

Agenda – Legislation, Justice and Constitution Committee

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| Meeting Venue: | For further information contact: |
| Video Conference via Zoom | P Gareth Williams |
| Meeting date: 13 September 2021 | Committee Clerk |
| Meeting time: 13.30 | 0300 200 6565 |
| | SeneddLJC@senedd.wales |

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV

Informal pre-meeting (13:00–13:30)

- 1 Introductions, apologies, substitutions and declarations of interest
13.30
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3
13:30–13:35 (Pages 1 – 4)
LJC(6)–05–21 – Paper 1 – Statutory instruments with clear reports
 - 2.1 SL(6)021 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2021
 - 2.2 SL(6)022 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021
 - 2.3 SL(6)025 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2021

2.4 SL(6)036 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 2) Regulations 2021

2.5 SL(6)038 – The Infant Formula and Follow-on Formula (Wales) (Amendment) Regulations 2021

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

13:35–13:45

Made Negative Resolution Instruments

3.1 SL(6)024 – The Plant Health (Fees) (Forestry) (Wales) (Amendment) (No. 2) Regulations 2021

(Pages 5 – 14)

LJC(6)–05–21 – Paper 2 – Draft report

LJC(6)–05–21 – Paper 3 – Regulations

LJC(6)–05–21 – Paper 4 – Explanatory Memorandum

3.2 SL(6)033 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021

(Pages 15 – 22)

LJC(6)–05–21 – Paper 5 – Draft report

LJC(6)–05–21 – Paper 6 – Regulations

LJC(6)–05–21 – Paper 7 – Explanatory Memorandum

3.3 SL(6)039 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021

(Pages 23 – 41)

LJC(6)–05–21 – Paper 8 – Draft report

LJC(6)–05–21 – Paper 9 – Regulations

LJC(6)–05–21 – Paper 10 – Explanatory Memorandum

3.4 SL(6)023 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2021

(Pages 42 – 54)

LJC(6)–05–21 – Paper 11 – Draft report

LJC(6)–05–21 – Paper 12 – Regulations

LJC(6)–05–21 – Paper 13 – Explanatory Memorandum

LJC(6)–05–21 – Paper 14 – Letter from the Minister for Health and Social Services, 12 July 2021

3.5 SL(6)028 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021

(Pages 55 – 79)

LJC(6)–05–21 – Paper 15 – Draft report

LJC(6)–05–21 – Paper 16 – Regulations

LJC(6)–05–21 – Paper 17 – Explanatory Memorandum

LJC(6)–05–21 – Paper 18 – Letter from the Minister for Health and Social Services, 16 July 2021

3.6 SL(6)029 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2021

(Pages 80 – 90)

LJC(6)–05–21 – Paper 19 – Draft report

LJC(6)–05–21 – Paper 20 – Regulations

LJC(6)–05–21 – Paper 21 – Explanatory Memorandum

LJC(6)–05–21 – Paper 22 – Letter from the Minister for Health and Social Services, 19 July 2021

3.7 SL(6)032 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021

(Pages 91 – 109)

LJC(6)–05–21 – Paper 23 – Draft report

LJC(6)–05–21 – Paper 24 – Regulations

LJC(6)–05–21 – Paper 25 – Explanatory Memorandum

LJC(6)–05–21 – Paper 26 – Letter from the Minister for Health and Social Services, 30 July 2021

3.8 SL(6)035 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 4) Regulations 2021

(Pages 110 – 123)

LJC(6)–05–21 – Paper 27 – Draft report

LJC(6)–05–21 – Paper 28 – Regulations

LJC(6)–05–21 – Paper 29 – Explanatory Memorandum

LJC(6)–05–21 – Paper 30 – Letter from the Minister for Health and Social Services, 6 August 2021

3.9 SL(6)040 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2021

(Pages 124 – 136)

LJC(6)–05–21 – Paper 31 – Draft report

LJC(6)–05–21 – Paper 32 – Regulations

LJC(6)–05–21 – Paper 33 – Explanatory Memorandum

LJC(6)–05–21 – Paper 34 – Letter from the Minister for Health and Social Services, 27 August 2021

Made Affirmative Resolution Instruments

3.10 SL(6)026 – The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021

(Pages 137 – 156)

LJC(6)–05–21 – Paper 35 – Draft report

LJC(6)–05–21 – Paper 36 – Regulations

LJC(6)–05–21 – Paper 37 – Explanatory Memorandum

LJC(6)–05–21 – Paper 38 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 14 July 2021

3.11 SL(6)027 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021

(Pages 157 – 172)

LJC(6)–05–21 – Paper 39 – Draft report

LJC(6)–05–21 – Paper 40 – Regulations

LJC(6)–05–21 – Paper 41 – Explanatory Memorandum

LJC(6)–05–21 – Paper 42 – Letter from the First Minister, 16 July 2021

**3.12 SL(6)034 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales)
(Amendment) (No. 15) Regulations 2021**

(Pages 173 – 190)

LJC(6)–05–21 – Paper 43 – Draft report

LJC(6)–05–21 – Paper 44 – Regulations

LJC(6)–05–21 – Paper 45 – Explanatory Memorandum

LJC(6)–05–21 – Paper 46 – Letter from the First Minister, 6 August 2021

**3.13 SL(6)041 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales)
(Amendment) (No. 16) Regulations 2021**

(Pages 191 – 203)

LJC(6)–05–21 – Paper 47 – Draft report

LJC(6)–05–21 – Paper 48 – Regulations

LJC(6)–05–21 – Paper 49 – Explanatory Memorandum

LJC(6)–05–21 – Paper 50 – Letter from the First Minister, 27 August 2021

**4 Instruments previously considered for sifting and now subject to
scrutiny under Standing Orders 21.2 and 21.3**

13:45–13:50

**4.1 SL(6)031 – The Food and Drink (Transitional Provisions) (Wales) (EU Exit)
Regulations 2021**

(Pages 204 – 219)

LJC(6)–05–21 – Paper 51 – Draft report

LJC(6)–05–21 – Paper 52 – Regulations

LJC(6)–05–21 – Paper 53 – Explanatory Memorandum

5 Written Statements under Standing Order 30C

13:50–13:55

5.1 WS-30C(6)001 – The Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021

(Pages 220 – 225)

LJC(6)-05-21 – Paper 54 – Written statement, 12 July 2021

LJC(6)-05-21 – Paper 55 – Commentary

5.2 WS-30C(6)002 – The Health Security (EU Exit) Regulations 2021

(Pages 226 – 236)

LJC(6)-05-21 – Paper 56 – Written statement, 14 July 2021

LJC(6)-05-21 – Paper 57 – Commentary

LJC(6)-05-21 – Paper 58 – Research Service briefing

6 Papers to note

13:55–14:05

6.1 Correspondence from the Minister for Economy: Ministerial Forum for Trade

(Pages 237 – 238)

LJC(6)-05-21 – Paper 59 – Letter from the Minister for Economy, 12 July 2021

LJC(6)-05-21 – Paper 60 – Letter from the Minister for Economy, 26 July 2021

6.2 Correspondence from the Llywydd: Committee timetable

(Pages 239 – 241)

LJC(6)-05-21 – Paper 61 – Letter from the Llywydd, 14 July 2021

6.3 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group for Elections and Registrations

(Pages 242 – 243)

LJC(6)-05-21 – Paper 62 – Letter from the Counsel General and Minister for the Constitution, 15 July 2021

LJC(6)-05-21 – Paper 63 – Letter from the Counsel General and Minister for the Constitution, 12 August 2021

6.4 Correspondence with the Llywydd: Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill

(Pages 244 – 246)

LJC(6)-05-21 – Paper 64 – Letter from the Llywydd, 16 July 2021

LJC(6)-05-21 – Paper 65 – Letter to the Llywydd, 2 July 2021

**6.5 Correspondence from the Minister for Finance and Local Government:
Finance Ministers' Quadrilateral**

(Page 247)

LJC(6)–05–21 – Paper 66 – Letter from the Minister for Finance and Local Government, 19 July 2021

6.6 Correspondence from the Chair of the Children, Young People and Education Committee: Children and young people's priorities for the Sixth Senedd

(Pages 248 – 249)

LJC(6)–05–21 – Paper 67 – Letter from the Chair of the Children, Young People and Education Committee, 20 July 2021

6.7 Correspondence from the Chief Executive of the Competition and Markets Authority: Office for the Internal Market

(Pages 250 – 252)

LJC(6)–05–21 – Paper 68 – Letter from the Chief Executive of the Competition and Markets Authority, 27 July 2021

LJC(6)–05–21 – Paper 69 – Letter to the Chief Executive of the Competition and Markets Authority, 16 July 2021

6.8 Correspondence with the First Minister: Inter-Institutional Relations Agreement

(Pages 253 – 254)

LJC(6)–05–21 – Paper 70 – Letter from the First Minister, 27 July 2021

LJC(6)–05–21 – Paper 71 – Letter to the First Minister, 16 July 2021

6.9 Correspondence from the Minister for Climate Change: UK Emissions Trading Scheme

(Pages 255 – 258)

LJC(6)–05–21 – Paper 72 – Letter from the Minister for Climate Change, 28 July 2021

LJC(6)–05–21 – Paper 73 – Written Statement by the Welsh Government, 28 July 2021

6.10 Correspondence with the Royal College of Speech and Language Therapists: Potential inquiry

(Pages 259 – 261)

LJC(6)–05–21 – Paper 74 – Letter from the Head of Wales Office, Royal College of Speech and Language Therapists, 30 July 2021

LJC(6)–05–21 – Paper 75 – Letter to the Head of Wales Office, Royal College of Speech and Language Therapists, 21 July 2021

**6.11 Correspondence from the Chair of the Equality and Social Justice Committee:
Joint working between committees in the Sixth Senedd**

(Page 262)

LJC(6)–05–21 – Paper 76 – Letter from the Chair of the Equality and Social Justice Committee, 10 August 2021

6.12 Correspondence in relation to the UK–EU Parliamentary Partnership Assembly

(Pages 263 – 267)

LJC(6)–05–21 – Paper 77a – Letter to Lord Kinnoull, Chair of the European Union Committee, House of Lords, 25 August 2021

LJC(6)–05–21 – Paper 77b – Letter to Lord Kinnoull, Chair of the European Union Committee, House of Lords, 16 July 2021

LJC(6)–05–21 – Paper 77c – Letter to Sir Oliver Heald MP, 16 July 2021

**6.13 Correspondence with the Counsel General and Minister for the Constitution:
Common frameworks**

(Pages 268 – 275)

