

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) 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. 4) Regulations 2021.

Mark Drakeford
First Minister

26 February 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 are qualified rights, which permit 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)(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 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 19 February 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 modifications are now being made to the principal Regulations' Alert Level 4 restrictions and requirements in respect of extended households and venues approved for the solemnisation of weddings, formation of civil partnership or alternative wedding ceremonies.

Alert Level 4 is modified on a temporary basis (until end of the day on 12 March 2021, unless extended before then) to permit a household with one or more children under the age of 1 to form an extended household with another household. This ability for households to be part of an extended household under this provision ends on the youngest child's first birthday (at which point the parents and children concerned will continue to be able to gather with any other person for the purposes of providing or receiving care or assistance, where it is reasonably necessary and there is no reasonably practicable alternative).

Currently, at Alert Level 4, single adult households (defined at regulation 57(1)(u) of the principal Regulations) 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. This is an unintentional gap in the provision and means such individuals do not have the same access to support as adults would. Alert Level 4 is therefore amended to allow such households to form an extended household. Equivalent changes for the other Alert levels will be made in due course.

These changes comes into force on 27 February 2021.

In Alert Level 4 only places of worship and Register Offices may be open to conduct wedding or civil partnership ceremonies. This is now being modified on a temporary

basis so as to permit approved premises¹ to open to the public to the extent that this is required for the purposes of the solemnisation of a marriage, formation of a civil partnership, or an alternative wedding ceremony at the premises. Allowing approved premises to open in this way creates a consistent approach for all types of weddings and civil partnerships.

This changes comes into force on 1 March 2021, as previously announced.

The opportunity is being taken to also make minor and consequential changes, including revoking spent provisions (to come into force on 27 February 2021) and to update a cross-reference to regulations that are to be revoked (to come into force on 1 March 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.

¹ i.e. premises in which civil wedding ceremonies and the formation of civil partnerships may take place