

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) 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. 18) Regulations 2021.

Mark Drakeford
First Minister

8 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 the Legislation, Justice and Constitution Committee

Coming into force

The Regulations come into force on 9 October 2021, within 21 days of their laying. Not adhering to the 21-day convention allows these Regulations to come into force at the earliest opportunity. This is necessary in order to amend the new regulation 16A that is to be inserted into the principal Regulations on 11 October 2021¹, before that regulation comes into force. Regulation 16A(1), commonly known as the COVID-pass provision, requires the person responsible for certain premises to take reasonable measures to ensure that an adult is permitted to be present on the premises only if they have evidence of particular matters, including vaccination with an authorised vaccine. The amendments are required to maintain consistency with regulation 2A of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, as amended from 4 October 2021 and 11 October 2021. Regulation 2A provides that a person arriving in Wales from outside the common travel area is subject to reduced coronavirus testing requirements if they have been vaccinated with a qualifying vaccine, and regulation 16A of the principal Regulations provides that evidence of vaccination with the same qualifying vaccine is acceptable for the purposes of regulation 16A(1).

Not adhering with the 21-day convention also allows the Regulations to come into force at the earliest opportunity to a. provide an exception for a person to leave isolation to prevent illness, injury or other risk of harm to another person or to move to a different place to live to prevent illness to another person; b. make clear, for the purpose of the general data protection Regulation (GDPR), the basis on which contact tracers may access information about a person’s vaccination status; c. clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations; and omit the spent transitional provision at regulation 10A.

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.

¹ Regulation 16A is to be inserted by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021.

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.

These amending Regulations reduce the extent to which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

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.

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 is due to be 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. In this update we set out the core measures we will retain through the autumn and winter period, which we hope will avoid the need for more intrusive measures. However, if we are faced with a situation in which COVID-19 could overwhelm the NHS, such as the emergence of a new variant that does not respond to current vaccines, the Plan points to the Alert Level framework which will allow us to respond in a proportionate way.

The principal Regulations are now amended, with effect from the beginning of 9 October 2021, as follows:

- clarify that a person may leave isolation to prevent illness, injury or other risk of harm to another person (“A”) where it is not possible or practicable for somebody else to assist A, the person is not assisting A as part of the person’s work or through providing voluntary services, and the risk of harm to A is greater than the risk of harm to A that arises from being in the same place as the person who would otherwise have to isolate, or to move to a different place to live to prevent illness to another person;
- make clear, for the purpose of the general data protection Regulation (GDPR), the basis on which contact tracers may access information about a person’s vaccination status;
- clarify that regulation 57(9) of the principal Regulations, which makes provision in relation to when a gathering or event is not to be treated as being “outdoors”, applies to all gatherings and events; and
- omit the spent transitional provision at regulation 10A.

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021 are also amended from the beginning of 9 October 2021, so that the regulation 16A that is to be inserted into the principal Regulations from 11 October 2021 is amended to:

- clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations (the COVID-pass requirements); in practice this means that those requirements don’t apply to any religious service held in premises ordinarily used as a place of worship;
- provide consistency with the International Travel Regulations by adding additional countries to the list of acceptable vaccinations for the purposes of the COVID pass.

5. 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. However, engagement has taken place with various stakeholders including the Information Commissioner’s Office and 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 urgently 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.