LJC(6)–05–21 – Paper 78 – Letter from the Counsel General and Minister for the Constitution, 7 September 2021

LJC(6)–05–21 – Paper 79 – Letter to the Counsel General and Minister for the Constitution, 16 July 2021

**6.14 Correspondence with the Counsel General and Minister for the Constitution:
Evidence session**

(Pages 276 – 277)

LJC(6)–05–21 – Paper 80 – Letter from the Counsel General and Minister for the Constitution, 8 September 2021

LJC(6)–05–21 – Paper 81 – Letter to the Counsel General and Minister for the Constitution, 16 July 2021

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

14:05

8 Legislative Consent Memorandum on the Environment Bill – consideration of draft report

14:05–14:30

(Pages 278 – 329)

[Legislative Consent Memorandum – Environment Bill](#)

[Supplementary Legislative Consent Memorandum – Environment Bill](#)

LJC(6)–05–21 – Paper 82 – Draft report

LJC(6)–05–21 – Paper 83 – Legal advice note (Legislative Consent Memorandum)

LJC(6)–05–21 – Paper 84 – Legal advice note (Supplementary Legislative Consent Memorandum)

LJC(6)–05–21 – Paper 85 – Letter from the Minister for Climate Change, 6 August 2021

LJC(6)–05–21 – Paper 86 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Llywydd, 19 July 2021

LJC(6)–05–21 – Paper 87 – Letter to the Minister for Climate Change, 14 July 2021

9 Legislative Consent Memorandum on the Leasehold Reform (Ground Rents) Bill

14:30–14:40

(Pages 330 – 337)

[Legislative Consent Memorandum – Leasehold Reform \(Ground Rents\) Bill](#)

LJC(6)–05–21 – Paper 88 – Legal advice note

10 Legislative Consent Memorandum on the Professional Qualifications Bill

14:40–14:55

(Pages 338 – 364)

[Legislative Consent Memorandum – Professional Qualifications Bill](#)

LJC(6)–05–21 – Paper 89 – Legal advice note

LJC(6)–05–21 – Paper 90 – Research Service briefing

LJC(6)–05–21 – Paper 91 – Letter to the Minister for Education and the Welsh Language, 12 August 2021

11 Legislative Consent Memoranda on the Armed Forces Bill

14:55–15:05

(Pages 365 – 371)

[Legislative Consent Memorandum – Armed Forces Bill](#)

[Supplementary Legislative Consent Memorandum – Armed Forces Bill](#)

LJC(6)–05–21 – Paper 92 – Legal advice note

12 Briefing note on international agreements

15:05–15:15

(Pages 372 – 384)

LJC(6)–05–21 – Paper 93 – Briefing note

13 Forward Work Programme

15:15–15:30

(Pages 385 – 393)

LJC(6)–05–21 – Paper 94 – Chair’s update

LJC(6)–05–21 – Paper 95 – Forward look

Statutory Instruments with Clear Reports 13 September 2021

SL(6)021 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2021

Procedure: Made Negative

These Regulations made under the Teaching and Higher Education Act 1998 govern the student loan liability of full-time students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2021/2022.

Further, these Regulations provide for up to £1,500 of a borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the day on which their first loan repayment is considered to have been received.

Parent Act: Teaching and Higher Education Act 1998

Date Made: 01 July 2021

Date Laid: 06 July 2021

Coming into force date: 01 August 2021

SL(6)022 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021

Procedure: Made Negative

These Regulations amend the Education (Fees and Awards) (Wales) Regulations 2007 ("the 2007 Regulations"), the Education (Student Support) (Wales) Regulations 2017 ("the 2017 Regulations"), the Education (Student Support) (Wales) Regulations 2018 ("the 2018 Regulations") and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations").

These Regulations amend provisions in the 2017 Regulations and the 2018 Regulations relating to the amount of maintenance support payable to an eligible student by reference to the place where they live during the quarters in which that support is payable. The amendments provide that an eligible student who lives with their parents for a reason only



relating to coronavirus is treated as living in the location they would have been living had it not been for that reason, unless the student requests otherwise.

These Regulations also correct typographical errors in the 2007 Regulations, the 2017 Regulations, the 2018 Regulations and the 2019 Regulations.

Parent Act: Education (Fees and Awards) Act 1983, Teaching and Higher Education Act 1998

Date Made: 07 July 2021

Date Laid: 09 July 2021

Coming into force date: 01 August 2021

SL(6)025 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2021

Procedure: Made Negative

These Regulations amend the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 ("the 2012 Regulations").

Regulation 2(2) removes the requirement for an application made by a local planning authority for the alteration or extension of a listed building in their area to have to be referred to the Welsh Ministers for determination. Regulation 2(3) and (4) are consequential on regulation 2(2).

Regulation 2(5) inserts two paragraphs in regulation 9 of the 2012 Regulations. New paragraph (8) provides that the committee or sub-committee that determines an application by the local planning authority cannot have been involved in the management of the building. New paragraph (9) provides that where an application of the local planning authority is determined by that authority, there is no right of appeal.

Regulation 3 contains a transitional provision that provides that any application made by a local planning authority for the alteration or extension of a listed building in their area before the coming into force of these Regulations will be determined by the Welsh Ministers.

Parent Act: Planning (Listed Buildings and Conservation Areas) Act 1990

Date Made: 12 August 2021

Date Laid: 16 July 2021

Coming into force date: 16 August 2021



SL(6)036 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 2) Regulations 2021

Procedure: Made Negative

These Regulations make consequential amendments to secondary legislation in light of the Additional Learning Needs system coming into force in relation to some children from 1 September 2021. For example:

- The New School (Admissions) Regulations 2006 are amended so that a new school may be named under section 48 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 in a child's individual development plan, and the person responsible for admissions to that school will be required to admit a child in the same way as if an established school were named.
- The School Admissions (Infant Class Sizes) (Wales) Regulations 2013 deal with the limit on class sizes for infant classes at maintained schools. Those 2013 Regulations are amended so that the definition of "suitable education" takes into account the ALN system.

The [Explanatory Memorandum](#) to these Regulations provides further, helpful information on the amendments made to secondary legislation.

These Regulations also revoke provisions of secondary legislation that would otherwise lapse or become redundant in light of the coming into force on 1 September 2021 of certain provisions of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

These Regulations come into force on 1 September 2021 to coincide with the ALN system starting to come into force.

Parent Act: Additional Learning Needs and Education Tribunal (Wales) Act 2018

Date Made: 10 August 2021

Date Laid: 11 August 2021

Coming into force date: 01 September 2021



SL(6)038 – The Infant Formula and Follow-on Formula (Wales) (Amendment) Regulations 2021

Procedure: Made Negative

New rules relating to infant formula and follow-on formula made from protein hydrolysates will apply, on a GB-wide basis, from 22 February 2022.

These Regulations provide for the enforcement of those rules in Wales from 22 February 2022. The enforcement provisions provide, for example, that local authorities in Wales can exercise powers of entry and issue improvement notices to secure compliance with the rules.

These Regulations also provide for the enforcement of the rules that apply to infant formula and follow-on formula until 22 February 2022.

Parent Act: Food Safety Act 1990

Date Made: 25 August 2021

Date Laid: 26 August 2021

Coming into force date: 16 September 2021



SL(6)024 – The Plant Health (Fees) (Forestry) (Wales) (Amendment) (No. 2) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers pursuant to paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018 (the "**2018 Act**") and amend the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (the "**2019 Regulations**").

The Regulations provide for increases in the fees payable to the Welsh Ministers for services in relation to plant passport authorities and applications for phytosanitary certificates (including phytosanitary certificates for re-export) to reflect an inflationary rise in the cost of providing those services since the introduction of those fees.

The Regulations come into force on 5 August 2021.

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

Regulation 2(3) of the subject Regulations substitutes Schedule 4A to the 2019 Regulations. In accordance with Regulation 3(5A) of the 2019 Regulations, Schedule 4A prescribes fees payable in connection with certain applications for a phytosanitary certificate for export (or re-export).

1. Schedule 4A (prior to amendment by these Regulations) included provision for fees to be charged for, *"The examination or testing of plants, plant products or other objects and associated activities..."*.
2. As amended by the subject Regulations, that description is replaced with, *"The examination or testing of wood, wood products, isolated bark or used forestry machinery and associated activities...."*.



The Welsh Government is asked to confirm whether the updated terminology amends the basis on which fees may be charged in accordance with Schedule 4A. If the scope for charging fees is amended by these Regulations, the Regulations would appear to be subject to the draft affirmative approval procedure in accordance with paragraph 1(8) of Schedule 7 to the 2018 Act, as applied by paragraph 12(3) of that Schedule.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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.

The Regulations provide for increases in fees charged for services as set out above.

Welsh Government response

Technical Scrutiny point 1:

The 2019 Regulations relate to forestry as a distinct subclass of plants. The amendment provides improved clarity and consistency with the English Government's version of these regulations but does not amend the basis on which fees are charged in any way. The amendment does not give rise to any policy change and the legal effect remains the same as previously.

Fees for equivalent checks of plants generally are set out in Schedule 4A of the Plant Health etc. (Fees) (Wales) Regulations 2018.

Legal Advisers

Legislation, Justice and Constitution Committee

21 July 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 838 (W. 195)

**EXITING THE EUROPEAN
UNION, WALES**

PLANT HEALTH, WALES

**The Plant Health (Fees) (Forestry)
(Wales) (Amendment) (No. 2)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018 (c. 16) and amend the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (S.I. 2019/497 (W. 114)).

These Regulations provide for increases in the fees for services in relation to plant passport authorities and applications for phytosanitary certificates (including phytosanitary certificates for re-export) to reflect an inflationary rise in the cost of providing those services since the introduction of those fees. The fees relating to plant passport authorities have increased by 34% for the period between 2006 and 2020, while fees for export certification have increased by 40% for the period between 2004 and 2020 (based on the Consumer Price Index including owner occupiers' housing costs (CPIH)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 838 (W. 195)

**EXITING THE EUROPEAN
UNION, WALES**

PLANT HEALTH, WALES

**The Plant Health (Fees) (Forestry)
(Wales) (Amendment) (No. 2)
Regulations 2021**

Made 13 July 2021

Laid before Senedd Cymru 15 July 2021

Coming into force 5 August 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018(1).

Title and commencement

1.—(1) The title of these Regulations is the Plant Health (Fees) (Forestry) (Wales) (Amendment) (No. 2) Regulations 2021.

(2) These Regulations come into force on 5 August 2021.

**Amendment of the Plant Health (Fees) (Forestry)
(Wales) Regulations 2019**

2.—(1) The Plant Health (Fees) (Forestry) (Wales) Regulations 2019(2) are amended as follows.

