

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

WELSH STATUTORY INSTRUMENTS

2021 No. 1485 (W. 386)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus Restrictions) (No. 5)
(Wales) (Amendment) (No. 25) Regulations 2021**

<i>Made</i>	- - - -	<i>22 December 2021</i>
<i>Laid before Senedd Cymru</i>		<i>23 December 2021</i> <i>at 6.00 a.m. on 26</i>
<i>Coming into force</i>	- -	<i>December 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) (No. 25) Regulations 2021.

(2) These Regulations come into force at 6.00 a.m. on 26 December 2021.

(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.

Amendment to 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.

(2) In regulation 16—

(a) in paragraph (1)—

(i) before “Step 3” insert—

“Step 3

Take all reasonable measures to ensure—

(a) that a distance of 2 metres is maintained between any persons indoors on the premises, except between members of a permitted group;

(b) where persons are required to wait indoors to enter the premises, that a distance of 2 metres is maintained between them, except between members of a permitted group.”;

(ii) the existing reference to “Step 3” becomes “Step 4”;

(b) after paragraph (1) insert—

“(1A) In determining the extent to which it is reasonable to take a particular measure under Step 3, regard may be had to measures taken under Step 4 to mitigate the risk of exposure to coronavirus that arises when any person is within a distance of 2 metres of another person.”;

(c) after paragraph (4) insert—

“(4A) For the purposes of Step 3, “permitted group” means—

(a) where the premises are in an Alert Level 1 area or an Alert Level 2 area, a group which—

(i) consists of no more than 6 people, not counting any persons under the age of 11 or any carer of a person in the group, or

(ii) consists of members of the same household and any carer of a member of the household;

(b) where the premises are in an Alert Level 3 area or an Alert Level 4 area, a group which consists of members of the same household and any carer of a member of the household.”

(3) After regulation 16 insert—

“Specific measures applicable to licensed premises

16ZA.—(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 under Step 4 of that regulation must include (but are not limited to)—

(a) having a person controlling entry to the premises, apart from in cinemas and theatres;

(2) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40), S.I. 2021/210 (W. 52), S.I. 2021/307 (W. 79), S.I. 2021/413 (W. 133), S.I. 2021/502 (W. 150), S.I. 2021/542 (W. 154), S.I. 2021/583 (W. 160), S.I. 2021/668 (W. 169), S.I. 2021/686 (W. 172), S.I. 2021/722 (W. 183), S.I. 2021/862 (W. 201), S.I. 2021/925 (W. 210), S.I. 2021/970 (W. 228), S.I. 2021/1119 (W. 271), S.I. 2021/1131 (W. 274), S.I. 2021/1212 (W. 303), S.I. 2021/1304 (W. 334), S.I. 2021/1363 (W. 358), S.I. 2021/1407 (W. 366), S.I. 2021/1468 (W. 376) and S.I. 2021/1477 (W. 379).

- (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.
- (2) But where food is provided at the premises on a buffet basis, customers may select food from the buffet and return to where they are seated.
- (3) Paragraph (1) does not apply to—
 - (a) workplace canteens, or
 - (b) premises in an educational establishment.
- (4) Paragraph (1)(b) does not apply in relation to—
 - (a) customers at—
 - (i) cinemas, or
 - (ii) theatres,where those customers are normally seated at the premises (other than when ordering food or drink or being served with food or drink) for the showing of a film or a live theatrical performance, or
 - (b) persons attending a regulated gathering or event.
- (5) For the purpose of paragraph (4), a “live” theatrical performance is one the customer is witnessing other than by means of a broadcast.
- (6) For the purposes of paragraph (1)—
 - (a) food or drink sold in holiday or travel accommodation as part of room service is not to be treated as being sold for consumption on the premises;
 - (b) food or drink sold for consumption in an area adjacent to the premises where seating is made available for customers is to be treated as being sold for consumption on the premises.
- (7) Where regulated premises not authorised for the sale or supply of alcohol for consumption on the premises allow customers to consume their own alcohol on the premises, paragraphs (1) to (3) apply to those premises as they apply to premises that are authorised for the sale or supply of alcohol for consumption on the premises.

