

SL(5)699 – The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020

Background and Purpose

These Regulations limit the circumstances under which a pupil or student may attend the premises of a school or further education institution in Wales between 14 and 22 December 2020. The Regulations are made in response to the risks to public health arising from Coronavirus and are based upon advice given by the Chief Medical Officer for Wales. The Regulations prohibit-

- (i) proprietors of schools from allowing pupils in year 7 and above to attend school; and
- (ii) proprietors of further education institutions from allowing students to attend the institution.

There are exceptions for (among others) the children of critical workers, vulnerable pupils and students, and pupils of special schools.

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

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

The enabling powers relied upon in the Welsh text are-

Section 45C(1) and (3)(c), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984 (our emphasis).

The enabling powers relied up upon in the English text are-

Section 45C(1) and (3), 45F(2) and 45(P) of the Public Health (Control of Disease) Act 1984.



Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

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 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 these 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). 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.

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 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. In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 10th December 2020, supported by a press statement.



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 acknowledge that these Regulations have been made in response to a public health emergency. The Committee would, however, like the Welsh Government to provide further detail on who it consulted and when, prior to making 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

We note there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

6. 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 is no child impact assessment and invite the Welsh Government to explain what steps it took to assess the particular impact of these Regulations on children.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required (but not to points 2 and 3).

Legal Advisers

Legislation, Justice and Constitution Committee

13 December 2020

