

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

30 July 2021

1. Description

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability (Wales) (Amendment) Regulations 2021 (“the Operator Liability Regulations”).

2. Matters of special interest to the Senedd

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. 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.

European Convention on Human Rights

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 Operator Liability 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 Operator Liability Regulations made by these Regulations do not change the engagement of individual rights

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the 1984 Act. The Explanatory Memoranda to the International Travel Regulations and the Operator Liability Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

These Regulations amend the International Travel Regulations by making the following changes:

On arrivals from the EU (and others)

- to expand the exemption on the requirement to isolate and undertake a PCR test on Day 8 for arrivals from amber list countries where those persons were vaccinated in any of the EU27, EFTA countries (Norway, Switzerland, Iceland, Liechtenstein) and the European microstate countries (Andorra, Monaco, San Marino and Vatican City);
- to provide that for a person to evidence fully vaccinated status they must present the EU Digital COVID Certificate;

On arrivals from the USA

- to expand the exemption on the requirement to isolate and undertake a PCR test on Day 8 for arrivals from amber list countries where those persons were fully vaccinated with United States Food and Drug Administration approved vaccines in the USA and can present a Centers for Disease Control and Prevention vaccination card to evidence this;
- to also require proof of residency in addition to the CDC vaccination card for USA arrivals, to mitigate against fraud;
- to include in the exemption persons who have participated in a clinical trial in the United States of America by the Food and Drugs Administration of a vaccine for vaccination against coronavirus.

These Regulations also amend the Operator Liability Regulations to place duties on operators of international passenger services to check:

- i. that a person who has declared that they are an eligible vaccinated arrival within the meaning of regulation 2A of the International Travel Regulations, has the evidence required to support that declaration; and
- ii. that passengers seeking to rely on an exemption in Schedule 2 to the International Travel Regulations possess evidence that they are eligible for the exemption.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

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.

6. Regulatory Impact Assessment (RIA)

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.