

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 11) 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. 11) Regulations 2021.

Mark Drakeford
First Minister

4 June 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 Senedd Cymru

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 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.

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)(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 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 so that from 6.00 a.m. on 7 June 2021 the restrictions and requirements in Schedule 1 to those Regulations apply to the whole of Wales. However, in order to move to Alert Level 1 of the Coronavirus Control Plan in a phased way, the restrictions and requirements of Schedule 1 are being amended in various respects. As amended, Schedule 1 provides that—

- gatherings indoors in private dwellings remain restricted to the members of one household or extended household. An extended household may now comprise up to three households and one well-being needs household (sometimes referred to as a support bubble).
- up to four people who share living facilities may gather indoors at a private dwelling. This is an amendment to Schedule 1 and will be required until Wales moves fully to Alert Level 1 of the Action Plan, when up to six persons (not from the same household or extended household) will be allowed to gather in private dwellings).
- up to 30 people can meet in any premises outdoors, including in private gardens and in regulated premises.

In relation to events—

- regulated gatherings and events outdoors can take place with up to 4,000 people (for standing events) or 10,000 people (for seated events). An event's actual capacity will depend on its risk assessment. There is no limit on the number of people with which an attendee at an event can gather, but the event organisers must take all reasonable measures to minimise the risk of exposure to coronavirus.
- subject to exceptions, no person may organise an indoor event. The exceptions include indoor celebrations at regulated premises of marriage,

formation of a civil partnership or alternative wedding ceremony and indoor celebrations at such premises of the life of a deceased person. They also include indoor regulated gatherings. In all these cases, a maximum of 30 people may attend.

- ice skating rinks must remain closed.

These Regulations also amend the principal Regulations to make minor and consequential amendments, including to replicate the events provisions in Schedule 1 across Schedules 2 to 4. They also clarify that the exception to the table service requirement previously provided for in cinemas, theatres and sports grounds applies only where a person is seated to watch the performance or sporting event as well as extending that exception to people attending an outdoors regulated gathering or event.

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.