

SL(5)653 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations removed Denmark from the list of exempt countries and territories with effect from 4.00 a.m. on 6 November 2020. From that time, persons entering Wales who have been in Denmark in the 14 days previously have been required to isolate.

These Regulations extend the isolation requirement to all members of the household of any person entering Wales who has been in Denmark in the 14 days before, the result being that both the returning traveller and any members of their household will now be required to isolate for 14 days.

These Regulations make further provision that:

- No person arriving into Wales who has been in Denmark in the previous 14 days can be exempted from the requirements to provide passenger information or isolate.
- A more limited list of permitted reasons to temporarily leave isolation will apply in relation to travellers returning from Denmark and any members of their household.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following 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.

In regulations 3(3), 3(4), 4(3) and 4(4) the quotation marks that denote the wording to be inserted are not in the correct place – in each instance the opening quotation marks should precede “or”. Although the reader may be able to infer what is to be substituted, the provision as drafted does not express this clearly.



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

Regulation 4(3) amends regulation 28(1) of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the No.4 Regulations”). However, regulation 28(1) relates to gatherings in private dwellings, and subparagraphs (a) to (c) provide enforcement officers with specific powers to disperse such gatherings.

As regulation 28(1) does not provide enforcement officers with the power to direct a person to return to the place where they are living, it seems illogical that the amendment is inserted into that paragraph – the effect would be that an enforcement officer who has reasonable grounds to suspect that a person is contravening regulation 18A(3) would be unable to direct that person to return to the place where they are required (by virtue of regulation 18A(3)) to be.

It appears that regulation 4(3) should in fact amend regulation 28(4) of the No.4 Regulations, as that paragraph relates to persons subject to self-isolation requirements. The powers conveyed on enforcement officers by virtue of paragraph (4) correspond with what we assume is the intended effect of regulation 4(3) in that they allow enforcement officers to direct a person to return to the place where they are living (or remove a person to that place).

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

Regulation 4(5) amends regulation 29(1)(b) of the No.4 Regulations. However, “16” does not occur anywhere in subparagraph (b), so it is impossible to insert the amendment ‘after “16”’ as provided by the provision. Furthermore, it does not appear that the insertion has any relevance to regulation 29 (which deals with powers relating to prohibited events).

Considering what we assume to be the intended effect of the amendment, it appears that regulation 4(5) should amend regulation 35(1)(a) of the No.4 Regulations. If the amendment were inserted there it would make it an offence to contravene the requirement in regulation 18A(3). This would mirror the amendment made to regulation 29(1)(b) of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 by regulation 3(5) of these Regulations.

4. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

- (a) Section 45P(2) of the Public Health (Control of Disease) Act 1984 is cited as one of the enabling powers in the English, but the Welsh only refers to section 45P;
- (b) There is a footnote referring to the Public Health (Control of Disease) Act 1984 at page 3 in the Welsh but there is no corresponding footnote in the English;



- (c) In paragraph (4)(a)(ii) of the text inserted by regulation 2(7), the English reads: 'to avoid serious illness, serious injury or other risk of serious harm;' and is translated as 'i osgoi salwch neu anaf neu i ddianc rhag risg o niwed difrifol;'. We believe the translation should read 'i osgoi salwch difrifol, anaf difrifol neu risg arall o niwed difrifol;';
- (d) The misplaced quotation marks at regulations 3(3) and 3(4) respectively (raised in the first technical reporting point) have resulted in the Welsh not including the word 'neu' in both instances.

Merits Scrutiny

The following 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 Explanatory Memorandum to these Regulations provides that:

"The amendments contained these [sic] Regulations do not change the engagement under the International Travel Regulations or the No. 3 and No. 4 Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights"

We agree that the engagement of individual rights under the legislation listed above is not varied by these Regulations. However, these Regulations prescribe a more limited set of circumstances in which persons may temporarily leave isolation than are applicable to persons required to isolate other than by reason of having arrived in Wales from Denmark.

Can the Welsh Government provide an explanation as to the reasoning for this increased interference with individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights?

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"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."

Implications arising from exiting the European Union

None.



Welsh Government response

A Welsh Government response is required in relation to the technical reporting points and the first merits reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 16 November 2020 and reports to the Senedd in line with the reporting points above.

