

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) 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. 8) Regulations 2022.

**Mark Drakeford**  
**First Minister**

25 March 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 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) 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 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 28 March 2022 to—

- omit Part 3 of the principal Regulations, which requires persons to self-isolate if they test positive for coronavirus, or are close contacts of persons who test positive for coronavirus (but self-isolation continues to be recommended in Welsh Government guidance);
- change the principal Regulations' requirements for face coverings to be worn on public transport and in certain indoor public places so that they now only apply in health and social care premises;
- omit the specific requirement for persons taking part in election campaigning to take reasonable measures to minimise the risk of exposure to coronavirus (but political parties will continue to be required to take such reasonable measures under regulation 16 of the principal Regulations in relation to their activities on regulated premises);
- omit the specific offence in the principal Regulations of being involved in organising a large unlicensed music event.

The Regulations also make amendments that are consequential on the amendments set out above and those which have been made to the principal Regulations previously.

They also make a transitional provision to make clear that any legal requirement for a person to self-isolate ceases when these Regulations come into force (but again, Welsh Government guidance will continue to be relevant to such a person).

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 applies

#### **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 assessment, which includes equality impact assessments, published on [16 September](#) 2021, has been reviewed and remains valid overall. However, a further summary impact assessment has been completed and is being prepared for publication. This impact assessment highlights the following impacts:

- removal of legal restrictions is expected to have a positive wellbeing impact for some individuals who may feel negatively impacted by current provisions relating to the wearing of face coverings. Or who may have suffered from loneliness if required to self-isolate;
- conversely some individuals may suffer from concerns and anxiety if they view the removal of restrictions as happening too soon and putting health at risk. This may negatively impact their wellbeing, and they may choose instead to withdraw from society;
- removal of specific requirements for election campaigning may cause anxiety for campaigners and voters who may be unsure about whether campaigning is being undertaken safely.

Public health advice has been developed with the aim of helping to allay concerns.