

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) 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. 15) Regulations 2021.

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

6 August 2021

## 1. Description

The Regulations amend the [Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) Regulations 2020](#) (“the principal Regulations”) and the [Health Protection \(Coronavirus Restrictions\) \(Functions of Local Authorities etc.\) \(Wales\) 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 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 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. 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 preventing the spread of coronavirus.

These amending Regulations further 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 continued 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 [Coronavirus Control Plan](#). This plan was updated on 14 July 2021 to set out how Wales will move beyond Alert Level One to a set of baseline restrictions, being referred to Alert Level Zero.

On 17 July the whole of Wales completed a phased move into Alert Level 1.

These Regulations now further amend the principal Regulations so that from 6.00am on 7 August, 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. As such:

- all the remaining legal limits and caps on the number of people who can gather together (including in private homes, public places or at events) are removed; and
- there are no requirements for any particular types of businesses and services to close, so nightclubs and adult entertainment venues may reopen.

Whilst none of the alert level restrictions and requirements set out in Schedules 1 to 4 of the principal Regulations currently apply, the other restrictions and requirements continue, subject to certain amendments. As set out in the Explanatory Note to the Regulations (being made today) this includes the:

*...requirements on persons responsible for regulated premises to take reasonable measures to minimise the risk of exposure to coronavirus at the premises, and requirements to wear face coverings on public transport and in particular indoor public places.*

It will be for each business operator and organisation to determine, on the outcome of their risk assessment, the reasonable measures that they should have in place to control the spread of coronavirus (including in relation to limiting close physical interaction between persons on the premises). This may mean that individual premises may set limits on the numbers of people who can gather, and on the capacity of events.

Under the Regulations, face coverings will no longer be required to be worn in hospitality settings.

These Regulations also amend (from the beginning of 7 August) the requirements for persons to isolate after being notified by a contact tracer that they have had close contact with a person who has tested positive for coronavirus: persons under 18 will no longer be required to isolate if contacted, and adults will no longer be required to isolate if contacted by a tracer if they:

- a) have received both doses of a coronavirus vaccine (in the UK) at least 14 days before they were contacted; or
- b) are participating in a clinical trial in the UK of a coronavirus vaccine.

If a person has been notified that they have tested positive for coronavirus, they must continue to isolate. These Regulations do not amend this requirement.

In addition to making minor technical and consequential amendments to the principal Regulations, these Regulations also amend the expiry date of the principal Regulations and the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to 26 November 2021.

## **5. Consultation**

Given the continued 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. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.