

SL(6)097 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) impose requirements on persons entering Wales after having been abroad. They include requirements for booking and undertaking coronavirus tests in accordance with those Regulations.

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

- Removing LFDs as an option for day 2 tests for all fully vaccinated travellers arriving from non ‘red-list’ countries.
- Requiring fully vaccinated travellers arriving from non ‘red-list’ countries to self-isolate from arrival until they get a negative result from their day 2 test PCR test.

The effect of these changes will be that fully vaccinated travellers arriving from non ‘red-list’ countries will need to self-isolate until they have taken a day 2 PCR test and received a negative result. If they receive a positive result they will need to remain in self-isolation for a period of 10 days beginning with the day on which they took the PCR test.

These Regulations also amend the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 in consequence of the changes made to the International Travel Regulations.

Procedure

Negative

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:



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee

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

These Regulations insert a new regulation 6HB(3) into the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. The English version of new regulation 6HB(3) refers to isolation for 10 days, while the Welsh version refers to isolation for 14 days. Therefore, it is unclear for how long a person must isolate in the circumstances set out in regulation 6HB.

However, we welcome that the Welsh Government has: (a) acted quickly to correct the error (via the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021), and (b) helpfully explained that no person was affected by the error during the brief time it was in force.

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 “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 29 November 2021.

In particular, we note the following:

“This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- *LFDs are removed as an option for day 2 tests for fully vaccinated travellers.*
- *Fully vaccinated travellers are required to self-isolate from arrival until they get a negative result from their day 2 test.*

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 no regulatory impact assessment has been prepared in relation to these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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."

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.

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."

Welsh Government response

Technical Scrutiny point:

This error has been urgently addressed through the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021, which came into force at 8pm on 1 December 2021. Those Regulations amended the Welsh text of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 at regulation 6HB(3) so that both language versions now accurately state the relevant period as 10 days.

Although very regrettable, in practice we confirm that no one in Wales or the UK will have been affected by this error prior to its remedy. This is because when the amendment was corrected it was only the second day of the new international travel arrangements, and as such "day 2 tests" were only just being taken. The consequences of any inconclusive test results and the disparity between the texts of the isolation periods of 10 days or 14 days would not have any impact until next week.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 6 December 2021 and reports to the Senedd in line with the reporting points above.