(2) For Schedule 1 substitute—

-
- (1) 2018 c. 16 (“the 2018 Act”). The Welsh Ministers are an “appropriate authority” by virtue of paragraph 8 of Schedule 4 to the 2018 Act. The meaning of “appropriate authority” in paragraph 8 of Schedule 4 to the 2018 Act was amended by section 41(4) of, and paragraph 47(5) of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).
- (2) S.I. 2019/497 (W. 114), amended by S.I. 2020/44 (W. 5); there are other amending instruments but none is relevant.

“SCHEDULE 1 Regulation 3(2)

Fees for inspections in connection
with a plant passport authority

| Type of inspection | Fee |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Physical inspection and associated activities (including travelling and office time) in connection with granting, variation or suspension of a plant passport authority or for monitoring compliance with that authority— | |
| (a) up to and including the first hour; | £49.50 |
| (b) thereafter, for each additional 15 minutes or part thereof | £12.38”. |

(3) For Schedule 4A substitute—

“SCHEDULE 4A

Regulation 3(5A)

Fees in connection with an
application for a phytosanitary
certificate for export or
phytosanitary certificate for re-
export: Wales

| Service | Fee |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| The consideration of an application, including the issue, where appropriate, of a phytosanitary certificate for export or a phytosanitary certificate for re-export | £21.00 |
| The examination or testing of wood, wood products, isolated bark or used forestry machinery and associated activities (including travelling and office time)— | |
| (a) up to and including the first hour; | £37.80 |
| (b) thereafter, for each additional 15 minutes or part thereof | £10.50”. |

Julie James

Minister for Climate Change, one of the Welsh
Ministers

13 July 2021

Explanatory Memorandum to the Plant Health (Fees) (Forestry) (Wales) (Amendment) (No.2) Regulations 2021

This Explanatory Memorandum has been prepared by the Landscapes, Nature and Forestry Division of the Environment, Skills and Natural Resources Department of 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 Plant Health (Fees) (Forestry) (Wales) (Amendment) (No.2) Regulations 2021. There are good reasons for making the provisions in this instrument and they are a reasonable course of action.

As this instrument is made under the European Union (Withdrawal) Act 2018 I have made the relevant statements as set out in the Annex.

Julie James MS
Minister for Climate Change

15 July 2021

1. Description

The Plant Health (Fees) (Forestry) (Wales) (Amendment) (No.2) Regulations 2021 (the “instrument”) will make amendments to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”) which apply in relation to Wales. It provides for inflationary increases in the fees for services in relation to plant passport authorities and applications for phytosanitary certificates (including phytosanitary certificates for re-export).

2. Explanations

What did any relevant EU law do before exit day?

The 2019 Regulations set fees for delivery of plant health (forestry) services in Wales. Fees included in the 2019 Regulations apply to export certification services which are required to comply with third country entry requirements relating to plant health-controlled material. Also included are fees for inspections in connection with a plant passport authority. All businesses that use these services are charged a fee.

Why is it being changed?

Amendments are being made to provide for increases in the fees for services, in relation to Wales, to reflect an inflationary rise in the cost of providing those services since the introduction of those fees. There have been no changes to these fees since they were introduced.

What will it now do?

The instrument will allow the Forestry Commission, on behalf of the Welsh Ministers to recover more of its plant health costs through fees for services.

3. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

4. Legislative background

The instrument is being made by Welsh Ministers in exercise of the powers conferred by paragraph 4 of schedule 7 of the European Union (Withdrawal) Act 2018 to amend regulations that relate to fees that were originally made under the European Communities Act 1972.

This instrument is made under negative procedure as it relates to fee changes which solely relate to the value of money.

Article 80 of Regulation (EU) 2017/625 makes provision for competent authorities to be able to charge fees or charges to cover the costs of official controls and other official activities, including export certification. The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”)

specify fees payable to the Welsh Ministers in relation to plant health (forestry) services, including export certification and inspections in connection with a plant passport authority, provided in Wales.

5. Purpose and intended effect of the legislation

The instrument makes amendment to increase the fees for services relating to plant passports and phytosanitary certification, to reflect an inflationary rise in the cost of providing those services since the introduction of those fees. These increased fees will mirror the regulatory changes being made in England which will come into force from 15 July 2021.

The instrument will allow the Forestry Commission, acting on behalf of Welsh Ministers, to recover more of its plant health costs through fees for services. The improvement in recovery of costs will apply to the application, examination, production and amendment of phytosanitary certificates to meet third country entry requirements as well as to the inspections in connection with a plant passport authority in Wales.

6. Consultation

Stakeholders have not been consulted as all the amendments introduced by this instrument are inflationary increases and not policy changes.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. An RIA has not been prepared for this instrument as it simply increases the annual fee in line with consumer price inflation. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

7. Competition Assessment

The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

ANNEX

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister for Climate Change, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Plant Health (Fees) (Forestry) (Wales) (Amendment) (No2) Regulations 2021 do no more than is appropriate”.
- 1.2 This is the case because the instrument ensures the current policy services for export certification to third countries and for plant health services within Wales is maintained.

2. Good reasons

- 2.1 The Minister for Climate Change, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 2.2 It is Welsh Government policy to recover the cost of plant health services through fees and to make inflationary increases to fees as appropriate to achieve cost-recovery.

3. Equalities

- 3.1 The Minister for Climate Change, Julie James, has made the following statement(s):
- This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.
- 3.2 The Minister for Climate Change, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In relation to the instrument, I, Julie James, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in Paragraph 2 of this Explanatory Memorandum.

SL(6)033 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021

Background and Purpose

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 (“the Optical Regulations”) which provide for payments to be made by means of a voucher system in respect of costs incurred by certain categories of persons in connection with sight tests and the supply, replacement and repair of optical appliances.

Regulation 2 amends regulation 1(2) of the Optical Regulations so as to make reference to an increase in the NHS sight test fee of 1.9% from 1 April 2021.

Procedure

Made 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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The provisions under regulation 2 of these Regulations will have effect retrospectively from 1 April 2021. This is expressly permitted under section 76(9) of the National Health Service (Wales) Act 2006.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

31 August 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 916 (W. 209)

**NATIONAL HEALTH
SERVICE, WALES**

**The National Health Service
(Optical Charges and Payments)
(Amendment) (Wales) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 (“the Optical Regulations”) which provide for payments to be made by means of a voucher system in respect of costs incurred by certain categories of persons in connection with sight tests and the supply, replacement and repair of optical appliances.

Regulation 2 amends regulation 1(2) of the Optical Regulations so as to make reference to an increase in the NHS sight test fee of 1.9%.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 916 (W. 209)

**NATIONAL HEALTH
SERVICE, WALES**

**The National Health Service
(Optical Charges and Payments)
(Amendment) (Wales) Regulations
2021**

Made 1 August 2021

Laid before Senedd Cymru 3 August 2021

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred on them by sections 71, 76(9) and 203(9) and (10) of the National Health Service (Wales) Act 2006(1), make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021.

(2) These Regulations come into force on 1 September 2021 but the amendments set out in regulation 2 have effect from 1 April 2021.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “the Optical Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997(2).

(1) 2006 c. 42; see section 206(1) for the definitions of “prescribed” and “regulations”.
(2) S.I. 1997/818, amended by S.I. 2015/1600 (W. 199); there are other amending instruments but none is relevant.

Amendment of regulation 1(2) of the Optical Regulations

2. In regulation 1(2) of the Optical Regulations (citation, commencement and interpretation), in the definition of “NHS sight test fee”—

- (a) for “£58.87” substitute “£59.98”, and
- (b) for “£21.31” substitute “£21.71”.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers

1 August 2021

Explanatory Memorandum to the National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021.

Eluned Morgan AS/MS
Minister for Health and Social Services

3 August 2021

1. Description

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 to provide for an increase in the NHS sight test fees.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The provisions under regulation 2 of the National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2021 will have effect retrospectively from 1 April 2021. This is expressly permitted under section 76(9) of the National Health Service (Wales) Act 2006.

3. Legislative background

Sections 71, 76(9) and 203(9) and (10) of the National Health Service (Wales) Act 2006 give the Welsh Ministers the power to make regulations to provide for an increase in the NHS sight test fees and to provide that the increase has retrospective effect.

The Regulations will follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

The NHS sight test fee and associated allowances are uplifted annually after negotiations between NHS England & Improvement (on behalf of the Department of Health and Social Care in England) and the Optometric Fees Review Committee. For 2021/22 a 1.9% increase was agreed. As in previous years, a common approach has been adopted with England whereby the fee is uplifted by the same percentage rate in Wales. The fee is payable to an optometrist or ophthalmic medical practitioner who has undertaken a sight test for one of the categories of people eligible to receive it under the NHS.

The legislation increases the NHS sight test fees by 1.9% from 1 April 2021.

5. Consultation

No public consultation has been undertaken as this legislation simply uplifts the NHS sight test fees.

NHS England & Improvement undertakes negotiations annually with the Optometric Fees Review Committee regarding the setting of General Ophthalmic Services Fees and Allowances and makes a recommendation to the Department of Health and Social Care. The Optometric Fees Review Committee comprises of the Association of Optometrists, the Federation of

Opticians, the Association of British Dispensing Opticians and the British Medical Association.

Optometry Wales, the representatives of the profession in Wales expect the uplift of the fees, as in previous years, to mirror those in England. Optometry Wales and NHS Wales Shared Services Partnership who make the payments on behalf of the Local Health Boards to the profession have been informally consulted on the proposed increase.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for this instrument as it simply increases a statutory fee.

SL(6)039 – Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021

Background and Purpose

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021 ("the Regulations") make provision to extend the duration of the moratorium provided by section 82 of the Coronavirus Act (2020) ("the Act"), during which a right of re-entry or forfeiture under a relevant business tenancy for non-payment of rent may not be enforced, by action or otherwise, during the "relevant period".

Section 82(12) of the Act defines the "relevant period" as beginning with the day after the day the Act was passed, and ending with 30 June 2020, or such later date as may be specified by the relevant national authority in regulations. The power to specify a later date may be exercised on more than one occasion so as to further extend the "relevant period".

