

SL(6)159 – The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022

Background and Purpose

With effect from 04:00 hours on Friday 11 February 2022, these [Regulations](#) revoked the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and replaced the requirements in them, changing and consolidating them. The key changes are that these Regulations:

- Add 16 countries to the list of recognised vaccination programmes and make transitional provision for persons isolating in Wales who have been vaccinated in those countries (such persons can cease isolating);
- Change the testing and isolation requirements for arriving travellers so that:
 - o “eligible travellers” (which includes fully vaccinated persons and those under 18) are not required to undertake any testing (and, in line with the extant position, are not required to isolate on arrival);
 - o non-eligible travellers who began their journey outside the common travel area will not be required to isolate on arrival in Wales. They will still be required to take a pre-departure test and a day 2 test;
 - o positive cases will have to isolate in accordance with the requirements in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020;
- Change the time for completion of a passenger locator form to not more than 3 days before a person arrives in Wales;
- Change the information required in a passenger locator form;
- Change exemptions for arriving travellers to requirements to complete a passenger locator form and undertake testing.

These Regulations also revoke Part 3 of the Health Protection (Coronavirus, International Travel and Notification) (Wales) (Miscellaneous Amendments) Regulations 2021. This returns the Health Protection (Notification) (Wales) Regulations 2010 to their position as it was prior to the amendments in Part 3 being made. As such, private laboratories must report results of COVID-19 (including genomic sequencing) and influenza to the proper officer of the local authority.

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 four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 8(5) (together with paragraph 1 of Schedule 4) sets out what is required for a “day 2 test” to comply with the Regulations. Regulation 8(5)(a) states that a day 2 test is not to be treated as complying with regulation 8 unless the test is taken no later than the end of the second day after the day on which the person in question arrived in Wales. However, it is not clear whether this means that the person can actually take a day 2 test before day 2, for example, immediately upon their arrival in Wales, or whether they must wait until the second day after the day of their arrival. It may be argued that it is implicit from the title of the test that it must be taken no earlier than the start of the second day after the day on which the person in question arrives in Wales, but we do not consider this to be a satisfactory position. The Welsh Government is therefore asked to clarify whether the day 2 test can in fact be taken any time after a person arrives in Wales or whether it must actually be taken on day 2.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 8(7) provides that where an adult arrives in Wales without possessing the day 2 test required under regulation 8(3), they must as soon as is reasonably practicable obtain that test or those tests. However, regulation 8(3) does not require an adult to possess a day 2 test upon arrival in Wales, it requires the possession of a booking for a day 2 test with a test provider upon arrival in Wales. Further, the regulations seem to require a single day 2 test only, yet regulation 8(7) refers to “those tests”. The Welsh Government is therefore asked to provide further explanation as to the meaning of regulation 8(7).

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 16(2)(a)(iv) makes reference to a “sorted BAM file” relating to a sample taken in respect of a day 2 test that has been sequenced. Neither the Regulations nor the enabling Act provide a definition for the term “sorted BAM file”. The Welsh Government is asked further clarify or define this wording in regulation 16(2)(a)(iv).

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 18 provides that the Welsh Ministers must review the necessity and proportionality of these Regulations at least once every 28 days. However, the Explanatory Note to the Regulations states that such reviews must take place every 21 days. It is appreciated that the Explanatory Note does not form part of the Regulations but the Committee considers that it must give an accurate description of the law contained in the



Regulations. The Welsh Government is therefore asked to explain what it intends to do in order to rectify this discrepancy.

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 10 February 2022.

In particular, we note that the letter states 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 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 there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“Given the changing threat arising from coronavirus and the need for the public health response to keep pace, 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



We note that no regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum states that this is:

"due to the need to put them in place urgently to deal with a serious and imminent threat to public health".

5. 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 notes that the necessity and proportionality of the Regulations is to be reviewed every 28 days and that the Regulations will expire on 31 May 2022.

Welsh Government response

Technical Scrutiny point 1:

The policy intention for "day 2 tests" is that they can be taken any time before the end of the second day after a person arrives in Wales. The Government considers that the drafting of regulation 8(5)(a) accurately represents this position.

Technical Scrutiny point 2:

The Government accepts that regulation 8(7) would be clearer if the words "the booking for" were included before "the day 2 test". Similarly, the reference to "or those tests" is not relevant. However, the Government considers that the paragraph, when read in the context of the remainder of regulation 8, provides sufficient clarity for the requirement under regulation 8(7) to be effective.

Technical Scrutiny point 3:

The reference to a "sorted BAM file" in regulation 16(2)(a)(iv) is carried over from the 2020 Regulations and refers to a binary alignment map, which is a file that contains genetic sequencing data. The Government accepts that the reference would benefit from further definition. However, the provision in question relates to processing of information by providers of day 2 tests. The reference is a technical term and the Government considers it will be understood by the persons to whom the provision is relevant.

Technical Scrutiny point 4:

The Government intends to pursue correction of this error by way of correction slip. The Legislative Codes Office has agreed to this.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 28 February 2022 and reports to the Senedd in line with the reporting points above.

