

SL(5)577 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”), and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”).

The International Travel Regulations

The International Travel Regulations impose requirements on people entering Wales after having been abroad. These requirements relate to information that must be provided using an online form, and a mandatory isolation period of 14 days. These requirements are subject to exceptions, and certain categories of person are exempt from having to comply, including those travelling from the common travel area.

These Regulations extend the exemptions from the requirement to provide information, and extend the exemptions and exceptions from the requirement to isolate.

These Regulations amend the self-isolation requirement so that it applies only to individuals arriving in Wales from non-exempt countries. Exempt countries are those which are considered to present an acceptable level of risk from a public health perspective for passengers to enter the UK and which are listed in the Regulations. These regulations insert a new Schedule 3 into the International Travel Regulations, which provides a list of “exempt countries and territories” (from which persons travelling to Wales will be exempt from the self-isolation requirements in regulations 7 and 8).

These Regulations also make a number of changes to the existing Schedules to the International Travel Regulations. These Regulations amend Schedule 1 to make certain changes to the passenger information that must be provided. They also amend regulation 3 and Parts 1 and 2 of Schedule 2, to make certain changes to the categories of persons who are exempt from the requirement in regulations 4 and 5 of the International Travel Regulations to provide passenger information and/or from the requirement in regulations 7 and 8 of those regulations to self-isolate.

The Public Health Information Regulations

The Public Health Information Regulations require operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus. This includes measures required by the International Travel Regulations.

The Public Health Information Regulations are amended by these Regulations to make changes to the content of the on-board statement made to passengers during their journey to Wales, so that the statement is consistent across the United Kingdom. The requirement for operators to make the statement orally is also removed.



These Regulations amend both the International Travel Regulations and the Public Health Information Regulations to provide that the statutory review period will be 28 days, rather than 21 days.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following 5 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 issues of public policy likely to be of interest to the Senedd

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.

These Regulations were made at 10.20am on 9 July 2020, laid before Senedd Cymru at 4.00pm on 9 July and came into force on 10 July 2020. In this case, the Welsh Government considers that the circumstances justify a breach of the 21 day rule. We note the letter sent by Rebecca Evans, Minister for Finance and Trefnydd, to the Llywydd, dated 9 July 2020. This states:

Not adhering to the 21 day convention allows the Regulations to come into force on 10 July 2020 and in view of the circumstances surrounding this disease the reduced period is considered necessary and justifiable in this case.

Equivalent Regulations were made in England on 6 July, coming into force in stages on 7 and 10 July and similar timeframes are being followed in Scotland and Northern Ireland as part of a 4 nations approach to avoiding the spread of infection or contamination from coronavirus or coronavirus disease in the UK via any imported infections via travellers.

The Welsh Government's Explanatory Memorandum to the Regulations provides further detail about the UK wide approach to avoid imported infections from travellers:

On 6 July 2020 the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020 were made, with some provisions coming into force on 7 July and some on 10 July. Amending regulations are also being introduced on similar timelines amending the equivalent requirements for Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from Covid-19 via any imported infections via travellers.

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



The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. The amendments made by these Regulations to the International Travel Regulations add additional exemptions from the requirement to isolate in certain cases, as such the restrictions on those entering Wales is reduced in that regard.

The Welsh Government's Explanatory Memorandum to the Regulations provides an analysis of the human rights implications of these Regulations and states as follows:

... Articles 5 (right to liberty and security), 8 (right to respect for private and family life) and A1P1 (right to peaceful enjoyment of possessions) are potentially engaged by the Travel Regulations. Article 14 (protection from discrimination) is also engaged in connection with the interference of the other rights identified.

These are all 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 necessary and proportionate.

The changes made by these amending Regulations are a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses. The amendments widen and expand the exemptions from the requirements to isolate and remove the blanket requirement to isolate thus imposing less restrictive measures on persons entering Wales. Those who benefit from these amendments are those who (i) fall into an exempted category; or (ii) arrive from an exempted countries. These amendments remain a justifiable and proportionate interference with Article 8.

It was considered that the Passenger Information Regulations as originally made did not interfere with any ECHR rights. The changes these amending Regulations will make do not alter that position.

3. 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

Regulation 8 of these Regulations change the time period within which the Welsh Ministers must carry out reviews of the International Travel Regulations from 21 to 28 days. Similarly, Regulation 11 changes the review period in respect of the Public Health Information Regulations from 21 to 28 days.

The Welsh Government's Explanatory Memorandum states as follows:

...the statutory review period (at regulation 19 and 9 respectively) will be 28 days rather than 21 days, with the next reviews taking place no later than 27 July 2020. The same approach is being taken in England, Scotland and Northern Ireland and changing the Regulations for Wales will ensure that the review point remains consistent across all four nations of the UK for these Regulations

4. 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.

5. 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

The Committee's previous report on the International Travel Regulations highlighted two cross referencing errors (in respect of regulation 9 and regulation 17(10)). The Welsh Government's response to the Committee's report stated that "*The Welsh Government will amend the Regulations to correct the cross references at the earliest available opportunity*". Regulation 9 of these Regulations makes miscellaneous amendments which, amongst other matters, corrects those referencing errors.

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

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.