The Welsh Ministers are the "relevant national authority" in relation to Wales, and are therefore able to make regulations to extend the "relevant period" for protections beyond 30 June 2020, thereby maintaining the protection provided by section 82 of the Act to such later date specified in regulations. The "relevant period" has previously been extended on a number of occasions.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.2) Regulations 2021 extended the "relevant period" until 30 September 2021. The purpose of the present Regulations is to specify that the "relevant period" is now to end, in relation to Wales, with 25 March 2022.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following two 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 there has been no formal consultation on these Regulations. In particular, we note the justification for this in the following paragraphs of the Explanatory Memorandum:

“Given how recently we have approached stakeholders, and given the nature of their responses, we have not undertaken a further stakeholder engagement in this instance. Engagement exercises to better understand the impact the protections has had on both commercial tenants and landlords in Wales were previously undertaken and the feedback was broadly similar at each round. Key points included:

- The provisions were intended to be a short-term emergency measure.*
- The moratorium is beginning to have an adverse impact on commercial landlords.*
- The extension of the moratorium is likely to have led to unintended consequences with rent accruals causing a substantial debt for businesses and could be called in in short order.*
- It is important that, whether the protections are permitted to lapse or renewed, it is done so as a package underpinned by close engagement across Welsh and UK Governments.*
- Landlords can be expected to take a tough approach to rent arrears should the moratorium be lifted. For businesses dealing with mandated closure and with no ability to generate income, rent is increasingly difficult to meet.*
- It is reasonable to continue to provide support to impacted businesses until they are able to resume trading normally.*
- The issue of commercial rent arrears is probably the last significant outstanding business concern arising from the pandemic.*
- The worst outcome would be a ‘cliff edge’ when all tenant protections are suddenly withdrawn with nothing to replace them.*

The concerns raised by stakeholders will be central to the development of policy positions and will inform further discussions with the UK Government as we work to find a suitable solution for Wales.”



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

These Regulations engage a commercial landlord's rights under Article 1 Protocol 1 ("A1P1") of the European Convention on Human Rights (the protection of property). A1P1 rights can only be interfered with by a public authority where, in broad terms, such action is lawful and necessary for the public interest.

The Committee notes that the Regulations will only extend the "relevant period" up to 25 March 2022.

The Committee further notes the Welsh Government's justification for any potential interference with human rights; in particular the following paragraphs of the Explanatory Memorandum supporting the adoption of "Option 3" of the Regulatory Impact Assessment:

"Option 3 would allow more time for Welsh businesses to recover as the economy recovers, and to therefore bolster their ability to meet rent payments. The Welsh Government has outlined a cautious and considered approach to easing restrictions on the economy. Whilst Wales is currently at alert level zero and all businesses are permitted to operate, this only came into effect on the 7th August 2021 and so the ability to pay rent will take time for many businesses until they get back onto their feet.

.....

In recommending Option 3, the Welsh Government recognises the position of landlords, as investors in and providers of critical business infrastructure. The provisions of Option 3 will continue to put landlords at something of a disadvantage in negotiating rent deferment arrangements to ease tenants' current predicaments whilst seeking to protect their assets. However, we anticipate there being other measures available to landlords. For example, through successive amendments to the Taking Control of Goods Regulations 2013, the required amount of arrears for Commercial Rent Arrears Recovery (CRAR) will remain at 554 days' of net unpaid rent."

The Committee notes also the statement of the Minister for Economy, Vaughan Gething MS, of 26 August 2021, which states:

"The moratorium was introduced for reasons including limiting the significant impact on businesses from the series of interventions and restrictions imposed on the Welsh economy throughout the pandemic.

The UK Government has announced its intention to introduce legislation to ring-fence commercial rent debt accrued during the pandemic¹. It is anticipated that this will include principles which landlords and tenants of business tenancies should use to

¹ <https://www.gov.uk/government/publications/resolving-commercial-rent-arrears-accumulated-due-to-covid-19>



negotiate on the same and the introduction of a system of binding arbitration where agreement between tenants and landlords cannot be reached.

The UK Government also announced that they have:

- Extended the "relevant period" in England to 25 March 2022, which it is expected will also allow for UK Parliamentary time to pass the necessary primary legislation.*
- Extended the restrictions on the use of commercial rent arrears recovery (CRAR) so that, from the 24 June 2021, the minimum net unpaid rent that must be outstanding before CRAR can be used is 554 days.*
- Extended the restrictions against serving a winding-up petition on the basis of a statutory demand implemented through the Corporate Insolvency and Governance Act 2020 until 30 September 2021.*

I have decided to extend the "relevant period" for the purposes of section 82 of the Act in relation to Wales to 25 March 2022 by making The Business Tenancies (Extension of Protection from Forfeiture etc) (Wales) (Coronavirus) (No. 3) Regulations 2021. This will give the same levels of protection in this respect for Welsh businesses as those in England, and will assist with the recovery of Welsh businesses as the economy improves. It will also provide the Welsh Government with what is believed to be sufficient time to continue to work in considering and then where necessary, implementing measures in relation to commercial rent arrears accumulated during the pandemic in Wales. It is expected that this will include working with the UK Government in the further consideration and development of their proposals.

The protection provided by section 82 of the Act during the "relevant period" does not remove the requirement to pay rent, and I am clear that, wherever possible, tenants should of course pay rent."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 September 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 952 (W. 217)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) (No. 3)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 82 of the Coronavirus Act 2020 (“the Act”) ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning with 26 March 2020, and ending with 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority.

The Welsh Ministers are the relevant national authority in relation to Wales.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020 (S.I. 2020/606 (W. 140)) extended the “relevant period” until 30 September 2020.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020 (S.I. 2020/960 (W. 214)) further extended the “relevant period” until 31 December 2020.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020 (S.I. 2020/1456 (W. 314)) further extended the “relevant period” until 31 March 2021.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021 (S.I. 2021/253 (W. 66)) further extended the “relevant period” until 30 June 2021.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2021 (S.I. 2021/759 (W. 186)) further extended the “relevant period” until 30 September 2021.

As a result of these Regulations, the moratorium provided by section 82 of the Act is further extended until 25 March 2022.

Regulation 2 of these Regulations extends the “relevant period” until 25 March 2022.

Regulation 3 of these Regulations revokes the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2021.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government’s website at www.gov.wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 952 (W. 217)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) (No. 3)
Regulations 2021**

Made 23 August 2021

Laid before Senedd Cymru 26 August 2021

Coming into force 30 September 2021

The Welsh Ministers make the following Regulations in exercise of the power conferred on them by section 82(12) of the Coronavirus Act 2020⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021.

(2) These Regulations come into force on 30 September 2021.

Extension of relevant period providing protection from forfeiture etc.

2. For the purposes of section 82 (business tenancies in England and Wales: protection from forfeiture etc.) of the Coronavirus Act 2020, the “relevant period”, as defined in subsection (12) of that section ends, in relation to Wales, with 25 March 2022.

(1) 2020 c. 7.

Revocation

3. The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2021⁽¹⁾ are revoked.

Vaughan Gething

Minister for Economy, one of the Welsh Ministers

23 August 2021

⁽¹⁾ S.I. 2021/759 (W. 186).

Explanatory Memorandum to the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021

This Explanatory Memorandum has been prepared by the Economy, Skills & Natural Resources Group 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 Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Vaughan Gething MS
Minister for Economy
26 August 2021

PART 1

1. Description

These Regulations make provision to extend the duration of the moratorium provided by section 82 of the Coronavirus Act (2020) (“the Act”), during which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

According to the UK Government¹, the British Property Federation (BPF) estimate that by the 30 June 2021, £7.5bn of commercial rent across the UK will be in arrears. Remit Consulting estimate that of 30 March, £5.3bn of commercial rents arising since March 2020 were unpaid, of which half (£2.8bn) were in the retail sector.

Further, the most recent data for the UK shows that hospitality rent payment continues to lag significantly behind the average, with just 23.6% of rent paid in the pubs, bars and restaurants sector 35 days after the March payment date. Whilst the statistics relate to the whole of the UK, a proportion of this data relates to Wales.

The UK Government have announced that Section 82 of the Coronavirus Act 2020, which prevents landlords of relevant business tenancies from being able to evict tenants for the non-payment of rent, will continue until 25 March 2022 in England, unless legislation is passed ahead of this. It is expected that this will provide sufficient time for the UK Government to legislate in respect of commercial rent arrears that have accrued during the pandemic. It is anticipated that this will include requiring landlords and tenants to come to an agreement on the treatment of commercial rent debt that has accrued during the pandemic and the introduction of a system of binding arbitration where agreement between tenants and landlords cannot be reached. Further information on the UK Government’s proposals and other measures the UK Government have put in place can be found in their policy statement which is available [here](#).

By extending the “relevant period”, as defined by section 82(12) of the Coronavirus Act 202 so that it ends, in relation to Wales, with 25 March 2022, the Welsh Government will be able to continue to work in considering and then where necessary, implementing, measures for Wales in relation to rent arrears accrued during the pandemic. It will also help to ensure that Welsh businesses are not put at a disadvantage to those businesses in England and will help with the recovery of Welsh businesses as the economy improves.

Now that Wales has entered alert level zero of the coronavirus control plan, the number of businesses under immediate threat of eviction from their premises must be kept low while the economy starts to recover. Consequently, these

¹ [Supporting businesses with commercial rent debts: policy statement - GOV.UK \(www.gov.uk\)](#)

Regulations come into force on 30 September 2021 in order to ensure that there is no gap in the protection given to tenants. Taking this decision has been essential to ensuring appropriate alignment of the measures taken to combat the effects of the pandemic with the view of a longer-term solution on rent arrears being able to be considered and where necessary, implemented.

3. Legislative background

Section 82 of the Act makes provision that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning with the day after the day the Act was passed, and ending with 30 June 2020, or such later date as may be specified by the relevant national authority in regulations. The power to specify a later date may be exercised on more than one occasion so as to further extend the “relevant period”.

The Welsh Ministers are the “relevant national authority” in relation to Wales, and are therefore able to make regulations, to extend the “relevant period” for protections beyond 30 June 2020, thereby maintaining the protection provided by section 82 of the Act to such later date specified in regulations.

Regulations currently in force, The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.2) Regulations 2021 extend the “relevant period” until 30 September 2021.

These Regulations follow the Senedd’s negative resolution procedure.

4. Purpose and intended effect of the legislation

The purpose of the Regulations is to specify that the “relevant period”, as defined by section 82(12) of the Act, is to end, in relation to Wales, with 25 March 2022.

The effect of the Regulations is to extend the “relevant period” in which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise in order that the relevant period ends, in relation to Wales, with 25 March 2022.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

Three options have been considered:

Option 1: Do nothing - Allow the provision protecting commercial tenants from eviction due to non-payment of rent to lapse on 30 September 2021.

Option 2: Make Regulations to extend the protection for a further three months to 31 December 2021.

Option 3: Make Regulations to extend the protection for a further almost 6 months to 25 March 2022.

