assessment;
 - (ii) where the pupil’s parent is notified by the proprietor of the school at which the pupil is registered that the proprietor considers it appropriate for the pupil to attend by reason of the pupil’s vulnerability;
 - (iii) where—
 - (aa) the local authority that maintains the school at which the pupil is registered, or
 - (bb) the proprietor of the independent school at which the pupil is registered,

- decides the pupil is the child of a critical worker;
- (b) a pupil from attending the premises of a special school;
- (c) a pupil from attending the premises of a pupil referral unit;
- (d) a pupil from attending the premises of a unit in a school, where—
 - (i) the unit is recognised by a local authority as being reserved for pupils with special educational needs, and
 - (ii) the pupil is wholly or mainly educated at the unit;
- (e) a pupil who is a boarder from residing in accommodation at the school premises.

(3) In deciding whether a pupil is the child of a critical worker, the local authority or the proprietor of an independent school must have regard to any guidance published by the Welsh Ministers about identifying children of critical workers.

Restriction on attending further education premises

6B.—(1) A proprietor of a further education institution in Wales may not permit a student to attend the premises of the further education institution.

(2) But sub-paragraph (1) does not prevent a proprietor from permitting a student to attend the premises of—

- (a) a further education institution to undertake an examination or other assessment;
- (b) an institution within the further education sector where the student is notified by the institution that the institution considers it appropriate for the student to attend due to the student’s vulnerability.

Enforcement

6C. Any failure by a proprietor to comply with paragraph 6A or 6B is enforceable by an application for injunction by the Welsh Ministers or the local authority in whose area the alleged failure occurred to the High Court or County Court, without notice.

Interpretation of Part 3A

6D. In this Part—

- (a) the “1996 Act” means the Education Act 1996(4);
- (b) “boarder” has the meaning given by section 579 of the 1996 Act;
- (c) “further education institution” means—
 - (i) an institution within the further education sector;
 - (ii) a provider of education or training within the meaning of section 31(1)(a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000(5) that—
 - (aa) is not an institution within the meaning of paragraph (i),
 - (bb) is not an institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992(6), and
 - (cc) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,

(4) 1996 c. 56.

(5) 2000 c. 21.

(6) 1992 c. 13.

but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;

- (d) “independent school” has the meaning given by section 463 of the 1996 Act;
 - (e) “institution within the further education sector” has the meaning given by section 91(3) of the Further and Higher Education Act 1992;
 - (f) “parent” has the meaning given by section 576 of the 1996 Act;
 - (g) “proprietor” has the meaning given by section 579 of the 1996 Act in relation to a school and, in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;
 - (h) “pupil” has the meaning given by section 3 of the 1996 Act;
 - (i) “pupil referral unit” has the meaning given by section 19 of the 1996 Act;
 - (j) “special educational needs” has the meaning given by section 312 of the 1996 Act;
 - (k) “special school” means—
 - (i) a special school within the meaning given by section 337 of the 1996 Act;
 - (ii) an independent school which wholly or mainly provides education for pupils with special educational needs;
 - (l) “school” has the meaning given by section 4 of the 1996 Act.”
- (12) In Schedule 8—
- (a) in paragraph 1—
 - (i) in sub-paragraph (1)(a), for “or 17” substitute “, 17 or 17A”;
 - (ii) in sub-paragraph (2)(b), for “or 17” substitute “, 17 or 17A”;
 - (b) in paragraph 2—
 - (i) in sub-paragraph (3)(a), for “or 17” substitute “, 17 or 17A”;
 - (ii) in sub-paragraph (4)(b)(ii), for “or 17” substitute “, 17 or 17A”;
 - (iii) in sub-paragraph (4)(c), for “or 17” substitute “, 17 or 17A”;
 - (c) in paragraph 3(3)(c), after “17” insert “or 17A”;
 - (d) in paragraph 4(1)(b), after “17” insert “or 17A”.

Amendment of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

3.—(1) The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020(7) are amended as follows.

- (2) In regulation 3(1), for “19 February” substitute “31 March”.
- (3) In regulation 6—
 - (a) for paragraph (2) substitute—

“(2) In considering whether the public health conditions are met, a local authority must, in particular, have regard to whether people are gathering, or are likely to gather, at the event in contravention of whichever of the following provisions of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 applies to the area in which the event is held or is proposed to be held—

(7) S.I. 2020/1011 (W. 225) as amended by S.I. 2020/1100 (W. 250), S.I. 2020/1149 (W. 261), S.I. 2020/1219 (W. 276), S.I. 2020/1409 (W. 311) and S.I. 2020/1609 (W. 335).

- (a) paragraph 2 of Schedule 1;
 - (b) paragraph 2 of Schedule 2;
 - (c) paragraph 2 of Schedule 3;
 - (d) paragraph 2 of Schedule 4.”
- (b) omit paragraph (8).

Revocation

4. The following Regulations are revoked—

- (a) the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020**(8)**;
- (b) regulation 7 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020**(9)**;
- (c) regulation 2 of the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020**(10)**;
- (d) regulations 4 and 5 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020**(11)**;
- (e) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020**(12)**.

At 12.48 p.m. on 19th January 2021

Mark Drakeford
First Minister, one of the Welsh Ministers

(8) S.I. 2020/1237 (W. 279) as amended by S.I. 2020/1288 (W. 286) and S.I. 2020/1609 (W. 335).
(9) S.I. 2020/1288 (W. 286) as amended by S.I. 2020/1609 (W. 335).
(10) S.I. 2020/1409 (W. 311).
(11) S.I. 2020/1477 (W. 316).
(12) S.I. 2020/1522 (W. 326).

EXPLANATORY NOTE

(This note is not part of the Regulations)

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 are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

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

- (a) require all persons who are subject to the obligation in regulation 16 to take measures to minimise the risk of exposure to coronavirus on their premises to undertake a specific assessment of the risk of exposure to coronavirus on those premises and to consult on that;
- (b) make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises;
- (c) make provision imposing duties on the proprietors of schools and further education institutions preventing pupils or students from attending to their premises, subject to some limited exceptions;
- (d) make consequential and other minor changes to ensure consistency with the new provisions.

The Regulations also amend the Health Protection (Coronavirus, Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 225)) (“the Functions of Local Authorities Regulations”). The amendment is consequential on the making of the Restrictions Regulations and requires a local authority, when deciding whether to give an event direction under the Functions of Local Authorities Regulations, to have regard to whether the event may result in people gathering in contravention of the relevant Schedule to the Restrictions Regulations. The Regulations also revoke spent enactments relating to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (S.I. 2020/1219 (W. 276)).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.