

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) 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. 4) Regulations 2022.

Mark Drakeford
First Minister

27 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 allows the Regulations to come into force at the earliest opportunity 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 28 January 2022, so that Wales moves to alert level zero and the restrictions on indoor gatherings and events, which were introduced on 26 December, are removed. The equivalent restrictions on outdoor gatherings and events were removed by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022 with effect from 21 January 2022.

The restrictions now being removed are:

- the limit on numbers for regulated indoor events of 30 people;
- the limit on numbers that may gather indoors in public places (the rule of six), and the offence for more than 30 people to gather indoors in private dwellings or in holiday or travel accommodation;
- the specific requirement for the person responsible for regulated premises to ensure that a distance of 2 meters is maintained between persons indoors on the premises;
- the additional reasonable measures for indoor hospitality (controlled entry and the table service requirement), and the specifically listed additional reasonable measures which retail premises were required to put in place (controlled entry, hand sanitizers and basket/trolley cleaning); these measures instead being considered as part of the wider consideration of what reasonable measures businesses should put in place following a Covid-related risk assessment.

The principal Regulations are also amended to remove the legal requirements:

- for nightclubs and similar premises to remain closed; and
- for people to work from home where reasonably practicable.

The effect of this is that:

- there are no specific limits on the number of people who can gather together;
- there are no specific limits on the number of people that may attend events at any time;
- there are no requirements for any particular types of businesses or services to close.

Nevertheless, persons responsible for regulated premises are still required to take reasonable measures to minimize the risk of exposure to coronavirus at the premises. This requirement means that persons responsible for regulated premises may still

need to set limits on the numbers of people who can gather, and on the capacity of events. Face coverings must still be worn on public transport and in particular indoor public places, but these Regulations amend the principal Regulations to provide that a person is no longer required to wear a face covering in premises where food or drink is sold for consumption on the premises.

A further amendment to the principal Regulations is also made to allow people who are medically exempt to enter certain premises and events where the Covid Pass is used, including people who have evidence that they cannot be vaccinated or take a qualifying test for coronavirus.

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

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. In accordance with the Code, a regulatory impact assessment as to the likely cost and benefit of complying with these Regulations has not been carried out, due to the need to put them in place urgently to ensure that the principal Regulations' restrictions and requirements continue to be proportionate.

Given that these amended Regulations are easing existing measures, the previous summary impact assessments, which include equality impact assessments, published on [16 September](#)¹ 2021, [2 November](#)² 2021 and [18 January](#)³ 2022, have been reviewed and remain valid.

¹ [Alert Levels in Wales - a guide to restrictions: summary impact assessment August 2021 | GOV.WALES](#)

² <https://gov.wales/nhs-covid-pass-impact-assessment>

³ <https://gov.wales/updated-nhs-covid-pass-impact-assessment>