Costs and benefits

There are potential financial implications associated with all options. With options 2 and 3 there may be increasing pressure for Welsh Ministers to provide additional financial support to commercial landlords during this period to counteract the protection provided to tenants. Extending the protection is intended to support the economic recovery by trying to ensure businesses are able to continue trading.

However, the assessment is supplemented by data from a voluntary fortnightly [Business Insights and Conditions Survey \(BICS\)](#). It is carried out by the Office for National Statistics (ONS), which captures the views of businesses on the impact of the coronavirus (COVID-19) on turnover, workforce prices, trade and business resilience.

Annex A contains some further information on the survey and the findings should be viewed in the context of this information. It should be noted that, whilst the data is relatively timely, the situation with COVID-19 is fast moving so the key messages from the survey may become outdated very quickly. Furthermore, the survey is not forward looking so future business conditions and impacts are not covered.

Option 1: Do nothing - Allow the provision protecting commercial tenants from forfeiture proceedings due to non-payment of rent to lapse on 30 September 2021.

By doing nothing, the protection will lapse and as a result there is an increased risk that commercial tenants could be evicted from their premises for non-payment of rent. As the principle aim of the original legislation was to protect commercial tenants and jobs, removal of the current protection would put those commercial tenants, some of which may have been supported financially by both the Welsh and UK Governments, at higher risk as the economy recovers.

A consequence of this option is that commercial landlords will be free to take action for non-payment of rent. This will lead either to payment of some or all of rent owed by commercial tenants, or forfeiture proceedings. However, due to the uncertainty of the current economic climate, landlords would need to carefully consider whether they would benefit financially as tenants may in any event not be able make the necessary payments. It might be difficult to find a replacement tenant, or to sell the property, as demand for commercial space in some sectors (e.g. leisure, retail and hospitality) is likely to have reduced, at least in the short term.

The results from Wave 35 of the ONS BICS survey covers the period of **12 July to 25 July 2021**. It shows that, of businesses who have not permanently stopped trading, 51.9% of businesses in Wales are using or intend to use the Coronavirus

Job Retention Scheme (CJRS), compared to 52.8% of businesses in Scotland, 51.5% in Northern Ireland and 47.7% in England.

Welsh businesses have made use of a wide range of government schemes during the crisis. These include:

- Business grants funded by UK and devolved governments;
- Government backed accredited loans or finance agreements; and
- The Kickstart Job Scheme for young people as well as the CJRS.

Of businesses who have not permanently stopped trading, 35.5% of those operating in Wales are not using, or intending to use, any of the government back schemes or incentives, this compares to 40.4% in England, 35.9% in Northern Ireland and 36.1% in Scotland. Also, of business who have not permanently stopped trading and have applied for a government grant in Wales, 3.7% did not receive it. This compares to 2.7% in Northern Ireland, 4.4% in Scotland and 4.8% in England.

The conclusion is that Option 1 would put Welsh businesses at a disadvantage to businesses in England where protection under s.82 of the Coronavirus Act 2020 currently runs until 25 March 2022. This would also leave Welsh businesses to deal with the end of the CJRS at the same time that protection from forfeiture ends and would not achieve the policy objective of supporting business and protecting commercial tenants from forfeiture during the Coronavirus pandemic.

Option 2 – Make Regulations to extend the protection for a further 3 months to 31 December 2021.

Coronavirus has reduced economic activity, leading to a drop in income for many businesses. The ONS BICS survey shows:

- 11.6% of businesses in Wales reported a decrease in turnover outside of normal range. This compares to 13.8% in Scotland, 14.6% in England and 9.6% in Northern Ireland.
- Across all businesses currently trading in Wales, 5.6% declared that profits have decreased by more than 50% and 7.3% said profits had decreased between 20-50%.
- Business in Wales with more than six months of cash reserves was at 42.1%. This compares to 46.9% in Scotland, 42.4% in England and 43.3% in Northern Ireland.
- 37.3% of businesses in Wales had less than 6 months cash reserves (2.5% with no cash reserves), which compares to 34.7% (2.4% with no cash reserves) in Scotland, 40.1% in England (4% with no cash reserves) and 32.2% (2.9% with no cash reserves) in Northern Ireland

Insolvency:

In Wales, of businesses not permanently stopped trading:

- 9.4% had a moderate risk of insolvency

- 53.6% had a low risk of insolvency
- 28.5% had no risk of insolvency

Business confidence:

In Wales, of businesses currently trading:

- 65.5% reported high confidence that they would survive the next three months;
- 28.5% reported medium confidence that they would survive the next three months.

Capital expenditure

Welsh businesses appear to have also had their capital expenditure affected by the coronavirus (COVID-19) pandemic. Of all businesses continuing to trade in Wales, 5.9% reported that capital expenditure had stopped, while 15.5% reported that capital expenditure had been lower than normal.

This option will allow the Welsh Government to continue to protect commercial tenants during a continuing time of uncertainty, but at the same time does not excessively remove the rights and remedies which enable landlords to pursue non-payment of rent. However, it does not give the same protection as for those businesses in England and it would not provide sufficient time for us to further consider and where necessary work with the UK Government on measures for Wales in relation to commercial rent arrears that have accrued during the pandemic. Therefore, this option is not recommended.

Option 3: Make Regulations to extend the protection for a just under a further 6 months to 25 March 2022.

Option 3 would allow more time for Welsh businesses to recover as the economy recovers, and to therefore bolster their ability to meet rent payments. The Welsh Government has outlined a cautious and considered approach to easing restrictions on the economy. Whilst Wales is currently at alert level zero and all businesses are permitted to operate, this only came into effect on the 7th August 2021 and so the ability to pay rent will take time for many businesses until they get back onto their feet.

The commercial property sector and market plays an important role in the economy and in delivering and providing business critical infrastructure in the form of commercial premises from which businesses can operate and grow. It is therefore important to recognise the needs of both landlord and tenant businesses. The protection provided by section 82 of the Coronavirus Act 2020 during the relevant period does not remove the requirement to pay rent, but suspends a landlord's right to take forfeiture action for non-payment of rent during the relevant period.

The UK Government has announced that it is proposing to legislate to ringfence commercial rent debt accrued during the pandemic and introduce a system whereby landlords and tenants will be required to come to an agreement on the

treatment of the arrears. Where agreement cannot be reached between landlords and tenants that they undertake binding arbitration to ensure that a legally binding agreement is made between the parties to which they must adhere. It's understood that this will be introduced in this UK Parliamentary session.

Since the UK Government's announcement, the Welsh Government has been analysing the proposals to understand the implications for Wales and Welsh businesses. The Welsh Government will continue to assess the situation during this period and will work in considering and then where necessary, implementing, a solution for Wales in relation to rent arrears accrued during the pandemic.

To support negotiations between tenants and landlords further, the UK Government also announced that it has:

- Extended the current protections for commercial tenants against eviction to 25 March 2022 in England, unless legislation is passed ahead of this.
- Extended the restrictions on the use of commercial rent arrears recovery (CRAR) so that from the 24 June 2021 the minimum net unpaid rent that must be outstanding before CRAR can be used is 554 days'.
- Extended the restrictions against serving a winding up petition on the basis of a statutory demand implemented through the Corporate Insolvency and Governance Act 2020 until 30 September 2021.

In recommending Option 3, the Welsh Government recognises the position of landlords, as investors in and providers of critical business infrastructure. The provisions of Option 3 will continue to put landlords at something of a disadvantage in negotiating rent deferment arrangements to ease tenants' current predicaments whilst seeking to protect their assets. However, we anticipate there being other measures available to landlords. For example, through successive amendments to the Taking Control of Goods Regulations 2013, the required amount of arrears for Commercial Rent Arrears Recovery (CRAR) will remain at 554 days' of net unpaid rent.

Extending the "relevant period" for the purposes of section 82 of the Coronavirus Act 2020 in relation to Wales with 25 March 2022, will give the same levels of protection in this respect for Welsh businesses as those in England and will assist with the recovery of Welsh businesses as the economy improves. It will also provide the Welsh Government with what is believed to be sufficient time to continue to work in considering and then where necessary, implementing measures in relation to commercial rent arrears accumulated during the pandemic in Wales. It is expected that this will include working with the UK Government in the further consideration and development of their proposals.

6. Consultation

Given how recently we have approached stakeholders, and given the nature of their responses, we have not undertaken a further stakeholder engagement in this instance. Engagement exercises to better understand the impact the protections has had on both commercial tenants and landlords in Wales were previously undertaken and the feedback was broadly similar at each round. Key points included:

- The provisions were intended to be a short-term emergency measure.
- The moratorium is beginning to have an adverse impact on commercial landlords.
- The extension of the moratorium is likely to have led to unintended consequences with rent accruals causing a substantial debt for businesses and could be called in in short order.
- It is important that, whether the protections are permitted to lapse or renewed, it is done so as a package underpinned by close engagement across Welsh and UK Governments.
- Landlords can be expected to take a tough approach to rent arrears should the moratorium be lifted. For businesses dealing with mandated closure and with no ability to generate income, rent is increasingly difficult to meet.
- It is reasonable to continue to provide support to impacted businesses until they are able to resume trading normally.
- The issue of commercial rent arrears is probably the last significant outstanding business concern arising from the pandemic.
- The worst outcome would be a 'cliff edge' when all tenant protections are suddenly withdrawn with nothing to replace them.

The concerns raised by stakeholders will be central to the development of policy positions and will inform further discussions with the UK Government as we work to find a suitable solution for Wales.

7. Competition Assessment

On completion of the Competition Filter test it was determined that there are no effects on competition.

8. Post implementation review

The effect of these Regulations is time limited and the position will be reviewed prior to the proposed extension end date of 25 March 2022.

Measuring the data

Table 1: Sample and response rates for Waves 33, 34 and 35 of the Business Insights and Conditions Survey

| Wave | 1 July 2021 Publication Wave 33 | 15 July 2021 Publication Wave 34 | 29 July 2021 Publication Wave 35 |
|----------|---------------------------------------|----------------------------------------|----------------------------------------|
| Sample | 38,621 | 38,573 | 38,763 |
| Response | 9,645 | 9,058 | 9,036 |
| Rate | 25.0% | 23.5% | 23.3% |

Source: Office for National Statistics - Business Insights and Conditions Survey

Notes

The results are based on responses from the voluntary fortnightly BICS, which captures businesses' views on financial performance, workforce, prices, trade, and business resilience. The Wave 35 survey was live for the period 12 to 25 July 2021. For questions regarding the last two weeks, businesses were asked for their experience for the reference period 28 June to 11 July 2021.

The [survey questions](#) are available.

