

SL(6)020 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021

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

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations (“exempt countries and territories”) are not required to isolate. Regulation 3 of these Regulations amends the list of exempt countries and territories. Regulation 3 adds Anguilla, Antigua and Barbuda, Balearic Islands, Barbados, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Dominica, Grenada, Madeira, Malta, Montserrat, Pitcairn, and Turks and Caicos Islands to the “green list” of countries and territories.

Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A to the International Travel Regulations within the last 10 days of arrival. Regulation 4 of these Regulations adds Dominican Republic, Eritrea, Haiti, Mongolia, Tunisia and Uganda to the “red list” of countries and territories.

Regulation 5 amends the Public Health Information Regulations to amend the prescribed text of the on-board public health information announcement operators are required to provide to passengers arriving into Wales on relevant services to make specific reference to the post arrival testing requirements that apply.

Procedure

Made Negative.

These 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

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

Merits Scrutiny

The following five 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 “made 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 28 June 2021.

The letter explains that:

“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 paragraphs 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.

The Government considers that the Public Health Information Regulations do not engage any of the individual rights under the Human Rights Act 1998 and the European Convention on Human Rights. And, to the extent that any such rights may be engaged, the Government considers that the interference is minimal and can be justified as being necessary and proportionate to achieve a legitimate aim. The amendments to the Public Health Information Regulations made by these Regulations do not change the engagement of individual rights.”



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 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.”

It is noted that these Regulations amend the requirements to provide information to passengers arriving into Wales. In the absence of consultation prior to making these Regulations, the Government is asked to explain what, if any, action was taken to make operators aware of these changes ahead of them coming into force to ensure that operators could comply with the law, as amended.

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

Regulation 5 amends the Public Health Information Regulations to amend the prescribed text of the on-board public health information announcement operators are required to provide to passengers arriving into Wales. The previous on-board public health information announcement, as was previously set out in Schedule 1 to the Public Health Information Regulations, included the following text:

“Simple measures you can take to help protect yourself and family are:

Wear a mask; wash your hands; avoid touching your face with your hands; practice social distancing; catch coughs and sneezes in a tissue and dispose of it immediately.”

Regulation 5 of these Regulations removes this text from the amended Schedule to the Public Health Information Regulations. The Government is asked to explain why this text will no longer form part of the on-board public health announcement operators are required to provide to passengers arriving into Wales on relevant services, particularly as wearing face coverings in indoor public places (including public transport) is a legal requirement in Wales.

5. 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 explains 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

Merits scrutiny point 3:

The Government confirms that operators were notified on a UK-wide basis on 25th June 2021 of the intention to update the regulations regarding the provision of information to



passengers so that operators would in future also be required to inform passengers of the new obligations in relation to pre-departure testing. This information was provided to operators directly through established communication channels and via industry representative organisations.

Merits scrutiny point 4:

We can confirm that this update to the wording was made to enable 4 nations alignment, providing consistency to operators and passengers, whilst continuing to ask passengers to follow local public health guidance. This also ensures the advice will be relevant to travellers' ultimate destination in the UK, not just where they land, and that any changes to the detail of the public health advice can be captured at the relevant links rather than requiring the regulations to be updated with the latest advice.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 12 July 2021 and reports to the Senedd in line with the reporting points above.

