

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 21) 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. 21) Regulations 2021.

Mark Drakeford
First Minister

2 December 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 restrictions and 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 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 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 and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19. These Regulations make specific provision to respond to the emergence of the Omicron variant and enables NHS Wales Test, Trace, Protect contact tracers to require people to self-isolate as a result of close contact of a case suspected or confirmed as having the Omicron (B.1.1.529) variant of COVID-19. The Omicron variant of coronavirus was designated a variant of concern by the World Health Organisation on 26 November. The provisions for domestic self-isolation are updated to reflect the emerging situation and to slow community transmission of the disease. The Regulations reflect changes being introduced by the UK Government for England.

The existing provision exempting close contacts from self-isolation providing they have completed a full course of an authorised vaccine, have taken part in a clinical vaccine trial, are medically unable to be vaccinated or are under the age of 18, will not apply if a person is notified that they are a close contact of a suspected or confirmed case of the Omicron variant.

The effect of this amendment will be that anyone in Wales who is notified by NHS Test, Trace, Protect (or other specified bodies) that they are a close contact of a suspected or confirmed case of the Omicron variant will be legally required to self-isolate regardless of age or vaccination status..

The principal Regulations are now amended, with effect from the beginning of 3 December 2021, as follows:

- where an adult has been notified that they had close contact with a person who has tested positive for coronavirus which is or may be the Omicron variant, the adult must self-isolate for 10 days (unless regulation 10 of the principal Regulations apply) regardless of their vaccination status. The way that the 10 day period of self-isolation is calculated is set out in regulation 8(4) and (5).
- where an adult is notified that a child for whom they are responsible has been a close contact of someone who has tested positive for coronavirus which is or may be the Omicron variant, the child must isolate for 10 days (unless regulation 10 of the principal Regulations apply). The way that the 10 day period of self-isolation is calculated is set out in new regulation 9A(4) and (5).

The principal Regulations are also being amended to clarify that a “contact tracer” includes Public Health Wales NHS Trust and the Secretary of State so that they may notify people of positive test results.

5. Policy background

These changes are being made in response to the Omicron variant of COVID-19, which was first detected in countries in southern Africa from 23 November 2021 and was designated a variant of concern by the World Health Organization on 26

November 2021. Cases have now been detected in European countries, including several cases in the UK.

The Omicron variant has 32 spike mutations and the World Health Organisation's Variant Technical Group has designated it Very High Priority, meaning it may pose a substantial risk to public health. Initial data indicates that this variant may pose significant risk to the UK. A number of mutations are in key locations in the genome, suggesting possible changes in transmissibility and vaccine effectiveness.

Previous exemptions do not apply to those who are close contacts of confirmed or suspected Omicron cases. This is in order to reduce transmission of the variant as much as possible to protect public health while further data is gathered and studied on the effectiveness of vaccines and treatments against this variant. Where someone is found to be a close contact of a suspected or confirmed case of the variant, they will be notified that they must self-isolate. This will be for the same duration and calculated in the same way as currently occurs for other non-exempt close contacts. Suspected or confirmed cases will be identified through molecular testing (including through PCR tests, genotyping or sequencing).

6. 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.

7. 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.