

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

Mark Drakeford
First Minister

12 March 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

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 as 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 the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the 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 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), 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 serious and imminent 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 updated [Coronavirus Control Plan](#). Wales has been in Alert Level 4 since the beginning of the day on 20 December 2020.

The principal Regulations were reviewed on 11 March 2021, in accordance with regulation 2(b) of those Regulations, and the Welsh Ministers agreed that Wales should continue in Alert Level 4. However amendments and temporary modifications are now being made to the principal Regulations' Alert Level 4 restrictions and requirements, and the expiry date of the current temporary modifications in paragraph 2 of Schedule 5 to the principal Regulations is being amended so that they, and the new modifications set out below, continue to apply until the end of the day on 26 March 2021"

The following changes comes into force on 13 March 2021:

- replace 'stay at home' restrictions with 'stay local' rules

Currently, at Alert Level 4, the whole of Wales is subject to 'stay at home' restrictions. This restriction is temporarily modified, the effect of which will mean that people will be prohibited from leaving the area local to the place where they are living, without reasonable excuse.

- allow for up to four people from two different households to meet outside, effectively including in gardens and private outdoor spaces

Currently, at Alert Level 4, the principal Regulations allow groups of up to four people from two different households to exercise together outdoors (though the exercise must continue to start and finish from the place where the people are living). Such a group may include any children under the age of 11 from those households.

This is now being modified on a temporary basis so as to allow groups of up to four people from two different households to meet outdoors, which would include private gardens and other outdoor spaces, for any reason. Such a group may

include any children under the age of 11 from those households without counting towards the limit of four people.

Express provision is made to provide that persons cannot gather for the purposes of persuading or dissuading a person to vote in a particular manner in an election (for example, canvassing), unless the person is participating in a broadcast without an audience.

- outdoor sporting and exercise facilities to be permitted to reopen

In Alert Level 4, outdoor sporting and exercise facilities (such as tennis courts, bowling greens, golf courses, outdoor gyms) are required to remain closed. This is now being modified on a temporary basis so as to permit these facilities to open.

- include visits to residents of care homes (adults and children) as a reasonable excuse for gathering indoors with someone outside of a person's household or extended household

Currently, at Alert Level 4 the principal Regulations do not specifically provide for visits between members of different households as a reasonable excuse to gather. This is now being modified on a temporary basis to broaden the reasonable excuses for which a person can travel and to gather indoors to include visits to friends or relatives in care homes, provided they have the permission of the person responsible for the care home.

- remove the need for Ministers to specifically authorise individual elite sporting events

At Alert Levels 3 and 4 the principal Regulations require Ministers to authorise individual elite sporting events in order to enable them to take place. This is now being modified on a temporary basis for Alert Level 4 and amended permanently in Alert Level 3 to remove the requirement for such an authorisation, provided that the only persons present at the event are elite athletes and persons working, or providing voluntary services, at the event.

- allow the use of theatres and other premises for the purposes of rehearsals, irrespective of whether they are linked to a broadcast

The principal Regulations allow for premises otherwise closed to be used for the purposes of broadcast or rehearsal for such a broadcast only. This is now being temporarily modified in Alert Level 4, and permanently amended for the other Alert Levels, to allow any rehearsals to take place in premises, not simply rehearsals for the purpose of such a broadcast.

- "support bubbles" in all Alert Levels to include "a household comprising of 1 or more children and no adults"

Currently, at Alert Level 4, single adult households (defined at regulation 57(1)(u) of the principal Regulations) and a household comprising of 1 or more children

and no adults can form an extended household with another household. However there is no equivalent provision for children (for example those aged 16 or 17 years) who live alone or in a household with others of the same age without an adult at Alert Levels 1, 2 and 3. This was an unintentional gap in the provision and meant such individuals would not have the same access to support as adults would. Alert Levels 1, 2 and 3 are now amended to allow such households to form an extended household.

The following changes come into force at the beginning of 15 March 2021:

- remove the restrictions providing for school premises closures;

In Alert Level 4, all school and college premises are closed to children and young people, apart from children of critical workers or vulnerable children. From 20 February 2021 face to face learning for foundation phase children (those aged three to seven) has been permitted, along with enabling some older learners on vocational courses to attend college.

All restrictions in relation to school and education premises are now being lifted.

- provide for hairdressers and barbers to reopen

At Alert Level 4, the principal Regulations require hair salons and barbers to close. This is now being modified on a temporary basis to allow barbers and hair salons to reopen for the purposes of cutting, styling and colouring hair, by appointment only.

The following amendment will come into force at the beginning of 22 March 2021.

- provide for supermarkets and mixed retailers to sell non-essential items and to allow garden centres and plant nurseries to reopen

At Alert Level 4, the principal Regulation permit supermarkets and mixed retailers to remain open for the sale of essential items only. This is being modified to permit supermarkets and mixed retailers which are currently open (and which mainly sell the goods currently allowed to be sold under Alert Level 4) to sell any other items. The temporary modifications will also permit garden centres and plant nurseries to re-open.

The Regulations also extend the current expiry date of the principal Regulations and the Health Protection (Coronavirus, Functions of Local Authorities etc.) (Wales) Regulations 2020 to 28 May 2021, and make a temporary modification to those Regulations which is consequential on the modifications to the principal Regulations.

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.

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.