Coverage

The Monthly Business Survey (MBS) covers the UK for production and only Great Britain for services. The RSI and Construction are Great Britain-focused. Therefore, the BICS will be UK for production-based industries but Great Britain for the other elements of the economy covered.

The industries covered are:

- non-financial services (includes professional, scientific, communication, administrative, transport, accommodation and food, private health and education, and entertainment services)
- distribution (includes retail, wholesale and motor trades)
- production (includes manufacturing, oil and gas extraction, energy generation and supply, and water and waste management)
- construction (includes civil engineering, housebuilding, property development and specialised construction trades such as plumbers, electricians and plasterers)

The following industries are excluded from the survey:

- agriculture
- public administration and defence
- public provision of education and health
- finance and insurance.

Agenda Item 3.4

SL(6)023 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2021

Background and Purpose

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").

Specifically, these Regulations amend the International Travel Regulations to add four events to Schedule 4 (List of sporting events). An individual is able to leave isolation to compete in or train for, or provide coaching or other support to a person competing in, the sporting events listed in Schedule 4. The four events added to Schedule 4 are:

- European Tour – Cazoo Open;
- R & A – The Curtis Cup;
- Red Bull Hardline; and
- The Tour of Britain.

These Regulations also amend the Operator Liability Regulations so that an operator is not required to ensure that a passenger on a relevant service, who is a person that is being lawfully compelled to travel in the course of an extradition, prisoner transfer or deportation, is in possession of a notification of:

- a negative pre departure test result; or
- the arrangements made to comply with any post arrival testing requirements.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following three 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 Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs 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.

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."

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 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."

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 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 12 July 2021](#).

In particular, we note the following from the letter:

"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."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

28.07.2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 44**

Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 826 (W. 193)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
2) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48 (W. 11)) (the “Operator Liability Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a period determined in accordance with those Regulations.

Regulation 2 of these Regulations amends Schedule 4 to the International Travel Regulations to update the list of specified sporting events. An individual is able to leave isolation to compete or train in, or provide coaching or other support to a person competing in a sporting event specified in Schedule 4.

The Operator Liability Regulations impose requirements on persons operating international passenger services (“operators”) arriving into Wales from outside the common travel area. In accordance with those requirements operators must, for example, ensure that passengers travelling on such services possess notification of a negative test result and have made arrangements to take further tests following their arrival.

Regulation 3 amends the Operator Liability Regulations so that an operator is not required to ensure that a passenger is in possession of a negative pre-departure test result, or has made arrangements to take tests following their arrival, if that passenger is being lawfully compelled to travel in the course of an extradition, prisoner transfer or deportation.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 826 (W. 193)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
2) Regulations 2021**

Made at 11.54 a.m. on 12 July 2021

*Laid before Senedd
Cymru at 4.45 p.m. on 12 July 2021*

*Coming into force at 4.00 a.m. on 14 July
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 14 July 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. In Schedule 4 (specified sporting events) to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1), at the end insert—

“European Tour – Cazoo Open,
R & A – The Curtis Cup,
Red Bull Hardline,
The Tour of Britain”.

Amendments to the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

3.—(1) The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021(2) are amended as follows.

(2) In regulation 5 (requirement to ensure passengers possess notification of a negative test result), after paragraph (2)(a) insert—

“(aa) who is being lawfully compelled to travel to the United Kingdom in the course of an extradition, prisoner repatriation or deportation;”.

(3) In regulation 5A (requirement to ensure passengers possess notification of post arrival testing arrangements)—

- (a) in paragraph (2)(a), for “; or” substitute “;”;
- (b) after paragraph (2)(a), insert—

-
- (1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170) and S.I. 2021/765 (W. 187).
- (2) S.I. 2021/48 (W. 11), amendeded by S.I. 2021/72 (W. 18), S.I. 2021/171 (W. 39), S.I. 2021/305 (W. 78), S.I. 2021/584 (W. 161) and S.I. 2021/646 (W. 166).

“(aa) who is being lawfully compelled to travel to the United Kingdom in the course of an extradition, prisoner repatriation or deportation; or”.

Eluned Morgan

Minister for Health and Social Services, one of the Welsh Ministers

At 11.54 a.m. on 12 July 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 2) 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. 2) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

12 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 Legislation, Justice and Constitution Committee

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 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 to add the following four events to Schedule 4 – List of sporting events:

- European Tour – Cazoo Open
- R & A – The Curtis Cup
- Red Bull Hardline
- The Tour of Britain

These Regulations also amend the Operator Liability Regulations so that an operator is not required to ensure that a passenger on a relevant service, who is a person that is being lawfully compelled to travel in the course of an extradition, prisoner transfer or deportation, is in possession of a notification of;

- a negative pre-departure test result
- the arrangements made to comply with any post arrival testing requirements

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

12 July 2021

Dear Elin

The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force at 04:00 a.m. on 14 July 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This statutory instrument amends 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").

These Regulations make the following amendments:

They amend the International Travel Regulations to add the following four events to Schedule 4 – List of sporting events:

- European Tour – Cazoo Open
- R & A – The Curtis Cup
- Red Bull Hardline
- The Tour of Britain.

They also amend the Operator Liability Regulations so that an operator is not required to ensure that a passenger on a relevant service, who is a person that is being lawfully

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

compelled to travel in the course of an extradition, prisoner transfer or deportation, is in possession of a notification of:

- a negative pre-departure test result;
- the arrangements made to comply with any post arrival testing requirements.

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.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(6)028 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a specified period.

These Regulations amend the International Travel Regulations by:

- Making the following changes to the Red, Amber and Green lists:
 - adding Cuba, Indonesia, Myanmar and Sierra Leone to the Red list;
 - removing the Balearic Islands and the British Virgin Islands from the Green list (moving them to the Amber list);
 - adding Bulgaria, Croatia, Hong Kong and Taiwan to the Green list.
- Including provision for specified events to use private testing providers for mandatory testing.
- Remove the requirement for the following travellers from Amber list countries to isolate and take a Day 8 test:
 - fully vaccinated UK residents;
 - children under 18;
 - people who have taken part in vaccination trials.

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 The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)



Technical Scrutiny

No following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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 16 July 2021](#). In particular, we note the letter says:

“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.

The Government considers that the Public Health Information 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 Public Health Information Regulations made by these Regulations do not change the engagement of individual rights.”

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 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

29 July 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 863 (W. 202)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Miscellaneous
Amendments) (No. 2) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595 (W. 136)) (the “Public Health Information Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a period determined in accordance with those Regulations.

Regulation 3 of these Regulations amends regulation 2 of the International Travel Regulations to introduce a new definition in relation to vaccinated travellers and others. It also makes a minor consequential amendment to move an existing definition within those Regulations.

Regulation 4 introduces exemptions for travellers who have been fully vaccinated in the UK with an approved vaccine. These exemptions also apply to those on certain vaccine trials, and UK citizens or residents who are under the age of 18 on their arrival in Wales. Such travellers are exempted from the requirement to isolate on return from a non-exempt country or territory (except one specified in Schedule 3A to the International Travel Regulations), and are

only required to take a day 2 test. These exemptions therefore apply in relation to relevant arrivals from what are commonly known as the ‘amber list’ countries.

Regulations 5, 6, 7, 8, 10 and 13 make further amendments to the International Travel Regulations to give effect to these new exemptions.

Regulation 9 introduces a new testing regime in relation to ‘specified events’, meaning those events specified in new Schedule 1E to the International Travel Regulations. Regulation 5 removes people to whom this new regime applies from the testing provisions in regulation 6AB of the International Travel Regulations.

Regulations 11 and 12 make further provision in relation to offences and fixed penalty notices relating to failures to comply with the requirements in relation to specified events testing.

Regulation 15 amends the list of exempt countries and territories in Schedule 3 to the International Travel Regulations. Persons entering Wales after being in an exempt country or territory are not required to isolate, regardless of their status under the new exemptions relating to vaccination. Regulation 15 adds Bulgaria, Croatia, Hong Kong and Taiwan to the list of exempt countries and territories outside the common travel area. Regulation 15 also removes the Balearic Islands and British Virgin Islands from the list.

Regulation 16 amends the list of countries and territories subject to additional measures in Schedule 3A to the International Travel Regulations. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A within the last 10 days of arrival, pursuant to regulation 12E of the International Travel Regulations. Regulation 16 adds Cuba, Indonesia, Myanmar and Sierra Leone to the list of countries and territories subject to additional measures.

The Public Health Information Regulations impose requirements on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers with specified public health information.

In consequence of the amendments made to the International Travel Regulations by regulations 4, 5, 6, 7, 8, 10 and 13 of these Regulations, regulation 17 amends the specified public health information that operators must provide to passengers prior to and during traveling to Wales.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 863 (W. 202)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Public Health Information to
Travellers) (Wales) (Miscellaneous
Amendments) (No. 2) Regulations
2021**

Made at 3.49 p.m. on 16 July 2021

*Laid before Senedd
Cymru at 6.00 p.m. on 16 July 2021*

*Coming into force at 4.00 a.m. on 19 July
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 19 July 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1) are amended as follows.

Amendments to regulation 2

3. In regulation 2(1) (general interpretation), in the appropriate places insert—

““exempt country or territory” (“*gwlad neu diriogaeth esempt*”) means—

- (a) a country or territory within the common travel area;
- (b) a country or territory listed in Schedule 3,

and any reference to a “non-exempt country or territory” (“*gwlad neu diriogaeth nad yw’n esempt*”) is to be interpreted accordingly;”;

““regulation 2A traveller” (“*teithiwr rheoliad 2A*”) has the meaning given in regulation 2A;”.

New regulation 2A

4. After regulation 2 (general interpretation) insert—

“Exemptions for vaccinated travellers and others

2A.—(1) In these Regulations, a person (“P”) is a regulation 2A traveller if P meets the requirements of paragraph (2) and any of paragraphs (3) to (6) of this regulation.

(1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170), S.I. 2021/765 (W. 187) and S.I. 2021/826 (W. 193).

(2) P has been in a non-exempt country or territory, except for one listed in Schedule 3A, within the period of 10 days ending with the day of P's arrival in Wales.

(3) P—

- (a) has completed a course of doses of an authorised vaccine with the final dose having been received at least 14 days prior to arriving in Wales,
- (b) received that course of doses in the United Kingdom,
- (c) is able to provide proof if required by an immigration officer of meeting the requirement in sub-paragraph (a) through the NHS COVID pass, or equivalent from NHS Scotland, NHS Wales or the Department of Health in Northern Ireland, and
- (d) has declared that P has completed a course of an authorised vaccine using a facility referred to in regulation 4(1).

