

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

Mark Drakeford
First Minister

17 February 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 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 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 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 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 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, with effect from 18 February 2022, to omit regulation 16A of the principal Regulations, which requires any person responsible for certain premises to take reasonable measures to ensure that adults are on the premises only if they have what is commonly referred to as a “COVID pass” (and to make consequential amendments), as that requirement no longer remains proportionate in light of the current health position.

The principal Regulations are also amended to extend the exemption for fully vaccinated close contacts of persons who test positive for coronavirus so that close contacts no longer have to self-isolate if they have completed a course of doses of any vaccine that is authorised for the purposes of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022 (S.I. 2022/126 (W. 41)) or under the United Kingdom vaccine roll-out overseas (prior to the amendment, close contacts were only exempt if they had completed a course of doses of a vaccine authorised in the United Kingdom).

The principal Regulations also insert a transitional provision relating to the amendment to the exemption for fully vaccinated close contacts and to revoke a spent transitional provision.

The effect of this is that:

- all venues previously covered by the domestic Covid Pass requirements – large indoor and outdoor events, nightclubs, cinemas, theatres and concert halls – will no longer need to restrict entry to vaccinated individuals or those who have a negative test (or are medically exempt) as shown on a covid-pass;
- anyone identified in Wales as a close contact is exempt from the legal requirement to self-isolate for 10 days, if they have been fully vaccinated with an approved vaccine as defined in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022.

These Regulations also amend the principal Regulations and the [Health Protection \(Coronavirus Restrictions\) \(Functions of Local Authorities etc.\) \(Wales\) Regulations 2020](#) to provide they will now expire on 28 March 2022. The requirement on the Welsh Ministers to review the need for and proportionality of the restrictions and requirements in the principal Regulations every 21 days remains in place.

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 apply (and if future regulations were to move Wales to any of alert levels 1 to 4, the restrictions and requirements in Schedules 1 to 4 to the principal Regulations could be amended before taking effect).

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.

Given that these amended Regulations are easing existing measures, the previous summary impact assessments, which include equality impact assessments, published on [16 September](#)¹ 2021, 2 November² 2021 and 18 January³ 2022, have been reviewed and remain valid. Any removal of legal restrictions are likely to lessen the identified negative impacts.
