

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021.

Mark Drakeford
First Minister

18 June 2021

1. Description

The Regulations amend the [Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) Regulations 2020](#) (“the principal Regulations”).

2. Matters of special interest to Senedd Cymru

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human 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 is a qualified right, which permits 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 adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by 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.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

4. Purpose and intended effect of the legislation

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) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the [Coronavirus Control Plan](#). This plan was updated on 19 March 2021.

On 7 June the whole of Wales began to move into Alert Level 1. The full move to Alert Level 1 was delayed due to increasing prevalence rates of coronavirus, continuing uncertainty about the relationship between cases, hospitalisations and deaths together with the significant growth advantage of the “Delta variant” over the previously dominant “Alpha” strain.

The Government are continuing to move to Alert Level 1 of the Coronavirus Control Plan in a phased way, and these Regulations amend Schedule 1 of the principal Regulations to so as to provide for (i) some moderate relaxation in areas where it is felt that this is proportionate and justifiable, taking account of public health position and social-economic evidence and (ii) to address some anomalies in the Regulations as currently drafted.

Wedding/civil partnership receptions and wakes

There will no longer be a cap on numbers attending receptions for civil partnerships, weddings and alternative weddings, or celebrations of the life of a deceased person, in regulated premises. Limits will instead be determined based on the size of the venue and its ability to maintain social distance and adhere to other rules that a person responsible for a regulated premise is required to take to minimise the risk of exposure to coronavirus.

This change will bring the arrangements for Wales broadly align with the approaches being taken in England and in Scotland.

Reasonable measures (regulation 16) and the status of 2m distancing

Amendments are made to regulation 16 (requirement to take all reasonable measures to minimise the risk of exposure to coronavirus) to clarify the relationship between the duty to take all reasonable measures to ensure 2m distance is maintained between

persons on regulated premises and the other reasonable measures that a responsible person must take to minimise the risk of exposure to the virus.

The amendments introduce an updated 4 step approach all of which apply with equal legal standing and need to be taken into account. The steps reflect the statutory guidance and the latest evidence on the hierarchy of controls (including adding ventilation as an important mitigation).

Persons responsible for regulated premises will not be required to take all reasonable measures to ensure that a group that is lawfully gathered on regulated premises maintain a distance on 2m within that group.

Other reasonable measures are still key in ensuring lower risk of spread of the virus and are set out in the Regulations, including a new requirement to seek to ensure that premises are well ventilated.

A requirement to undertake a specific risk assessment is still included in regulation 16 and remains an important aspect of taking all reasonable measures. The risks identified should also be taken into consideration following this risk assessment and when planning what measures to take.

Gatherings for primary school children

The Regulations are amended so that primary school children may gather (in school contact groups/bubbles) at residential or holiday accommodation, including overnight stays, where this is a regulated gathering for the development or well-being of the children. This will permit, for example, trips to residential outdoor education centres.

Other matters

The Regulations also make amendments to:

- Provide that small grassroots music and comedy venues are able to operate on the same basis as hospitality venues, such as pubs and cafes, by clarifying that the prohibition on organising events does not apply to an entertainment performance where no more than 200 people are in attendance or where it is held outdoors.
- Clarify that indoor hospitality facilities can be provided at an outdoor event without changing the status of that event.

5. Consultation

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.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared 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. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.