

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 10) 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) (No. 10) Regulations 2022.

Mark Drakeford
First Minister

6 May 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

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, or have from time to time been, 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 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 to that aim. Any interference with these rights also needs to be balanced with the state’s positive obligations under Article 2 (right to life). The extension of specific 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 control 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 section sections 45C(1) and (3)(c), 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 threat to public health which is posed by the incidence of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The Regulations amend the principal Regulations to provide that those Regulations expire at the end of the day on 30 May 2022 (rather than 7 May 2022).

Despite the amendments made by these Regulations, the principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations applies.

5. Consultation

Given the ongoing threat arising from coronavirus and the need for a proportionate and prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders.

6. Regulatory and other impact assessments

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. In accordance with the Code, a regulatory impact assessment as to the likely cost and benefit of complying with these Regulations has not been carried out, due to the need to put them in place urgently to ensure that the principal Regulations' restrictions and requirements continue to be proportionate.

The previous Summary Impact Assessment (SIA), published on 16 September 2021¹ set out the wellbeing, economic and equality impacts specifically relating to the remaining legal restrictions at alert level zero. This has been reviewed and remains valid. The SIA relating to the Transition plan was published on 14 April 2022².

There are concerns from the residential care home sector that the prolonged requirement for staff, and visitors when in communal areas, to continue wearing face coverings is adversely impacting on residents' well-being. As the setting is their home, they feel they are still being treated differently to the wider population. This adverse impact has been somewhat mitigated by ensuring residents are exempt from the requirements anywhere in the setting and as the law requires face coverings only in indoor public areas, staff and visitors are able to remove face coverings in all other areas within the premises.

A further concern within these settings relate to difficulties in communication with residents for a number of reasons. This has been mitigated with the inclusion of a

¹ <https://gov.wales/alert-levels-wales-guide-restrictions-summary-impact-assessment-august-2021>

² [Together for a safer future: Wales' Covid-19 transition from pandemic to endemic \(March 2022\) - impact assessment \[HTML\] | GOV.WALES](#)

reasonable excuse, whereby a person can remove a face covering to communicate with a person who has difficulty communicating (in relation to speech, language or otherwise).

The list of reasonable excuses is not exhaustive and therefore there may be a number of other reasons whereby it could be reasonable to remove face coverings within indoor public areas of health and social care settings.