

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) 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. 6) Regulations 2022.

Mark Drakeford
First Minister

25 February 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

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations are being made according to the negative procedure and do not adhere to the 21 day convention. This allows the Regulations to come into force at the earliest opportunity in order to ensure the restrictions and requirements of the principal Regulations continue to be proportionate.

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 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 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 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 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) 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, with effect from 28 February 2022, to narrow the scope of regulation 20 by providing an exhaustive list of the premises to which the requirement to wear face coverings applies. The requirement now applies to the indoor public areas of the following, when the public have access to the premises—

- business premises offering goods or services for sale or hire, including premises listed in paragraphs (a) to (m) of paragraph 39 of Schedule 7 to the principal Regulations (including financial services providers, post offices and shopping centres);
- premises of veterinary surgeons and animal grooming services;
- storage and distribution facilities, including delivery drop off points;
- premises of estate or letting agents, developer sales offices and show homes;
- premises of close contact services (hair salons and barbers, nail and beauty salons including tanning and electrolysis services, and body piercing and tattooing services);
- premises used for the provision of takeaway food;
- premises used for the provision of medical or health services;
- premises used for the provision of a social care service, including care home services, secure accommodation services, residential family centre services and adult day care services.

The amendments also clarify that the face covering requirement does not apply to residents of the social care premises listed when the residents are on the premises.

The amendments mean that the face covering requirement no longer applies to particular types of premises that are open to the public (for example, leisure and entertainment premises, and visitor attractions).

The Regulations also make consequential amendments.

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](#)¹ 2021, has been reviewed and remains valid. Any removal of legal restrictions are likely to lessen the identified negative impacts.