Specific measures applicable to retail premises

16ZB. 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 under Step 4 of that regulation 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.”
- (4) In regulation 20—
- (a) in paragraph (1), omit “, other than premises where food or drink is sold, or otherwise provided, for consumption on the premises”;
- (b) after paragraph (3)(g) insert—
- “(h) where P is seated in premises where food or drink is sold, or otherwise provided, for consumption on the premises.”;
- (5) In regulation 26, after “16(1)” insert “, 16ZA(1), 16ZB”.
- (6) In regulation 28—
- (a) in paragraph (1), omit sub-paragraphs (a) and (b);
- (b) in paragraph (3)—
- (i) in sub-paragraph (a), omit “or (1A)”;
- (ii) in sub-paragraph (b), for “(3)” substitute “(2A)”.
- (7) In regulation 37—
- (a) in paragraph (1)—
- (i) in sub-paragraph (a), for “1(1) or 2(1) or (1A)” substitute “2(1)”;
- (ii) in sub-paragraph (b), for “1(1) or 2(1)” substitute “2(1), (2A)”;
- (b) in paragraph (2)—
- (i) in the words before paragraph (a), after “A person who” insert “, without reasonable excuse,”;
- (ii) in paragraph (a), after “private dwelling” insert “or in holiday or travel accommodation”;
- (iii) after paragraph (a), insert “, and”;
- (iv) for sub-paragraphs (b) and (c) substitute—
- “(b) which consists of—
- (i) more than 30 people, where the gathering is held to any extent indoors, or
- (ii) more than 50 people, where it is held outdoors,”.
- (8) In regulation 39(3)(a)(i), for “30” substitute “50”.
- (9) In regulation 57—
- (a) in paragraph (1)(h), for paragraphs (iii), (iv) and (v) substitute—
- “(iii) is a “domestic elite sportsperson” or an “international elite sportsperson” within the meaning given by—
- (aa) paragraph 44(2) of Schedule 4 to the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021(3);
- (bb) paragraph 42(2) of Schedule 4 to the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021(4);

(3) S.I. 2021/582.

(4) S.S.I. 2021/322.

- (cc) paragraphs 58 and 59 of Schedule 4 to the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021(5);”
- (b) after paragraph (4) insert—
- “(4A) For the purposes of these Regulations, where an event includes the playing of a team sport, members of a team playing in the event and any person providing coaching or other assistance to the team, are to be treated as if working at the event.”
- (10) In Schedule 1—
- (a) omit paragraph 1;
- (b) in paragraph 2—
- (i) in sub-paragraph (1), omit “or in holiday or travel accommodation”;
- (ii) omit sub-paragraph (1A);
- (iii) in sub-paragraph (2), for “sub-paragraphs (1) and (1A)” substitute “sub-paragraph (1)”;
- (iv) in sub-paragraph (5)(i), omit “other than at holiday or travel accommodation”;
- (v) omit sub-paragraph (5)(ka);
- (vi) after sub-paragraph (5) insert—
- “(5A) For the purposes of this paragraph, a gathering in holiday or travel accommodation is to be treated as if it were a gathering in a private dwelling.”;
- (c) omit paragraph 3;
- (d) in paragraph 4(2)—
- (i) in paragraph (a), for “paragraph 1” substitute “regulation 37(2)”;
- (ii) in paragraph (g), omit “, in premises other than holiday or travel accommodation,”;
- (iii) in paragraph (h), omit “(other than at holiday or travel accommodation)”;
- (iv) for paragraph (i) substitute—
- “(i) an event that is held outdoors at which no more than 50 people are in attendance;”
- (v) omit sub-paragraphs (j) and (k);
- (e) in paragraph 5(4A), after “regulation 16” insert “, 16ZA or 16ZB”;
- (f) in paragraph 7(1), omit “or 10”;
- (g) omit paragraph 10.
- (11) In Schedule 2—
- (a) omit paragraph 1;
- (b) in paragraph 2—
- (i) for sub-paragraph (1)(a) substitute—
- “(a) takes place indoors, or outdoors in regulated premises, other than in a private dwelling, and”;
- (ii) for sub-paragraph (2) substitute—
- “(2) But a person may participate in such a gathering if all the persons participating in the gathering are members of the same household.

- (2A) No person may, without a reasonable excuse, participate in a gathering which—
- (a) takes place outdoors other than—
 - (i) in regulated premises, or
 - (ii) in a private dwelling, and
 - (b) consists of more than 50 people, not including—
 - (i) any child under the age of 11 ,
 - (ii) the carer of a person who is participating in the gathering, or
 - (iii) where the gathering is regulated (see regulation 57(7)), persons working, or providing voluntary services, in relation to the holding of the gathering.”;
 - (iii) omit sub-paragraph (3);
 - (iv) omit sub-paragraph (3A);
 - (v) omit sub-paragraph (3B);
 - (vi) in sub-paragraph (4), after “(1)” insert “, (2A)”;
 - (vii) in sub-paragraph (6)(e)—
 - (aa) in the words before sub-paragraph (i), for “an indoor gathering of no more than 30 people at regulated premises, or an outdoor gathering of no more than 50 people at such premises, not counting (in either case) persons under the age of 11 or persons working at the premises,” substitute “a gathering at regulated premises”;
 - (bb) in sub-paragraph (i), for “26 March 2020” substitute “1 December 2021”;
 - (cc) in sub-paragraph (ii), for “26 March 2020” substitute “1 December 2021”;
 - (viii) in sub-paragraph (6)(k)—
 - (aa) omit “, in premises other than holiday or travel accommodation,”;
 - (bb) for “persons who were aged under 18 on 31 August 2020” substitute “children”;
 - (ix) after sub-paragraph (7) insert—

