

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 24) 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. 24) Regulations 2021.

Mark Drakeford
First Minister

22 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.

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 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.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been notified that these Regulations will come into force less than 21 days after the instrument has been laid. In accordance with section 4(1) of the same Act, the Llywydd has also been notified that the Regulations will come into force before they are laid in the Senedd. Not adhering with the 21-day convention and bringing the Regulations into force before they are laid in the Senedd allows the Regulations to come into force at the earliest opportunity to

- mitigate the impact of protracted staff absences on essential public services in Wales
- align our position in Wales with that of the UK Government to mitigate any cross-border issues or confusion;

- simplify the Regulations' approach to self-isolation to aid public messaging and compliance.

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) 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 reverse the specific provision introduced on 3 December; to enable NHS Wales Test, Trace, Protect contact tracers to require people to self-isolate as a result of close contact of a case suspected or confirmed as having the Omicron (B.1.1.529) variant of COVID-19. The Regulations reflect changes which have been introduced by the UK Government for England.

The amendments made will revert to our existing provision within the legislation which exempts close contacts from self-isolation providing they have completed a full course of an authorised vaccine, have taken part in a clinical vaccine trial or are under the age of 18. This will apply to contacts of all positive cases - Omicron or otherwise. Guidance will also be issued to advise exempt contacts to take 7 days of lateral flow tests.

The principal Regulations are now amended, with effect from the beginning of 22 December 2021, as follows:

- To remove the distinction between close contacts of known or suspected Omicron cases and close contacts of all other positive cases.
- All close contacts, regardless of the variant of coronavirus concerned, will not be required to self-isolate if they:
 - are children,
 - have completed a course of doses of an authorised vaccine at least 14 days before the close contact takes place,
 - are participating in a clinical trial in the United Kingdom, or
 - are participating in a testing scheme.
- The Regulations also provide that where a person comes within these categories but was under a requirement to isolate immediately before the start of the day on 22 December 2021 as a result of having close contact with a known or suspected Omicron case, the isolation requirement ends at the start of the day on that date.

5. Policy background

These changes are being made in response to the change in context in relation to the recent emergence of the Omicron variant of COVID-19 and its move to become the dominant variant.

The amendments will mean that previous exemptions will apply to those who are close contacts any COVID-19 cases – fully vaccinated, under 18s and those who are vaccine clinical trial participants will be exempt from self-isolation if identified as a close contact of a positive case but with added guidance to take daily lateral flow devices for 7 days. This is in order to balance the harms of self-isolation to individual well-being, education, public services and the economy, with the need to slow the spread of Omicron as far as possible in order to reduce the risk of adverse outcomes in vulnerable populations and of overwhelm to health and care services.

6. 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.

7. Regulatory and other impact assessments

A summary impact assessment has been prepared in relation to these Regulations, however due to the need to put them in place urgently to deal with a serious and imminent threat to public health this is yet to be published - it will be published as soon as practicably possible.