

SL(5)715 – The Health Protection (Coronavirus, South Africa) (Wales) 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 Restrictions) (No. 5) (Wales) Regulations 2020 (“the No. 5 Regulations”), making changes necessitated by the emerging health risks reported from South Africa that a new strain of coronavirus with high levels of transmissibility has been identified.

In particular, these Regulations:

- Extend the current isolation requirement imposed on travellers returning from South Africa to all members of the household of any person entering Wales from 9.00 a.m. on 24 December who has been in South Africa in the previous 10 days;
- Disapply all exemptions in Schedule 2 of the International Travel Regulations, so that no person arriving into Wales who has been in South Africa in the previous 10 days can be exempted from the requirements to provide passenger information or isolate;
- Provide a more limited list than is usual of reasons for temporarily leaving isolation;
- Prohibit any aircraft or ship coming directly from South Africa from arriving in Wales except for safety reasons (other than where that aircraft or ship’s journey began before these Regulations came into force).

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

Regulation 2(1) of these Regulations inserts a new regulation 12C into the International Travel Regulations.



The closing quotation mark denoting the end of the wording being substituted by regulation 12C(8) is missing.

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

Regulation 2(1) of these Regulations inserts a new regulation 12C into the International Travel Regulations.

Regulation 12C(1) provides that for the purposes of the regulation, “isolation requirement” has the meaning given by regulation 10(2) (of the International Travel Regulations).

Regulation 12C(9) contains similar wording, repeating the location of the definition of “isolation requirement” (i.e. the reader is again directed to regulation 10(2)).

We ask the Welsh Government to clarify why regulation 12C(9) appears to unnecessarily repeat the wording contained in regulation 12C(1).

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

Regulation 2(2) of these Regulations inserts a new regulation 12D into the International Travel Regulations.

The heading to regulation 12D, in the English version, contains the wording “...travelling directly from *Denmark*” [*emphasis added*]. We assume that this is an error and the heading should in fact read “...travelling directly from South Africa”.

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

Regulation 4(5) of the Welsh version of these Regulations repeats the change made to regulation 30 of the No. 5 Regulations - the text “ynlle ‘neu 9(2)’ rhodder ‘, 9(2) neu 11A(2)’” appears twice. The error does not occur in the English language version.

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 or public policy likely to be of interest to the Senedd

We note the Regulations came into force before being laid before the Senedd. The Minister for Health and Social Services, Vaughan Gething, notified the Llywydd of this in a letter dated 23 December 2020. In particular, we note the following in the letter:

“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the



Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected in South Africa."

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 the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments contained these Regulations do not change the engagement under the International Travel Regulations or the No. 5 Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental 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."

3. 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."

4. 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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out 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.

Welsh Government response

Technical Scrutiny point 1:

The Welsh Government notes the technical scrutiny point.

Technical Scrutiny point 2:

The Welsh Government notes the technical scrutiny point raised but the wording in brackets in paragraph (1) was merely a signpost. As this appears to have caused confusion, however, we will omit that wording at the earliest opportunity.

Technical Scrutiny point 3:

The Welsh Government accepts the technical scrutiny point raised and confirms that the heading to regulation 12D of Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 will be amended at the earliest opportunity to refer to South Africa.



Technical Scrutiny point 4:

The Welsh Government notes the technical scrutiny point raised.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 11 January 2021 and reports to the Senedd in line with the reporting points above.

