

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) 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. 8) Regulations 2021.

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

23 April 2021

## **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**

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), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memoranda 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 to temporarily modify how Alert Level 3 operates in the area of Wales. The period of the temporary modifications already in place has now been extended until the end of the day on 2 May 2021.

These Regulations make further temporary modifications:

#### From 24 April 2021:

- The restrictions on gathering with others outdoors are relaxed to allow a maximum of 6 people (not including children under 11 or carers) to gather from no more than 6 households.

#### From 26 April 2021:

- People may gather outdoors for the purposes of participating in formally organised activities involving up to 30 people (this involves a designated person being responsible for the activity, all reasonable measures being taken to minimise the spread of coronavirus while undertaking the activity and no consumption of alcohol). Formally organised activities can include protesting and picketing, which can take place without a limit on the number of people present at all Alert Levels apart from Alert Level 4.
- Certain businesses including visitor attractions and swimming pools will be allowed to reopen their premises for outdoor activities, including the consumption of food and drink outdoors (from 6.00 am onwards that day).
- Provided the act took place on or after 26 March 2020, outdoors gatherings of up to 30 people are allowed to celebrate the solemnisation of a marriage, formation of a civil partnership or an alternative wedding ceremony, or the life of a deceased person.

- People gathering when working in people's homes, for example by tradespeople, is allowed without it needing to be necessary or without the need for a "reasonable alternative" (unless at Alert Level 4).
- "Pilot" events may now be organised with the permission of the Welsh Ministers.

Amendments are also made to Schedules 1, 2 and 3 to reflect the content of the Coronavirus Control Plan and other minor changes made during the transition from Alert Level 4 to Alert Level 3 that are intended to continue to have effect at the other Alert Levels.

## **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.