

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) 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. 2) Regulations 2021.

Mark Drakeford
First Minister

29 January 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 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). 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 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 updated [Coronavirus Control Plan](#). Wales has been in Alert Level Four since the beginning of the day on 20 December 2020.

The principal Regulations were reviewed on 28 January 2021, in accordance with regulation 2(b) of those Regulations, and the Welsh Ministers agreed that the current level of restrictions (Alert Level 4) should continue. However the following changes are now being made to the principal Regulations:

- a. permitting a household that has ceased to be treated as part of an extended household to form a new extended household, provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of their previous extended household; and
- b. permitting a person to leave the place they are living to exercise with one other person from any household together with any children under 11 from either of those households (this affects Alert Level Four only).

Additionally, these Regulations also make minor, consequential and technical amendments to the principal Regulations.

Extended households

In all Alert Levels, the principal Regulations permit extended households to be formed, subject to specific restrictions and requirements set out in the relevant Schedule to the Regulations. In Alert Level 4 the Regulations permit "single adult households" to form an extended household (generally known as a support bubble) with one other household. However, it has been the case – in all Alert levels – that if any adult member of the extended household no longer wishes to be part of an extended household, then the extended household came to an end and no future extended household could be formed¹.

¹ Although extended households or support bubbles have been reformed in different configurations each time the principal regulations have been replaced. Since Boxing Day, a person can only be part of an exclusive support bubble.

It is recognised that relationships and circumstances may change over time, and the Regulations are now being amended to provide that where one extended household comes to an end, a new extended household may be formed provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of the previous extended household. Despite this, people are urged not to change support bubbles unless absolutely necessary.

Leaving the place where a person lives for the purposes of exercise (in Alert Level 4)

A person living in an Alert Level 4 area (which is currently the whole of Wales), may currently leave the place where they are living for the purposes of exercise, if they conduct that exercise (a) alone; (b) with another member of their household; or (c) with their carer. These Regulations will now permit a person to also exercise with one other person (outside of their household), together with any children under the age of 11 from those households.

This change is being made to help people with issues of loneliness and isolation and to support well-being more widely through increased exercise.

Automatic car washes

These Regulations provide that automatic car washes may continue to be open in an Alert Level 4 area.

Consequential and technical amendments

In light of the amendments made above, a number of minor consequential amendments are also required to the principal Regulations. Additionally, the opportunity is being taken to correct a minor drafting point in the principal Regulations identified by the Legislation, Justice and Constitution Committee in their report on the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 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.