

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2021**

This Explanatory Memorandum has been prepared by the Welsh Government and will be 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. 9) Regulations 2021.

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

29 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 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.

In accordance with section 4(1) of the Statutory Instruments Act 1946, the Llywydd has been informed that these Regulations will come into force on 3 May 2021 before they can be laid before the Senedd. As the Senedd is currently dissolved it will not be possible to lay the Regulations until Table Office has reopened following the general election. The Regulations are being published on [legislation.gov.uk](http://legislation.gov.uk) and the Welsh Government website in the interim.

### *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 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 so that from 3 May 2021 the whole of Wales is fully at Alert Level 3, and the restrictions and requirements of Schedule 3 to the principal Regulations apply. The temporary modifications set out in Schedule 3A are revoked.

These Regulations mean that from 3 May 2021:

- Gyms, fitness facilities, leisure centres, spas (but not steam rooms) and swimming pools can reopen their indoor premises;
- A household may agree to be treated as an extended household with one other household, or with two other households if one of those households is a well-being needs household. An extended household can meet and have contact in private dwellings;
- Children's indoor activities for the purposes of their development or well-being are allowed;
- Organised indoor activities for up to 15 people (not counting persons under the age of 11) are allowed which would enable, for example, group exercise classes to take place;
- Community centres can also open their indoor premises.

These Regulations also make a minor consequential amendment to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, and a minor revocation within the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2021 made 23 April 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.