

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) 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. 17) Regulations 2021.

Mark Drakeford
First Minister

27 September 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 the Legislation, Justice and Constitution Committee

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 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 coronavirus, taking into account the scientific evidence.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“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.

In accordance with section 45Q of the 1984 Act, a draft of these Regulations has been laid before Senedd Cymru for approval.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the 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 last updated on 16 July 2021.

The principal Regulations provide that the risk of exposure to coronavirus on all premises open to the public and workplaces must be assessed and “reasonable measures” taken to minimise that risk.

These Regulations amend the principal Regulations so as to require certain premises to take reasonable measures to ensure that adults (and this means a person aged 18 years or over) are only present if they have what is commonly referred to as a “COVID pass”.

SAGE has advised that it is important to act early to slow down a growing epidemic. By introducing the NHS COVID Pass it will help to support venues to stay open and enable events to continue taking place through a potentially difficult autumn and winter.

For this reason, the amended Regulations provide for the NHS COVID Pass will apply in the following premises:

- nightclubs and other places which serve alcohol and play music for dancing and are open at any time between midnight and 5am (and the requirement to have a COVID pass applies to the premises at any time, including times outside these hours, if they are open and are providing music for people to dance);
- premises where an event is being held, if the event is:
 - for over 10,000 people if they are all seated, or
 - over 500 indoors or 4,000 outdoors if they are not all seated

There are certain exceptions to the requirements based on the type of event (for example, protests and picketing) and exemptions for certain persons (those who are working or volunteering at the event).

These Regulations also amend the principal Regulations to create a new offence of providing false or misleading evidence of vaccination or testing status, where that evidence is required as part of the requirements for holding a COVID pass.

5. Consultation

Given the threat arising from coronavirus and the need for a prompt 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.