

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) 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. 6) Regulations 2021.

Mark Drakeford
First Minister

26 March 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

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 as 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 the coronavirus. 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.

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), 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.

These Regulations amend the principal Regulations, firstly to move the area of Wales to Alert Level 3 and to temporarily modify how Alert Level 3 operates (at least until the end of the day of 11 April 2021). This is achieved by inserting a new Schedule 3A into the principal Regulations, and making necessary amendments to the principal Regulations to ensure that references to Schedule 3 are treated as if replaced by references to Schedule 3A.

The effect is that the whole of Wales is an Alert Level 3 area from the beginning of the day on 27 March 2021. This means that the previous requirements to stay at home, or more recently, to stay local, no longer apply.

The temporary Alert Level 3 restrictions under Schedule 3A are different in a number of respects from the Schedule 3 restrictions that would usually apply to an Alert Level 3 area (as summarised in the Explanatory Note to these Regulations).

The temporarily modified Alert Level 3 restrictions mean:

- (a) Stay local restrictions to be lifted in Wales and replaced with restrictions on leaving or entering Wales without a reasonable excuse until the end of the day on 11 April;
- (b) Self-contained accommodation can reopen. Accommodation can only be let to members of the same household and their support bubble.
- (c) Up to 6 people (not including children under 11 or carers) from no more than 2 households may gather outdoors. This includes in private gardens.
- (d) Outdoor organised activities for children under 18 will be allowed.
- (e) Outdoor spaces of a scheduled monument or a registered historic park or garden, can reopen.

(f) Libraries and archives can reopen.

The Regulations also amend Schedule 5 to the principal Regulations to make temporary modifications to enable the enforcement of the restrictions in Schedule 3A.

These amendments and modifications come into force at the beginning of 27 March 2021.

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.