

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

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) Regulations 2020.

Mark Drakeford
First Minister

18 December 2020

1. Description

The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus, and revoke the current Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.

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 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 Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental 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 these 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 implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing 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.

3. Legislative background

The Regulations are made under sections 45B, 45C(1) and (3), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, in respect of Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

The Regulations, here after referred to as the “No. 5 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 or “coronavirus”.

The current Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 put in place the restrictions and requirements necessary after the firebreak between 23 October and 8 November. The No. 5 Regulations will revoke the current Regulations and will:

- a) set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels set out in the updated [Coronavirus Control Plan](#)
- b) move Wales into Alert Level Four on Christmas Day in view of the high prevalence of Covid-19 in Wales
- c) provide for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December), but restrict the numbers of households who may form an extended household during this period to two (plus one single adult household);
- d) increase the initial Fixed Penalty Notice for those organising events such as house parties where more than 15 people gather indoors or 30 outdoors, from £200 to £500.

The Regulations also provide for the enforcement of these requirements and restrictions.

The Regulations set out restrictions and requirements applicable under four different Alert Levels, aligned with the measures the Government is putting in place to control the spread of the virus and protect people's health, depending on the state of coronavirus across Wales and other key indicators. The Coronavirus Control Plan sets out how and when there will be movement between these Alert Levels for Wales or areas within Wales as the case may be. This approach is aimed at providing greater certainty for people and businesses across Wales about what legal restrictions are in place, depending on the level of risk, helping them to plan for the future. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government's [Technical Advisory Cell](#) and available on the gov.wales website. The latest briefing, dated 11 December, sets out the seriousness of the public health position.

The Chief Medical Officer recommends that an appropriate response to the public health situation is that Wales move to Alert Level 4 and reduce the number of households that can agree to form an extended household over the Christmas period.

In recognition of this, the Welsh Ministers have decided that Wales should move to Alert Level 4 at 6.00 p.m. on 25 December and limit the number of households that can meet over the Christmas period (23-27 December) to two instead of three as had been agreed by the four UK Governments.

These Regulations are intended to prevent direct COVID-19 deaths and deaths related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

Part 1 of the Regulations provides that the new provisions come into force at the beginning of Monday 21 December (with the exception of Part 6 (provision of school education)). As with the earlier Coronavirus Restrictions Regulations, there is a statutory requirement to review the Regulations, under which they must be reviewed by 7 January 2021 and at least every 21 days after that. The Regulations will expire at the end of the day on 31 March 2021 unless they are revoked before then.

Part 2 of the Regulations makes provision for the different restrictions that apply in relation to people gathering or travelling, organising events and the use of premises ordinarily open to the public depending on the "Alert Level" that applies. These levels are based on what the Welsh Ministers consider to be the appropriate and proportionate response to the incidence and spread of coronavirus. The restrictions and requirements specific to Alert Levels 1 to 4 are set out in Schedules 1 to 4 respectively. Part 2 and Schedule 5 also sets out which Alert Level applies to an area. An "area" may be part of Wales or the whole of Wales, meaning that the same grade of restrictions may apply across Wales or they may differ on a regional or local basis. When the strictest **Alert Level 4** restrictions apply to an area:

- there is an overarching requirement to stay at home and not to travel;
- most premises ordinarily open to the public are required to be closed.

As an exception, Part 2 and Schedule 6 make specific provision modifying the restrictions relating to extended households (and travelling to meet members of an extended household) for the period between 23 and 27 December 2020 (with an

additional day allowed before and after this period in the case of persons travelling to and from Northern Ireland). This will allow two households to come together to form an exclusive bubble. Given the decision to enter Alert Level 4 on 25 December this part also provides for holiday accommodation to remain open until the end of the Christmas period (as they would otherwise have to close under Alert Level 4).

Parts 3 to 5 impose further restrictions and requirements which generally apply at all Alert Levels and which maintain the previous provisions on face coverings and on reasonable measures. These restrictions and requirements are applicable irrespective of the Alert Level in force at any given time.

Part 3 imposes requirements on people who have tested positive for coronavirus and those notified by contact tracers that they have been in close contact with someone with coronavirus to self-isolate.

Part 4 retains the requirement for those responsible for regulated premises and for work undertaken in premises to take all reasonable measures for the purpose of minimising risk of exposure to, or spread of, coronavirus.

Part 5 provides that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions.

Part 6 provides for local authorities to ensure the provision of school education to vulnerable children and the children of key workers when schools are closed

Part 7 relates to the enforcement of the restrictions and requirements.

Part 8 makes provision about offences and penalties.

Part 9 contains defined terms (regulation 57), revokes previous Regulations and makes a consequential amendment.

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.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 16 December the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.

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.

A summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.