

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) 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. 14) Regulations 2021.

Mark Drakeford
First Minister

16 July 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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. 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 spreading 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 preventing the spread of coronavirus.

These amending Regulations reduce the extent in 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 continued 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 updated on 14 July 2021.

On 7 June the whole of Wales began to move into Alert Level 1 of the Coronavirus Control Plan as in force at that time. The full move to Alert Level 1 was delayed due to increasing prevalence rates of coronavirus, as a result of the “delta variant”.

Whilst cases of coronavirus are rising in the community, our high vaccination rates mean hospital admissions remain low and we are now able to complete the move to Alert Level 1 of the Coronavirus Control Plan.

The following changes are to be made to Schedule 1 to the principal Regulations to complete the phased move to Alert Level 1 of the Control Plan from 17 July:

- Any six people, or the members of any two households, can meet indoors in private homes and holiday accommodation, even if those persons aren't members of the same household or extended household.
- Organised indoor events for up to 1,000 seated or 200 standing can take place subject to the requirements in regulation 16 of the principal Regulations being met.
- Ice rinks can re-open.

Schedule 1 to the principal Regulations is also to be amended to-

- remove the previous limit of 30 on the number of people that are allowed to gather in all outdoor premises (but persons responsible for regulated premises outdoors must still comply with regulation 16 of the principal Regulations by taking steps to minimise the risk of exposure to coronavirus at the premises).
- allow up to 30 children (of any age, not just primary school children as was the case previously) to gather at holiday or travel accommodation for well-being, developmental or educational gatherings (e.g. supervised residential visits).

Regulations 16 and 17 of the principal Regulations are also to be amended. These regulations apply across all Alert Levels, and will continue to apply after Wales moves to Alert Level zero as set out in the updated Coronavirus Control Plan published on 14 July.

Regulation 16 of the principal Regulations requires the person responsible for regulated premises to take steps to minimise the risk of exposure to coronavirus. The steps currently include taking all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises. These Regulations adjust the steps so that the requirement to take all reasonable measures to maintain a distance of 2 metres only applies to indoor premises. However, there remains a requirement for the person responsible for the premises to take reasonable measures to limit close physical interaction between persons on the premises. As such, the requirement to ensure physical distancing remains one of a package of measures that may be required to be taken for the purpose of minimising the risk of exposure to coronavirus.

Regulation 16 also requires a coronavirus risk assessment to be undertaken. These Regulations amend the requirements so that employers are now also required to provide information to their employees on the risks identified in the assessment and the preventive and protective measures being put in place. This will mean more information being provided to employees.

Regulation 17 of the principal Regulations sets out particular measures that must be taken by persons responsible for licensed premises. These Regulations amend the requirements so that persons attending regulated gatherings or events at such premises no longer have to be seated to consume food or drink. The same position applies to other types of event: the showing of a film, a live sporting event, and a live theatrical performance. The requirement to be seated in licensed premises remains in force in all other circumstances.

5. Consultation

Given the continued threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

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. 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 will be published as soon as practicably possible.