

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) 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. 2) Regulations 2022.

Mark Drakeford
First Minister

20 January 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 is necessary 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. 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 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 and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

These Regulations amend the principal Regulations, with effect from 6:00 a.m. on 21 January 2022, to remove all restrictions on outdoor gatherings and events, which were introduced on 26 December and amended on 15 January:

- the limit on numbers for regulated outdoor events of 500 people;
- the limit on numbers and the offence for gathering outdoors in excess of 50;
- the additional reasonable measures for outdoor hospitality (the rule of six, and the table service requirement).

The principal Regulations are also amended so that the requirement to control entry to premises and for customers to be seated when ordering food or drink only applies to indoors parts of the premises.

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.

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. The impact of easing protections outdoors has been considered in a number of Summary Impact Assessments which remain relevant and therefore apply to these Regulations. These have been published on [22 April¹](#), [14 May²](#) and on [16 September³](#) 2021. The last of these includes consideration of the specific impacts of removing the limits on the numbers of people who can gather outdoors.

¹ [Coronavirus restrictions review 22 April 2021: summary impact assessment | GOV.WALES](#)

² [Coronavirus restrictions review 14 May 2021: summary impact assessment | GOV.WALES](#)

³ [Alert Levels in Wales - a guide to restrictions: summary impact assessment August 2021 | GOV.WALES](#)