

# SL(5)711 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020

## Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to introduce an offence in Alert Level 4 of failing to comply with the requirement for those responsible for premises with a licence to sell or supply alcohol for consumption off the premises to not sell or supply alcohol after 10 p.m. or before 6.00 a.m.

The amendment to the principal Regulations also enables local authorities to designate enforcement officers to enforce this requirement and issue compliance notices in relation to non-compliance.

## 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**

We note the Regulations came into force before being laid before the Senedd. The First Minister notified the Llywydd of this in a letter dated 21 December 2020. In particular, we note the following in the letter:

*“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately as they make a*



*technical amendment which ensures the enforcement regime continues to operate as it did under the regime which preceded the current principal Regulations. These Regulations have been published on the Welsh Government Covid-19 pages and at [legislation.gov.uk](http://legislation.gov.uk) before they come into force."*

**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**

There is an additional sentence at the end of the second paragraph of the Explanatory Note in the Welsh text which does not appear in the English text.

**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 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 Charter of Fundamental 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 implementation of new restrictions and requirements under the Regulations is a proportionate response to the increasing 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."*

**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**

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."*

**5. 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. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared for the principal Regulations and will be published on the gov.wales website:

<https://gov.wales/impact-assessments-coronavirus>.

## **Welsh Government response**

**Merits Scrutiny point 2: additional sentence in the Welsh text of the Explanatory Note**

The Government is grateful for the notice of the issue. The sentence in question was included in the Welsh text of the Explanatory Note in error, but does not affect the interpretation of the Regulations.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**6 January 2021**