(4) P—

- (a) has participated in, or is participating in, a clinical trial of an authorised vaccine for vaccination against coronavirus carried out in accordance with the requirements of the Medicines for Human Use (Clinical Trials) Regulations 2004⁽¹⁾,
- (b) is able to provide proof of such participation, and
- (c) has declared that P has participated in or is participating in such a clinical trial using a facility referred to in regulation 4(1).

(5) P is—

- (a) ordinarily resident in the United Kingdom, and
- (b) under the age of 18 upon arrival in Wales.

(6) P is either—

- (a) a person who—
 - (i) has completed a course of doses of a vaccine under the United

(1) S.I. 2004/1031, amended by section 116 of the Care Act 2014 (c. 23) and by S.I. 2004/3224, S.I. 2005/2754, S.I. 2005/2759, S.I. 2006/562, S.I. 2006/928, S.I. 2006/2984, S.I. 2007/289, S.I. 2007/3101, S.I. 2008/941, S.I. 2010/231, S.I. 2010/551, S.I. 2010/1882, S.I. 2011/2581, S.I. 2012/134, S.I. 2012/504, S.I. 2012/1641, S.I. 2012/1916, S.I. 2013/532, S.I. 2016/190, S.I. 2016/696, S.I. 2019/593, S.I. 2019/744, S.I. 2019/1094 and S.I. 2020/1488.

Kingdom vaccine roll-out overseas, with the final dose having been received at least 14 days prior to arriving in Wales,

(ii) is able to provide proof if required by an immigration officer of the requirements in paragraph (i), and

(iii) has declared that P has completed a course of doses of a vaccine as described in paragraph (i) using a facility referred to in regulation 4(1), or

(b) a dependant of a person of the description in any of paragraphs (a) to (c) of the definition of “United Kingdom vaccine roll-out overseas” and is under the age of 18 years upon arrival in Wales.

(7) For the purposes of paragraphs (3) and (6), P has completed a course of doses if P has received the complete course of doses specified—

(a) in the summary of product characteristics approved as part of the marketing authorisation for the authorised vaccine, or

(b) in the instructions for usage approved as part of the authorisation by the licensing authority on a temporary basis under regulation 174 of the Human Medicines Regulations 2012⁽¹⁾ for the authorised vaccine.

(8) For the purposes of paragraph (6), where P has received a dose of an authorised vaccine in the United Kingdom and a dose of a vaccine under the United Kingdom vaccine roll-out overseas, P is deemed to have received a course of doses of a vaccine under the United Kingdom vaccine roll-out overseas.

(9) For the purposes of this regulation, a child is to be treated as making a declaration using a facility referred to in regulation 4(1), and providing any proof required, if that declaration is made, and the proof provided, by a person who is travelling with and has responsibility for that child.

(10) In this regulation—

“authorised vaccine” (*“brechlyn awdurdodedig”*) means a medicinal product for vaccination against coronavirus—

(1) S.I. 2012/1916.

- (a) authorised for supply in the United Kingdom in accordance with a marketing authorisation, or
- (b) authorised by the licensing authority on a temporary basis under regulation 174 of the Human Medicines Regulations 2012 (supply in response to spread of pathogenic agents etc.);

“clinical trial” (“*treial clinigol*”) has the meaning given in regulation 2(1) of the Medicines for Human Use (Clinical Trials) Regulations 2004;

“Crown servant” (“*gwas y Goron*”) has the meaning given in section 12(1)(a) to (e) of the Official Secrets Act 1989⁽¹⁾;

“government contractor” (“*contractiwr y llywodraeth*”) has the meaning given in section 12(2) of the Official Secrets Act 1989;

“the licensing authority” (“*yr awdurdod trwyddedu*”) has the meaning given in regulation 6(2) of the Human Medicines Regulations 2012 (the licensing authority and the Ministers);

“marketing authorisation” (“*awdurdodiad marchnata*”) has the meaning given in regulation 8(1) of the Human Medicines Regulations 2012 (general interpretation);

“medicinal product” (“*cynnyrch meddyginiaethol*”) has the meaning given in regulation 2 of the Human Medicines Regulations 2012 (medicinal products);

“NHS” (“*GIG*”) means the health service continued under section 1(1) of the National Health Service Act 2006⁽²⁾;

“NHS COVID pass” (“*pàs COVID y GIG*”) means the COVID-19 records on the NHS smartphone app developed and operated by the Secretary of State through the website at NHS.uk or a COVID-19 post vaccination letter obtained from the NHS;

“NHS Scotland” (“*GIG yr Alban*”) means the health service continued under section 1(1) of the National Health Service (Scotland) Act 1978⁽³⁾;

“NHS Wales” (“*GIG Cymru*”) means the health service continued under section 1(1)

(1) 1989 c. 6.

(2) 2006 c. 41; section 1 was substituted by section 1 of the Health and Social Care Act 2012 (c. 7).

(3) 1978 c. 29.

of the National Health Service (Wales) Act 2006⁽¹⁾;

“United Kingdom vaccine roll-out overseas” (*“rhaglen frechu’r Deyrnas Unedig dramor”*) means the administration of vaccination against coronavirus to—

- (a) Crown servants, government contractors or other personnel posted or based overseas and their dependants under the scheme known as the Foreign, Commonwealth and Development Office staff COVID-19 vaccination programme,
- (b) residents of the British overseas territories, the Channel Islands and the Isle of Man, as part of a programme agreed in the overseas territory with the United Kingdom government, or
- (c) military or civilian personnel, government contractors and their dependants at a military posting overseas, including the British overseas territories, the Channel Islands and the Isle of Man, under the vaccination scheme provided or approved by the UK Defence Medical Services.”

Amendments to regulation 6AB

5.—(1) Regulation 6AB (requirement to book and undertake tests) is amended as follows.

(2) In paragraph (1)(c), before paragraph (i) insert—

“(ai) regulation 6L;”.

(3) In paragraph (2)(d), for paragraph (ii) substitute—

“(ii) a booking for a day 2 test in respect of—

(aa) a person (“P”) who arrives in Wales having been in an exempt country or territory listed in Schedule 3 within the period of 10 days ending with the day of P’s arrival in Wales;

(bb) a regulation 2A traveller.”

Amendments to regulation 6DB

6.—(1) Regulation 6DB (requirement to isolate on failure to take tests: travellers from exempt countries and territories) is amended as follows.

(1) 2006 c. 42.

(2) For the heading substitute “Requirement to isolate on failure to take tests: travellers from exempt countries and territories and regulation 2A travellers”.

(3) In paragraph (3), for “listed in Schedule 3” substitute “outside the common travel area”.

Amendments to regulation 6HB

7.—(1) Regulation 6HB (consequences of receiving inconclusive test result: travellers from exempt countries and territories) is amended as follows.

(2) For the heading substitute “Consequences of receiving inconclusive test result: travellers from exempt countries and territories and regulation 2A travellers”.

(3) In paragraph (3), for “listed in Schedule 3” substitute “outside the common travel area”.

Amendments to regulation 6K

8.—(1) Regulation 6K (workforce testing) is amended as follows.

(2) For paragraph (1) substitute—

“(1) This regulation applies to a person (“P”) aged 5 or over who—

- (a) arrives in Wales,
- (b) has, within the period of 10 days ending with the day of P’s arrival in Wales, been outside the common travel area, and
- (c) is a person specified in—
 - (i) paragraph 6 of Schedule 2, or
 - (ii) regulation 12E(2)(g).”

(3) After paragraph (1) insert—

“(1A) P must take a workforce test for day 2 in accordance with paragraph (6) where P—

- (a) is a regulation 2A traveller, or
- (b) has not been in a non-exempt country or territory within the period of 10 days ending with the day of P’s arrival in Wales.”

(4) In paragraph (2), at the beginning insert “Where paragraph (1A) does not apply,”.

(5) In paragraph (6)(b), after “means a test” insert “for the detection of coronavirus”.

New regulation 6L

9. After regulation 6K (workforce testing) insert—

“Specified events testing

6L.—(1) This regulation applies to a person (“P”) aged 5 or over who—

- (a) arrives in Wales,
- (b) has, within the period of 10 days ending with the day of P’s arrival in Wales, been outside the common travel area, and
- (c) is a relevant person at a specified event.

(2) P must take an event test for day 2 in accordance with paragraph (9) where P—

- (a) is a regulation 2A traveller, or
- (b) has not been in a non-exempt country or territory within the period of 10 days ending with the day of P’s arrival in Wales.

(3) Where paragraph (2) does not apply, P must undertake an event test for day 2, and day 8 in accordance with paragraph (9) in relation to each category of test.

(4) Where P does not undertake an event test as required by this regulation by reason of a reasonable excuse, P must, as soon as practicable after the matters giving rise to the reasonable excuse no longer pertain, undertake a replacement event test.

(5) Where a replacement event test is undertaken instead of—

- (a) an event test to be undertaken for day 2, P is to be treated as if they had undertaken an event test on day 2 in accordance with this regulation;
- (b) an event test to be undertaken for day 8, P is to be treated as if they had undertaken an event test on day 8 in accordance with this regulation.

(6) Regulations 6DA to 6HB apply to a person subject to this regulation as if—

- (a) references to regulation 6AB and 6AB(1) were to regulation 6L and 6L(1) respectively;
- (b) references to a day 2 test were to an event test undertaken for day 2;
- (c) references to a day 8 test were to an event test undertaken for day 8;
- (d) for regulation 6DB(5) there were substituted—

“(5) This paragraph applies to a replacement event test.”;

- (e) for regulation 6HA(5) there were substituted—

“(5) This paragraph applies to a replacement event test.”

(7) Where an event test generates an inconclusive result, P must as soon as reasonably practicable undertake a further event test and that further event test is to be treated as a replacement event test.

(8) A person responsible for organising a specified event must—

- (a) take reasonable steps to facilitate the taking of events tests by a relevant person in relation to the specified event they have responsibility for;
- (b) have regard to any guidance issued by the Welsh Ministers for the purposes of sub-paragraph (a).

