

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) 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) (Amendment) (No. 2) Regulations 2020.

Mark Drakeford
First Minister

22 December 2020

1. Description

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to introduce an offence in Alert Level 4 of failing to comply with the requirement for those responsible for premises with a licence to sell or supply alcohol for consumption off the premises to not sell or supply alcohol after 10 p.m. or before 6.00 a.m. The amendment also enables local authorities to designate enforcement officers to enforce this requirement and issue compliance notices in relation to non-compliance. .

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 principal Regulations, as amended by these 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 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 implementation of new restrictions and requirements under the 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.

Coming into force

These Regulations come into force at 12.01 am on 22 December, which is before they could be laid before the Senedd. The Llywydd has been notified of this, in accordance with section 4 of the Statutory Instruments Act 1946.

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 sections 45C(1) and (3), 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 or “coronavirus”.

The principal Regulations made on 18 December 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 Four since the beginning of the day on 20 December.

These Regulations amend the principal Regulations to provide that it is an offence to fail to comply with the Alert Level 4 requirement for licensed premises to not sell alcohol after 10 p.m. or before 6.00 a.m. This restriction applies at all Alert Levels under the principal Regulations and was part of the regime which preceded the current principal Regulations. In the course of drafting the principal Regulations the cross-referencing required to ensure that breach of this restriction in an Alert Level 4 area was an offence and was accompanied by appropriate enforcement powers was omitted in error. These Regulations simply correct that omission.

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.

The summary integrated impact assessment for the principal Regulations will be updated and published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.

