

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) 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. 25) Regulations 2021.

**Mark Drakeford**  
**First Minister**

23 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, particularly the rapid rise in Omicron cases.

### *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 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 amend the principal Regulations, with effect from 6:00 a.m. on 26 December 2021, so that:

- the whole of Wales moves from Alert Level 0 to Alert Level 2 at 6:00 a.m. on 26 December 2021;
- persons responsible for “regulated premises” (i.e. workplaces, premises open to the public and public transport vehicles) are required to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises, except between members of a permitted group comprising of no more than 6 persons or members of the same household at Alert Levels 1 and 2, or members of the same household at Alert Levels 3 and 4;
- in determining the extent it is reasonable to take a particular measure to ensure that a distance of 2 metres is maintained between persons on the premises, the person responsible for the premises may have regard to other measures taken to mitigate the risk of exposure to coronavirus on the premises;
- specific provision is made about the measures that must be taken to minimise the risk of exposure to coronavirus on licensed premises, including a requirement to control entry to the premises and for customers to be seated when ordering food or drink (subject to exceptions);
- specific provision is made about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises, including a requirement to control entry to the premises, to provide hand sanitisation products, to undertake additional sanitisation of baskets and trolleys etc., and to provide signs and make announcements to remind people of the 2 metre rule and to wear a face covering;
- face coverings must be worn in premises where food or drink is sold, or otherwise provided, for consumption on the premises, other than when seated;
- people playing in a team sport event or involved in coaching a team at an event are to be treated as working at the event and do not count towards any limit on numbers at the event (in the same way as referees and others involved in running the event);
- the restrictions on gathering in private dwellings and in holiday accommodation are removed, subject to it being an offence to participate

in a gathering of more than 30 people indoors or more than 50 people outdoors in these places;

- the exemption to the restriction on events is changed to enable any number of people to attend a celebration of a marriage or civil partnership or a celebration of a recently deceased person held at regulated premises (subject to the maximum numbers permitted on the premises in accordance with the risk assessment and other reasonable measures taken under regulation 16 of the principal Regulations);
- adult entertainment venues and ice rinks are omitted from the list of businesses whose premises have to close.

## **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 yet 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, summary impact assessments are in preparation which will include the impacts of Wales moving to Alert Level 2.