

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2022

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. 9) Regulations 2022.

Mark Drakeford
First Minister

13 April 2022

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 spread 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, or have from time to time been, 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 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 to that aim. Any interference with these rights also needs to be balanced with the state’s positive obligations under Article 2 (right to life). The extension of specific 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 control the rate of transmission of the 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 section 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 threat to public health which is posed by the incidence of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The Regulations amend the principal Regulations to provide that those Regulations expire at the end of the day on 9 May 2022 (rather than 18 April 2022).

The Regulations also omit Part 4 of the principal Regulations, which requires persons responsible for regulated premises to undertake covid-specific risk assessments and to take all reasonable measures to minimise the risk of exposure to coronavirus at the premises (but Welsh Government guidance on minimising the risk of the transmission of coronavirus remains relevant).

The Regulations also make amendments that are consequential on the amendments set out above.

Despite the amendments made by these Regulations, the principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations applies.

5. Consultation

Given the ongoing threat arising from coronavirus and the need for a proportionate and prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders.

6. Regulatory and other impact assessments

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 ensure that the principal Regulations' restrictions and requirements continue to be proportionate.

Given that these amended Regulations are easing existing measures, the previous summary impact assessment, which includes equality impact assessments, published on [16 September](#) 2021, has been reviewed and remains valid overall. However, a further summary impact assessment has been completed and is being prepared for publication. This impact assessment highlights the following impacts:

- some individuals may suffer from concerns and anxiety if they view the removal of restrictions relating to coronavirus risk assessment and reasonable

measures as happening too soon and putting health at risk. This may negatively impact their wellbeing, and they may choose instead to withdraw from society;

Public health advice has been developed with the aim of helping to allay concerns.