

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

Mark Drakeford
First Minister

14 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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. This is necessary in order to respond to the changing epidemiological picture and the evidence on the risk posed by coronavirus and the Omicron variant in particular.

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 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 the beginning of the day on 15 January 2022, so that the number of people who can be present at outdoor events will increase from 50 to 500 people. This figure does not include people working or providing voluntary services at the event and if it is a team sport event, members of the teams, coaches and people otherwise assisting the teams count as people working at the event.

The Regulations also make a minor amendment to regulation 16 of the principal Regulations which is consequential on the changes made to the principal Regulations by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 2021 (S.I. 2021/1485 (W. 386)).

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 in relation to these Regulations due to the need to put them in place to ensure a proportionate approach is taking in response to the changing epidemiological picture and health advice and evidence, in particular in the context of the Omicron variant.