

SL(5)559 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc) Regulations 2020

Background and Purpose

These Regulations are made in accordance with the powers conferred on the Welsh Ministers by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“Operators”) to provide passengers with certain public health information relating to the virus.

Operators are required to:

- Make available to passengers a link to the relevant pages of the gov.uk website and the gov.wales website at the point of booking or checking in online, or to direct passengers to these pages where booking or checking in is undertaken by telephone (Regulation 3);
- Provide the public health information statement in the Schedule to the Regulations, to passengers while on board (Regulation 4).

An exception to the requirements facing Operators is provided for in Regulation 5 in respect of recipients who are unlikely to be capable of understanding the information.

Part 3 of the Regulations make provisions in respect of offence, penalties and prosecutions. A fixed penalty notice of £4,000 may be issued to any person, suspected of committing an offence under the Regulations.

Part 4 of the Regulations imposes a requirement on the Welsh Ministers to review the requirements imposed by the Regulations by 29 June 2020, and at least once every 21 days subsequently. Regulation 11 provides that these Regulations will expire at the end of the 7th day of June 2021.

These Regulations also amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

Procedure

Negative.

Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1) Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 3(1) says that certain information must be provided at the time of booking **and** at the time of check-in, and that the precise detail of that information can be found in regulation 3(2). However,



regulation 3(2) specifies only the information that must be provided at booking (this is because regulation 3(2) cross-refers only to regulation 3(1)(a)). It is our understanding that regulation 3(2) was intended to cover information to be provided at both the time of booking and at the time of check-in.

2) Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 10 makes a number of amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. Regulation 10(2)(h) provides that *"in Schedule 1, in sub-paragraph (d), for "ei ddogfen" substitute "dogfen"."* There are two paragraphs within Schedule 1 which contain a sub-paragraph (d). It would be helpful if the reference in regulation 10 was made specifically to "paragraph 1, sub-paragraph (d)" where the words *"ei ddogfen"* appear.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1) Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issue of public policy likely to be of interest to the Senedd.

These Regulations were made at 5.38 pm on 15 June 2020 and were laid before the Senedd on 16 June 2020. The Regulations came into force in accordance with regulation 1(2) and (3). Regulations 2 to 9 come into force on 17 June 2020, whilst regulations 1, 10 and 11 came into force when the Regulations were made. This means that the Regulations were laid before the Senedd after the Regulations had come into force (in part), and also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

The Welsh Government explains in its Explanatory Memorandum to these Regulations that *"it is considered that in the current public health crisis the measures given effect by the Regulations should be put in place as a matter of urgency. Consequently, they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force."*

The Welsh Government explains in its letter to the Llywydd, dated 16 June 2020, that work on a joint policy for international travel has been led by the UK Government, in collaboration with the Devolved Authorities, to develop a unified UK approach. Equivalent Regulations came into force in England and Scotland on 8 June as did Northern Ireland's Statutory Rules.

The letter further provides that *"these Regulations make minor amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020), which for reasons of legal clarity need to come into force immediately. The remaining provisions will come into force after the instrument has been laid. Not adhering to the 21 day convention in this respect allows the Regulations to come into force on 17 June 2020 and, in view of the potential resumption of flights and to ensure continuity of the unified approach and consistency with the rest of the UK, the reduced period is considered necessary and justifiable in this case."*

2) Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd



No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently. The Explanatory Memorandum does provide that *"an initial assessment indicates that the impact of the Regulations on operators is low"*.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical Scrutiny

1) Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

- 1.1. Senedd legal advisers have pointed out a cross referencing error in regulation 3(2). The Welsh Government will amend the Regulations to correct this at the earliest available opportunity.
- 1.2. Senedd legal advisers have also noted some ambiguity in the amendment made by regulation 10(2)(h) to Schedule 1 to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. As the words being amended ("*ei ddogfen*") appear in only one paragraph (d) in the Schedule it is clear where the amendment sits. Nevertheless the Welsh Government will amend the instruction in regulation 10(2)(h) at the earliest opportunity to eliminate any risk of ambiguity.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 29 June 2020 and reports to the Senedd in line with the reporting points above.

