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WELSH STATUTORY INSTRUMENTS

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**2021 No. 57**

**The Health Protection (Coronavirus Restrictions)  
(No. 5) (Wales) (Amendment) Regulations 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<sup>(1)</sup> are amended as follows.

(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<sup>(2)</sup> (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—

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<sup>(1)</sup> S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336).

<sup>(2)</sup> S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

“(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<sup>(3)</sup>;
- (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<sup>(4)</sup> 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<sup>(5)</sup>, and
    - (cc) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,
 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”;

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(3) 1996 c. 56.  
 (4) 2000 c. 21.  
 (5) 1992 c. 13.

- (c) in paragraph 3(3)(c), after “17” insert “or 17A”;
- (d) in paragraph 4(1)(b), after “17” insert “or 17A”.