

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 10) 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. 10) Regulations 2021.

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

14 May 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 Senedd Cymru

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 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 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 reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations 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 45B, 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 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.

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 19 March 2021.

These Regulations amend the principal Regulations so that from 17 May 2021 the whole of Wales is at Alert Level 2, and the restrictions and requirements of Schedule 2 to the principal Regulations apply.

Under the restrictions and requirements of Schedule 2:

- Indoor hospitality can open;
- 6 people from different households can gather indoors or outdoors in regulated premises, not including under 11s (these Regulations amend the previously rules in Schedule 2 on gatherings indoors such that 6, rather than 4, can now gather).
- Holiday accommodation can open in full (but the rules on gathering continue to apply);
- Entertainment venues can open, including cinemas, bingo halls, bowling alleys, indoor play centres and areas, casinos, amusement arcades, theatres and concert halls;
- Indoor visitor attractions can open, including museums and galleries;
- The number of people who can take part in regulated indoor gatherings and regulated outdoor gatherings is 30 and 50 respectively. Sale or consumption of alcohol is prohibited at these gatherings.
- Celebrations of weddings and civil partnerships that took place on or after 26 March 2020, and celebrations of the life of a deceased person whose funeral is held on or after that date, are permitted indoors at regulated premises for up to 30 people and outdoors at such premises for up to 50 people. There are no restrictions on the sale or consumption of alcohol.

These Regulations also amend the principal Regulations to:

- Disapply the restriction on leaving Wales to go to a destination outside the common travel area without a reasonable excuse, and the requirement to present an international travel declaration form if doing so.
- Relax the rules on service in cinemas, sports grounds and theatres so that customers only have to be seated when consuming food or drink (and not when ordering or being served).
- Enable the Welsh Ministers to authorise specific events so that they can authorise events which any number of people can attend (including a number that is already permitted) and can modify the requirements to take reasonable measures to minimise the spread of coronavirus that would otherwise apply in accordance with regulation 16 of the principal Regulations.
- Clarify that the exception to the prohibition on large scale events that applies to the showing of a film, a theatrical performance, a market and a religious service only has effect where it takes place in premises ordinarily used for those purposes or outdoors (though at Alert Levels 3 and 4 this change only applies to markets and religious services).

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 27 August 2021.

## **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.