

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) 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. 19) Regulations 2021.

Mark Drakeford
First Minister

29 October 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 Senedd Cymru

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. 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 section 45C(1) and (3)(c) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

In accordance with section 45Q of the 1984 Act, a draft of these Regulations has been laid before Senedd Cymru for approval.

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.

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 last updated on 7 October and was published on 8 October. The updated Control Plan complements the wider planning taking place for the winter period, including for the NHS and social care.

With effect from 11 October the principal Regulations require certain premises to take reasonable measures to ensure that adults (and this means a person aged 18 years or over) are only present if they have what is commonly referred to as a “COVID pass”. These Regulations further amend the principal Regulations, with effect from 7.00 a.m. on 15 November 2021, to extend the types of premises where a COVID pass is required to cinemas, concert halls and theatres (other than drive-in cinemas or theatres).

5. Consultation

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

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 to deal with a serious and imminent threat to public health. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment (which includes an Equality Impact Assessment and Human Rights Impact Assessment) will be published as soon as practicably possible.