

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 3) 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. 3) Regulations 2021.

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

19 February 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 are qualified rights, which permit 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 the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the 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. Insofar as the Regulations provide for the phased return to face to face learning they are compatible with Article 2 of the First Protocol (right to education).

### 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 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 updated [Coronavirus Control Plan](#). Wales has been in Alert Level Four since the beginning of the day on 20 December 2020.

The principal Regulations were reviewed on 19 February 2021, in accordance with regulation 2(b) of those Regulations, and the Welsh Ministers agreed that the current level of restrictions (Alert Level 4) should continue. However the following changes are now being made to the principal Regulations:

- a. To permit school and Further Education Institution premises to re-open for the return of children in the foundation phase and some vocational learners.

In Alert Level 4, all school and college premises are closed to the majority of children and young people, apart from children of critical workers or vulnerable children. The Regulations will now permit a phased and flexible return to face to face learning for foundation phase children (those aged three to seven) along with some older learners on vocational courses where they need to take an examination or other assessment, or where attendance is necessary to enable students to complete a required element of their course (if that is in engineering, construction, hospitality, catering, or agriculture).

- b. To temporarily permit four people from two households to leave the place they are living to exercise.

A person living in an Alert Level 4 area (which is currently the whole of Wales), may currently leave the place where they are living for the purposes of exercise, if they conduct that exercise (a) alone; (b) with another member of their household; (c) with their carer; or (d) with one other person and any children under the age of 11 who are members of either person's household.

The principal Regulations are now amended to make temporary modifications to the restrictions and requirements applying to an Alert Level 4 area so as to allow groups of up to 4 people from 2 different households to exercise together outdoors (though the exercise must continue to start and finish from the place

where the people are living). Such a group may include any children under the age of 11 from those households.

This temporary modification (in place to the next 21 day review point) will assist in easing loneliness and isolation and support well-being more widely through increased exercise.

- c. To ensure athletes who have elite status under coronavirus related Regulations applying elsewhere in the United Kingdom, may compete in Wales (without further designation by Sport Wales).

Additionally, these Regulations also make minor consequential amendments to the principal Regulations.

## **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.