

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) 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. 7) Regulations 2021.

Mark Drakeford
First Minister

09 April 2021

1. Description

The Regulations amend the

- Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), and
- Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information 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.

The Government considers that the Public Health Information Regulations do not engage any of the individual rights under the Human Rights Act 1998 and the European Convention on Human Rights. And, to the extent that any such rights may be engaged, the Government considers that the interference is minimal and can be justified as being necessary and proportionate to achieve a legitimate aim. The amendments to the Public Health Information Regulations made by these Regulations do not change the engagement of 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 45B, 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memoranda to the principal Regulations and the Public Health Information 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 [Coronavirus Control Plan](#). This plan was updated on 19 March 2021.

These Regulations amend the principal Regulations to temporarily modify how Alert Level 3 operates in the area of Wales. The period of the temporary modifications already in place has been extended until the end of the day on 25 April 2021.

In particular these Regulations make further temporary modifications:

- a. removing the restrictions on canvassing, although canvassers are subject to a duty to take all reasonable measures to minimise the risk of exposure to, and spread of, coronavirus when carrying out this activity and, when taking those measures they must have regard to guidance issued by the Welsh Ministers.
- b. permitting the non-essential retail to reopen.
- c. permitting close contact services to reopen, including mobile services in people's homes such as mobile hairdressers (a new definition of close contact services has been included at regulation 57(1)(da)).
- d. removing the restrictions to now allow for wedding 'show-arounds' by appointment in premises used as venues for the wedding, civil partnership

and alternative wedding ceremonies, or for celebrations of the same, which are otherwise required to close.

- e. to remove restrictions so as to allow crematoriums to be fully open.

These Regulations remove the current restrictions on travel within the UK and into/from the Common Travel Area (CTA), and place new restrictions and requirements on international travel (which apply in all Alert Levels). This includes:

- a. restrictions to prohibit international travel without a reasonable excuse. A person who attempts to travel to a destination outside the CTA without a reasonable excuse is guilty of an offence and may be subject to a Fixed Penalty of £5,000.
- b. introducing a requirement for any person who is at an embarkation point (for example, an airport) and is seeking to leave the CTA with a reasonable excuse to provide a completed international travel declaration form stating the reasons for travelling to an enforcement officer on request. A Fixed Penalty of £60 may be levied on a person who fails to complete a declaration form or who provides false or misleading information on the form.

Other technical, minor and consequential amendments, including to provide for the enforcement of the new provisions on international travel, are also made by these Regulations.

In consequence of the amendments described in relation to international travel, the Regulations also amend the Public Health Information Regulations. The Public Health Information Regulations ensure that travellers are made aware of the travel requirements and public health guidance that are in force in Wales. The Public Health Information Regulations are amended so that operators of relevant services departing from Wales to a destination outside the CTA are required to advise travellers of the restriction on leaving Wales to such a destination, and the requirement to complete an international travel declaration form. This information is to be provided at the time of booking and at least 24 hours prior to the scheduled departure.

These amendments and modifications made by these Regulations come into force on 12 April 2021.

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.