“(8) For the purposes of this paragraph, a gathering in holiday or travel accommodation is to be treated as if it were a gathering in a private dwelling.”;
 - (c) omit paragraph 3;
 - (d) in paragraph 4—
 - (i) for sub-paragraph (1) substitute—

“(1) No person may, without a reasonable excuse, be involved in organising an event unless—

 - (a) the event is held outdoors,
 - (b) no more than 50 people attend at any time, and
 - (c) if the event is held on regulated premises, no alcohol is consumed.”;
 - (ii) in sub-paragraph (2)(a), for “paragraph 1” substitute “regulation 37(2)”;
 - (iii) in sub-paragraph (2)(e)—
 - (aa) for “an indoor gathering at regulated premises where no more than 30 people are in attendance, or an outdoor gathering at regulated premises where no

- more than 50 people are in attendance,” substitute “a gathering at regulated premises”;
- (bb) in paragraph (i), for “26 March 2020” substitute “1 December 2021”;
- (cc) in paragraph (ii), for “26 March 2020” substitute “1 December 2021”;
- (iv) for sub-paragraph (2)(g) substitute—
- “(g) a regulated gathering that takes place outdoors for the purposes of protest, or picketing carried out in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992;”;
- (v) in sub-paragraph (2)(h), omit “, in premises other than holiday or travel accommodation,”;
- (vi) in sub-paragraph (2)(l), omit “or outdoors at holiday or travel accommodation and”;
- (vii) omit sub-paragraph (2)(m);
- (e) in paragraph 5(4A), after “regulation 16” insert “, 16ZA or 16ZB”;
- (f) in paragraph 7(1), omit “or 10”;
- (g) omit paragraphs 10 and 11.
- (12) In Schedule 5, in column 3 of the table in paragraph 1, for “No alert level” substitute “Alert Level 2”.

22 December 2021

Mark Drakeford
First Minister, one of the Welsh Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 principal Regulations”) to—

- provide that the whole of Wales moves from Alert Level 0 to Alert Level 2 on 26 December 2021, meaning that the restrictions and requirements in Schedule 2 to the principal Regulations take effect;
- amend regulation 16 of the principal Regulations to require persons responsible for workplaces, premises open to the public and public transport vehicles (“regulated premises”) to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, except between the members of a group, comprising of no more than 6 persons or members of the same household at Alert Levels 1 and 2, or at Alert Levels 3 and 4, comprising of members of the same household;
- provide that in determining the extent to which it is reasonable to take a particular measure to ensure that a distance of 2 metres is maintained between persons on the premises, the person responsible for the premises may have regard to other measures taken to mitigate the risk of exposure to coronavirus where people gather on the premises;
- insert new regulation 16ZA into the principal Regulations to make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on licensed premises, including a requirement to control entry to the premises and for customers to be seated when ordering food or drink (subject to exceptions);
- insert new regulation 16ZB into the principal Regulations to make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises, including a requirement to control entry to the premises, for provision of hand sanitisation products, for additional sanitisation of baskets and trolleys etc., and for signs and announcements to remind people to maintain 2 metre distancing and to wear a face covering;
- reinstate the requirement to wear a face covering in premises where food or drink is sold, or otherwise provided, for consumption on the premises, other than when seated;
- make a minor amendment clarifying that those playing in a (non-professional) team sport event or involved in coaching a team at such an event are to be treated as though they are working at the event and therefore do not count towards any limit on numbers at the event (in the same way that referees and others involved in running the event are considered to be either working or volunteering at the event and also do not count towards the limit);
- amend Schedule 2 (Alert Level 2 Restrictions) to the principal Regulations to—
 - (in view of a decision taken to provide advice on minimising social contact rather than imposing legal restrictions) remove the restrictions on gathering in private dwellings and in holiday accommodation, however this is subject to it being an offence to participate

in a gathering of more than 30 people indoors or more than 50 people outdoors in these places;

- change the exemption to the restriction on events to enable any number of people to attend a celebration of a marriage or a celebration of a recently deceased person held at regulated premises (but this is subject to the maximum numbers that are permitted on the premises in accordance with the risk assessment and other reasonable measures taken under regulation 16 of the principal Regulations, including social distancing);
- change the list of businesses whose premises have to be closed to omit adult entertainment venues and ice skating rinks;
- make amendments corresponding to those made to Schedule 2 to Schedule 1 (Alert Level 1 Restrictions).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. In accordance with the Code, a regulatory impact assessment as to the likely cost and benefit of complying with these Regulations has not been carried out, due to the need to put them in place urgently to deal with a serious and imminent threat to public health.