

SL(5)751 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 (“the Regulations”) are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

The Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”).

The International Travel Regulations require all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 10 days. There is an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as “exempt countries”.

On the basis of current public health advice, enhanced measures have been introduced under the Regulations imposing a new testing system for persons aged 5 years or over arriving into Wales (subject to a limited number of exemptions), requiring them to book, pay for and undertake testing on day 2 and 8 of their isolation period. Failure to do so will be a criminal offence, liable to a fine. Failure to undertake both tests will also mean that the isolation period is extended to 14 days. The Regulations also impose enhanced information requirements on travellers.

Further measures are being taken in relation to countries listed in Schedule 3A of the International Travel Regulations that have already been identified as an enhanced risk due to links with variant strains of coronavirus in order to further protect against the risk of community transmission of variant strains. In addition to the existing ban on direct flights and vessels from the listed countries, no person who has been in such a country in the last 10 days will be able to enter Wales as from 4am on 15 February, and failure to comply with this restriction will be a criminal offence, liable to a fine.

Part 5 of the Regulations amends Schedule 2 (exempt persons) to the International Travel Regulations, which exempts certain categories of worker from having to isolate, or in certain circumstances, provide passenger information. Part 1 of Schedule 2 is amended to insert a provision exempting those in transit through the United Kingdom from both the requirement to isolate and to provide passenger information.

Part 6 of the Regulations creates new exceptions from the requirements to isolate pursuant to regulations 7 and 8 of the International Travel Regulations. The Regulations insert a new Schedule 5 to the International Travel Regulations dealing with sectoral exceptions, and they



amend regulation 10(4) of the International Travel Regulations (isolation requirements: exceptions) in two ways. Firstly, to permit people to leave their isolation premises for the purpose of obtaining a test for coronavirus. Secondly, to provide that the categories of workers listed in new Schedule 5 are permitted to leave their isolation premises in order to carry out their work where they are unable to do so from home.

Regulation 20 amends Schedule 4 to the International Travel Regulations (specified sporting events), replacing the existing list of sporting events with an updated list.

The Regulations also make various consequential changes and transitional provisions.

The enhanced management of isolation requirements came into effect for travellers arriving into Wales from 4am on 15 February. However, the amendments to the International Travel Regulations do not affect the requirements under those Regulations for persons arriving into Wales before the coming into force of these amendments.

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.

1. Standing Order 22(2)(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The Regulations contain various incorrect references and omissions as follows:

- The reference to “regulations 2 to 12” in regulation 2 of the Regulations is incorrect. The correct reference is regulations 2 to 20.
- Regulation 11(b) of the Regulations omits the relevant section number of the Perjury Act 1919, which is section 5.
- The reference to “paragraph 24 of Schedule 5” in regulation 17(3) of the Regulations is incorrect. The correct reference is paragraph 14 of Schedule 5.
- The reference to “paragraph 31(2)(a) of Schedule 5” in regulation 19(2) of the Regulations is incorrect. The correct reference is 21(2)(a) of Schedule 5.
- The reference to “paragraph 31(2)(b) of Schedule 5” in regulation 19(3) of the Regulations is incorrect. The correct reference is 21(2)(b) of Schedule 5.



Merits Scrutiny

The following seven 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 Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 13 February 2021.

In particular, we note what the letter says regarding the urgency with which the Regulations need to address the latest risks associated with international travel:

“These enhanced measures include a new testing system is in place for persons aged 5 years or over arriving into Wales (subject to a limited number of exemptions), requiring them to book and undertake testing on day 2 and 8 of their isolation period. Failure to do so will be a criminal offence, liable to a fine. Failure to undertake both tests will also mean that the isolation period is extended to 14 days.

Moreover, further measures are being taken in relation to countries that have already been identified as an enhanced risk due to links with variant strains of coronavirus (“red list countries”) in order to further protect against the risk of community transmission of variant strains.

Not adhering to the 21 day convention, and bringing them into force before they are laid, 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

The Regulations impose complex new requirements for testing, isolation, reporting, and in respect of various exemptions thereto. Failure to comply with the new requirements is potentially subject to criminal sanctions. Bearing in mind both the level of complexity, and the serious repercussion for breach, it is important the citizen can fully access and understand the relevant law being introduced by the Regulations.

Whilst it is accepted that legislation of this nature is necessarily complicated at times, we note the high level of complexity introduced by new regulations 6B to 6J (as inserted by regulation 3 of the Regulations), and 6D in particular. The Explanatory Note and Explanatory Memorandum do not appear to provide sufficient guidance to enable a full understanding of the detailed legal obligations these provisions impose on the citizen and, as such, additional



guidance is desirable. We note in particular, that the nature of these provisions would lend themselves to explanation via a flowchart.

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

The Explanatory Note to the Regulations contains references to regulations that amend specific provisions in the International Travel Regulations. Whilst the effect is correctly described in each case, certain of the amending regulations referred to are incorrectly numbered, and the correct numbering is as follows:

- The reference to “Regulation 14” in the seventh paragraph of the Explanatory Note is incorrect. The correct reference is regulation 13.
- The reference to “Regulation 15” in the eighth paragraph of the Explanatory Note is incorrect. The correct reference is regulation 14.
- The reference to “Regulation 4” in the eighth paragraph of the Explanatory Note is incorrect. The correct reference is regulation 15.
- The reference to “Regulation 9” in the tenth paragraph of the Explanatory Note is incorrect. The correct reference is regulation 20.

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 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 of 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.”

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs 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.”

6. 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 regulatory impact assessment 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. .”

7. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment

We note that new regulation 6J, as inserted by regulation 3 of the Regulations, engages Standing Order 21.3(i) in that it provides for the imposition, publication and recovery of charges by the Welsh Ministers for day 2 and day 8 tests.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point, and merits reporting points 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

24 February 2021

