

SL(5)625 – The Smoke-free Premises and Vehicles (Wales) Regulations 2020

Background and Purpose

These Regulations are made under sections 6(5), 10(6), 11(5), 15(1), 16(1), 17(1), 17(3), 18(2), 28(7) and 123(1) of, and paragraphs 5, 6 and 9 of Schedule 1 to the Public Health (Wales) Act 2017 (“the 2017 Act”). Each of these provisions, save for section 123(1)¹, were brought into force on 29 September 2020².

The Regulations are due to come into force on 1 March 2021.

The Regulations exempt certain premises from the requirement to be smoke-free under the 2017 Act and set out the circumstances in which vehicles are to be treated as being smoke-free. The Regulations also make provision about displaying signs and provision relating to enforcement. In particular, the Regulations:

- define “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” – under the 2017 Act, the requirement to be smoke-free is imposed in relation to workplaces and premises open to the public that are enclosed or substantially enclosed;
- state that any premises which are used to any extent as dwellings are not to be treated as smoke-free, unless they are also used as places of work;
- state that holiday or temporary accommodation are not required to be smoke-free, though this provision ceases to have effect on 1 March 2022;
- provide that, subject to certain conditions, rooms in adult care homes, adult hospices and research and testing facilities may be designated as rooms in which smoking is permitted;
- provide that, subject to certain conditions, rooms in mental health units may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 September 2022;
- provide that bedrooms in hotels, guesthouses, inns, hostels and members’ clubs which meet certain conditions may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 March 2022;
- provide for hospital grounds, school grounds and public playgrounds to be smoke-free and for conditions which must be met before an area in the grounds of a school

¹ Section 123 came into force on 3 July 2017, when the 2017 Act received Royal Assent.

² See the Public Health (Wales) Act 2017 (Commencement No. 5) Order 2020.



that provides residential accommodation and in hospital grounds may be designated as an area in which smoking is permitted;

- require a person who controls or is concerned in the management of smoke-free premises to take reasonable steps to cause a person smoking there to stop smoking;
- require signs to be displayed in premises which are workplaces or open to the public, school grounds, hospital grounds and public playgrounds, and specify their content;
- provide that certain vehicles are treated as being smoke-free. Vehicles used wholly or mainly in the course of work by more than one person or to transport members of the public are smoke-free all the time. Other vehicles which are not smoke-free all the time are smoke-free only when a person in the vehicle is receiving goods or services from another person also in the vehicle and when a child is in the vehicle (subject to an exemption for caravans);
- provide that a driver, an operator or a person who is concerned in the management of a smoke-free vehicle has a duty to prevent smoking in that vehicle;
- require signs be displayed in certain smoke-free vehicles and specify their content.
- designate the chief officer of police for a police area as an enforcement authority in relation to vehicles which are smoke-free by virtue of being used for social, domestic or other private purposes where a child is present. Local authorities are already enforcement authorities under section 18 of the 2017 Act in relation to premises, places and vehicles in their areas; and
- provide for fixed and discounted penalty amounts in respect of certain offences.

Procedure

Draft Affirmative.

Technical Scrutiny

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

Merits Scrutiny

The following three 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

The Committee is concerned that the Welsh Government has not provided any assessment, justification or made any reference to human rights in the Explanatory Memorandum for these Regulations. The Committee believes that the Regulations engage Article 8 of the



European Convention on Human Rights ("ECHR"), which is the right to private life. Although this is a qualified right, in that it is a right which may be interfered with in order to protect the rights of another or the wider public interest, e.g. on public health grounds, the Welsh Government must provide details of its assessment or otherwise risk breaching this human right.

Although the law does allow an interference the rights under Article 8, the Welsh Government must set out that the change in the law:

- is justified on the grounds of public interest;
- is proportionate to the public interest aim pursued; and
- is done in accordance with domestic and international law, and with legal certainty.

Section 7 of the 2017 Act provides that premises in Wales are smoke-free if they are workplaces, which includes certain dwellings. The Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purposes of section 7. The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more of these dwellings will be required to be smoke free.

Similarly, the Regulations also provide that privately owned vehicles are to be smoke-free when a child is in the vehicle.

In both of these situations, the Regulations affect how people conduct themselves in their privately owned property, whether this be their own home or their vehicle.

The Welsh Government is asked to set out how it considers that these regulations are compliant with Article 8 of the ECHR.

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

There are cross-references in the Regulations to provisions of the 2017 Act which are not yet in force.

- The Regulations refer to sections 5, 7, 8 and 12 of the 2017 Act. Section 5 makes it an offence to smoke in smoke free premises or vehicles. Section 7 makes workplaces in Wales smoke-free. Section 8 makes premises that are open to the public smoke-free. Section 12 makes playgrounds in Wales smoke-free. None of sections 5, 7, 8 or 12 are as yet in force.
- The Regulations also refer to sections 6, 10, 11 and 17 of the 2017 Act, and certain paragraphs of Schedule 1 to that Act. Sections 6, 10, 11 and 17 and the relevant paragraphs of Schedule 1 were partially brought into force on 29 September 2020, but only to the extent necessary for the Regulations to be made. Substantively, section 6 makes it an offence for those in charge of the relevant premises to fail to



prevent smoking in a smoke free area. Section 10 makes school grounds in Wales smoke free and section 11 makes hospital grounds in Wales smoke free. Section 17 requires the display of signs in smoke free premises. The relevant paragraphs of Schedule 1 deal with fixed penalties. These elements of sections 6, 10, 11 and 17 and Schedule 1 are not yet in force.

- The Explanatory Note confirms that the term “smoking” in the Regulations is to be read in accordance with section 4 (Smoking) of the 2017 Act. Section 4 is not yet in force.

The Committee would be grateful if the Welsh Government would confirm that it intends to bring the provisions referred to above into force on or before 1 March 2021.

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

The Regulations required notification to the EU in line with the requirements of the Technical Standards and Regulations Directive 2015/1535/EC. This is as a result of the technical requirements in the Regulations as to the lay-out and form of no-smoking signs (Regulations 13, 14 and 18). This process required a three-month standstill period during which the Regulations remained in draft form and were not laid before the Senedd. The standstill period commenced on 23 June 2020 and ended on 24 September 2020. No objections were made by Member States to the draft 2020 Regulations.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required in relation to the first and second merit reporting points.

Committee Consideration

The Committee considered the instrument at its meeting on 12 October 2020 and reports to the Senedd in line with the reporting points above.

