

SL(6)162 – The Health Protection (Coronavirus, Public Health Information to Travellers and Operator Liability) (Wales) (Amendment) Regulations 2022

Background and Purpose

In consequence of the revocation and replacement of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020¹ by the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022² (“the International Travel Regulations”), these [Regulations](#) make amendments to:

- (i) the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020³ (“the Public Health Information Regulations”); and
- (ii) the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021⁴ (“the Operator Liability Regulations”).

The Public Health Information Regulations are also amended to provide that operators need only provide specified information to passengers pre-departure and on-board an international passenger service.

In addition, the Operator Liability Regulations are also amended to replace the current suite of obligations on operators with an obligation to maintain adequate processes and systems to ensure that passengers possess certain information or evidence.

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.

¹ (S.I. 2020/574 (W. 132))

² (S.I. 2022/126 (W. 41))

³ (S.I. 2020/595 (W. 136))

⁴ (S.I. 2021/48 (W. 11))



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 11(3)(c) inserts a definition of “eligible traveller” into regulation 4 of the Operator Liability Regulations.

The English version reads as follows:

“(c) in the appropriate place insert “eligible traveller has the meaning given in regulation 3 of the International Travel Regulations;”

The Welsh version reads as follows:

“(c) yn y lle priodol mewnosoder “mae i “teithiwr cymwys” (“eligible traveller”) yr ystyr a roddir yn rheoliad 3 o’r Rheoliadau Teithio Rhyngwladol;”

The English version of the Regulations does not contain a Welsh translation of the term “eligible traveller”, whereas the Welsh version does contain an English translation.

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 17 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 simplify existing requirements placed on operators. To the extent that any rights may be engaged, any interference is justified and proportionate, for the purpose of preventing the spread of COVID-19 and the protection of public health."

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."

Welsh Government response

Technical scrutiny point: Standing Order 21.2(vi)

The Government confirms that this is an error and the English version of the Regulations should contain a Welsh translation of the term "eligible traveller". We are seeking to correct this with the SI Registrar through a correction slip to the instrument.

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 point above.

