

SL(6)126 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2022

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include requirements for persons arriving in Wales to book and undertake coronavirus tests and to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

These [Regulations](#) amend the International Travel Regulations by:

- Removing the requirement for pre-departure tests for fully vaccinated travellers and all under 18s;
- Removing the requirement to isolate until a day 2 post arrival negative test result is received for fully vaccinated arrivals and all under 18s;
- Amending the requirement for post-arrival tests to be PCRs to allow LFDs to be used as an alternative for fully vaccinated persons and those under-18, and provide that anyone who tests positive on their LFD test must isolate and take a follow-up PCR test;
- Adding 16 countries to the list of recognised vaccination programmes;
- Exempting children under 5 from testing and isolation requirements;
- Making consequential amendments to the Public Health Information Regulations.

The Public Health Information Regulations² impose requirements on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers with specific public health information. Consequential changes are made to the Public Health Information Regulations to ensure that these Regulations are consistent in the terminology used.

Procedure

Negative.

¹ The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)

² The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595)



The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is 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 13(2) inserts a new paragraph 1ZCA into Schedule 1C to the International Travel Regulations.

Paragraph 1ZCA(1)(h) provides:

“(h) if they arrange with another person (“X”) for X to carry out any element of the single end-to-end testing service on their behalf, the test provider ensures that X complies with the following so far as relevant to the carrying out of that element—

- (i) paragraph 1ZA(1)(b) to (e) and (h) as applied by paragraph (a) of this sub-paragraph;*
- (ii) paragraph (c) to (g) of this sub-paragraph;*
- (iii) **paragraph 2D(2) and (4).**” [emphasis added]*

Paragraph 2D of Schedule 1C was revoked by regulation 13(5) of the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021.³

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a letter to the Llywydd dated 6 January 2022.

³ S.I. 2021/1342



In particular, we note what the letter says regarding why these regulations breach the 21 day rule:

"In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument has not adhered to the 21 day convention, and that some provisions will come into force before the instrument can be laid. The changes to pre-departure testing, post-arrival testing and isolation requirements, and the consequential amendments to the Public Health Information Regulations, will come into force from 04:00 hours on Friday 7 January; further changes to post-arrival tests will come into force from 04:00 hours on Sunday 9 January and the addition of 16 countries to the list of recognised vaccination programmes will come into force from 04:00 hours on Monday 10 January..."

... Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this 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.

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 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 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."

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.

We note that 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 of public policy likely to be of interest to the Senedd.

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:



"There has been no regulatory impact assessment 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

A Welsh Government response is required in relation to the technical reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 17 January 2022 and reports to the Senedd in line with the reporting points above.

