

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 26) 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. 26) Regulations 2021.

Mark Drakeford
First Minister

30 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. Not adhering with the 21-day convention allows the Regulations to come into force at the earliest opportunity to

- Reflect public health advice that the minimal increased risk of infectious individuals being released from isolation is balanced against the societal benefits from reducing the isolation period and the potential for this policy to increase compliance with isolation;
- reflect the rapidly increasing case rates in order to mitigate the potential 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.

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 to now provide that persons testing positive for coronavirus are now required to self-isolate for a 7-day period (rather than a 10-day period). The Regulations also provide that where a person comes within this category but was under a requirement to isolate immediately before the start of the day on 31 December 2021 as a result of having a notification to self-isolate following a positive COVID-19 test result, the isolation requirement is determined in accordance with regulation 6 or 7 as amended by these Regulations. Guidance will also be issued to advise positive cases to take lateral flow tests on day 6 and 7 of their self-isolation period.

These Regulations , with effect from the beginning of 31 December 2021:

- amend regulations 6 and 7 of the principal Regulations to provide that persons testing positive for coronavirus are now required to self-isolate for a 7-day period (rather than a 10-day period);
- provide that where a person was under a requirement to isolate immediately before these Regulations come into force, the end of the isolation period is to be determined in accordance with regulation 6 or 7 as amended by these Regulations;
- make a minor amendment in consequence of the changes made by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 2021 (S.I. 2021/1485 (W. 386)).

5. Policy background

The UK Health Security Agency’s (UKHSA) Public Health Advice, Guidance and Expertise (PHAGE) group has presented evidence to the four CMOs regarding the duration of self-isolation for COVID-19 cases and the potential to reduce this period with support from repeat testing with Lateral Flow Devices (LFDs). This advice comes in the context of rapidly rising case numbers and the consequential staffing issues that are being felt across essential public services. Based on public health advice the minimal increased risk of infectious individuals being released from

isolation is balanced against the societal benefits from reducing the isolation period and the potential for this policy to increase compliance with isolation.

6. Consultation

Given 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.