(9) In this regulation—

“an event test” (*“prawf digwyddiad”*) means a test for the detection of coronavirus;

“an event test undertaken for day 2” (*“prawf digwyddiad a gymerir ar gyfer diwrnod 2”*) means a test which is undertaken no later than the end of the second day after the day on which P arrived in Wales;

“an event test undertaken for day 8” (*“prawf digwyddiad a gymerir ar gyfer diwrnod 8”*) means an event test which is undertaken before the end of the eighth day after the day on which P arrived in Wales

“relevant person” (*“person perthnasol”*) in relation to a specified event means—

- (a) a person participating in or at the event to derive a living;
- (b) an individual essential to the running of the event, including—
 - (i) operational staff essential to the running of the event;
 - (ii) event officials;
 - (iii) referees;
 - (iv) broadcast staff and journalists covering the event;
- (c) an individual essential to the support of a person described in paragraph (a), including—
 - (i) medical, logistical, technical and administration staff;
 - (ii) the parent or carer of a such a person, where that person is under the age of 18;

“a replacement event test” (*“prawf digwyddiad arall”*) means an event test complying with the requirements that apply to the event test that was missed or provided an inconclusive result;

“a specified event” (*“digwyddiad penodedig”*) means an event listed in Schedule 1E.

(10) In this regulation, when considering whether a person derives a living from participating in an event, any payment made for a person's benefit by reason of their participation is to be taken into account, including payment by way of salary, prize money or through a contractual arrangement of any other kind.”

Amendments to regulation 9

10.—(1) Regulation 9 (isolation requirements; exemptions) is amended as follows.

(2) Paragraph (1) is omitted.

(3) For paragraph (2) substitute—

“(2) Regulations 7 and 8 do not apply to—

- (a) a person described in paragraph 1(1)(a) to (k) of Schedule 2 who satisfies the conditions in paragraph 1(2) of that Schedule;
- (b) a person described in paragraphs 2 to 5, 6A to 16 and 36 of Schedule 2;
- (c) subject to paragraph (3), a person described in paragraph 6 of Schedule 2;
- (d) subject to paragraph (3), a person described in regulation 12E(2)(a) to (d) (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A);
- (e) a regulation 2A traveller.”

Amendments to regulation 14

11.—(1) Regulation 14 (offences) is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (i), omit “or”;
- (b) in sub-paragraph (j), after “6K,” insert “or”;
- (c) after sub-paragraph (j) insert—
“(k) 6L,”.

(3) In paragraph (1B), for “or 6K” substitute “, 6K or 6L”.

(4) In paragraph (1E), for “regulation 6K” substitute “regulations 6K and 6L as regards the taking of tests”.

Amendment to regulation 16

12. In regulation 16 (fixed penalty notices), in paragraph (6AC), after “6K,” insert “or regulation 14(1)(k) for contravening a requirement in regulation 6L.”.

Amendment to Schedule 1

13. In Schedule 1 (passenger information), after paragraph 2 insert—

“**3.** Where the passenger intends to take advantage of an exemption as a regulation 2A traveller, the fact that the passenger has been vaccinated or falls within one of the other categories of exemption within regulation 2A.”

New Schedule 1E

14. After Schedule 1D insert—

“**SCHEDULE 1E** Regulation 6L

Specified testing events

European Tour – Cazoo Open”.

Amendments to Schedule 3

15.—(1) Schedule 3 (exempt countries and territories outside the common travel area) is amended as follows.

(2) In Part 1—

(a) at the appropriate places insert—

“Bulgaria”

“Croatia”

“Hong Kong”

“Taiwan”;

(b) omit “Balearic Islands”.

(3) In Part 2, omit “British Virgin Islands”.

Amendments to Schedule 3A

16. In Schedule 3A (countries and territories subject to additional measures), at the appropriate places insert—

“Cuba”

“Indonesia”

“Myanmar”

“Sierra Leone”.

Amendments to the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020

17. The Schedule to the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020⁽¹⁾ is amended as follows—

(a) for Part 1 substitute—

“Part 1

The information to be provided for the purposes of regulations 3(2)(a)(i), 3(2)(b)(i), 3(2)(c)(i), 3A(4)(b)(i) and 3A(4)(c) is—

“Essential information to enter Wales from overseas

Everyone entering Wales from overseas (including UK nationals and residents) must provide proof of a negative COVID-19 test taken within 3 days of departure to Wales.

Fill in your passenger locator form up to 48 hours before arrival. You must declare all countries you have visited or transited through in the 10 days prior to your arrival in the UK on your passenger locator form.

Before departure, check the list of red, amber and green countries as the list can change regularly.

Red list passengers

1. Book a Managed Quarantine Package
2. Complete a passenger locator form

You can only enter if you are a British or Irish National, or you have residence rights in the UK. You must enter through a designated port and quarantine in a government approved hotel for 10 days.

Amber list passengers

1. Book tests for day 2 and 8
2. Complete a passenger locator form

⁽¹⁾ S.I. 2020/595 (W. 136), amended by S.I. 2020/714 (W. 160), S.I. 2020/1118 (W. 253), S.I. 2020/1521 (W. 325), S.I. 2021/72 (W. 18), S.I. 2021/171 (W. 39), S.I. 2021/457 (W. 145), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166) and S.I. 2021/765 (W. 187).

3. Make plans to self-quarantine in private accommodation for 10 full days after arrival (or full duration of stay if less than 10 days).

If you are arriving from an amber country, and have been fully vaccinated through an approved vaccination programme, at least 14 days before your arrival in Wales, you must:

1. Book a test for day 2
2. Complete a passenger locator form

Green list passengers

1. Book a test for day 2
2. Complete a passenger locator form

These measures apply to all persons (including UK nationals and residents) arriving in Wales from outside the common travel area comprising the United Kingdom, Ireland, the Isle of Man, and the Channel Islands. The British Overseas Territories are not in the common travel area. Public health requirements may vary depending upon in which nation of the UK you are staying.

England: <https://www.gov.uk/uk-border-control>

Northern Ireland: <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-international-travel-advice>

Scotland: <https://www.gov.scot/publications/coronavirus-covid-19-international-travel-quarantine/pages/overview/>

Wales: <https://gov.wales/travelrules>

Failure to comply with these measures is a criminal offence and you could be fined. There are a limited set of exemptions from these measures. Check the list of exemptions carefully. You may be fined if you fraudulently claim an exemption.””;

(b) in Part 2—

- (i) in paragraph (a) (Welsh language version), after “o fewn y ddau ddiwrnod cyntaf ar ôl ichi gyrraedd” insert “, hyd yn oed os ydych wedi eich brechu yn llawn”;

- (ii) in paragraph (b) (English language version), after “within the first two days after you arrive” insert “, even if you have been fully vaccinated”.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers

At 3.49 p.m. on 16 July 2021

Explanatory Memorandum to The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) 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 Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

16 July 2021

1. Description

These Regulations amend the [Health Protection \(Coronavirus, International Travel\) \(Wales\) Regulations 2020](#) (“the International Travel Regulations”) and the [Health Protection \(Coronavirus, Public Health Information for Persons Travelling to Wales etc.\) Regulations 2020](#) (“the Public Health Information Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

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. This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. The changes made by these Regulations continue the four nation approach to international travel and ensure continuing alignment with England and the other nations.

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 Public Health Information 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 Public Health Information 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 [Public Health Information 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;

Changes to the Red, Amber and Green lists

- **Cuba, Indonesia, Myanmar and Sierra Leone** are added to the “red list” of countries and territories
- **The Balearic Islands and British Virgin Islands** are removed from the “green list” of countries and territories and added to the “amber list”
- **Croatia, Bulgaria, Hong Kong and Taiwan** are added to the “green list” of countries and territories

Include provision for specified events to use private testing providers for mandatory testing.

Remove the Day 8 PCR test and isolation requirements for fully vaccinated UK residents; children under the age of 18; and people who have taken part in vaccination trials who have arrived from an amber list country. Make various consequential amendments in light of those changes, including to workforce testing requirements.

These Regulations also make consequential amendments to the Public Health Information Regulations so the information operators are required to provide to travellers both prior to and during travel reflects the changes made by these regulations.

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

16 July 2021

Dear Elin

The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force at 04:00 a.m. on 19 July 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Public Health Information Regulations").

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

Changes to the Red, Amber and Green lists:

- **Cuba, Indonesia, Myanmar and Sierra Leone** are added to the "red list" of countries and territories
- **The Balearic Islands and British Virgin Islands** are removed from the "green list" of countries and territories and added to the "amber list"
- **Croatia, Bulgaria, Hong Kong and Taiwan** are added to the "green list" of countries and territories

Bae Caerdydd • Cardiff Bay
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Gohebiaeth.Eluned.Morgan@llyw.cymru
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Include provision for specified events to use private testing providers for mandatory testing.

Remove the Day 8 PCR test and isolation requirements for fully vaccinated UK residents; children under the age of 18; and people who have taken part in vaccination trials who have arrived from an amber list country. Make various consequential amendments in light of those changes, including to workforce testing requirements.

These Regulations also make consequential amendments to the Public Health Information Regulations so the information operators are required to provide to travellers both prior to and during travel reflects the changes made by these Regulations.

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.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies, MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 3.6

SL(6)029 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2021

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a specified period.

Regulation 2A of the International Travel Regulations contains exemptions to isolation and specific testing requirements for travellers to Wales who have been vaccinated or are under 18.

These Regulations amend the International Travel Regulations so that the regulation 2A exemptions do not apply to people travelling to Wales from Metropolitan France.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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 19 July 2021](#).

¹ The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)



We also note that these Regulations came into force before being laid before the Senedd.

With regard to the urgency of these Regulations, we note the following in the letter from the Minister for Health and Social Services to the Llywydd:

"Such urgency of coming into force is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. So if the amendment being made by these Regulations was not made urgently, passengers into the UK from Metropolitan France would be able to leave isolation on reaching Wales. 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 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

29 July 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 867 (W. 203)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 9)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These 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 impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Regulation 2A of those Regulations contains exemptions to isolation and specific testing requirements in relation to certain categories of travellers who have been vaccinated against coronavirus or are under 18.

Regulation 3 of these Regulations amends regulation 2A of the International Travel Regulations to provide that the exemptions in regulation 2A do not extend to persons travelling from Metropolitan France.

Regulation 4 of these Regulations corrects a drafting error in the International Travel Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 867 (W. 203)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 9)
Regulations 2021**

Made 19 July 2021

Coming into force at 4.00 a.m. on 20 July 2021

Laid before *Senedd*
Cymru at 11.00 a.m. on 20 July 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 20 July 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1) are amended as follows.

3. In regulation 2A(2), after “Schedule 3A”, insert “or Metropolitan France”.

4. In Schedule 1, paragraph 3 as inserted by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2021(2) is renumbered as paragraph 3A.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers
19 July 2021

(1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170), S.I. 2021/765 (W. 187), S.I. 2021/826 (W. 193) and S.I. 2021/863 (W. 202).

(2) S.I. 2021/863 (W. 202).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) 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) (Wales) (Amendment) (No. 9) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

20 July 2021

1. Description

These Regulations amend the [Health Protection \(Coronavirus, International Travel\) \(Wales\) Regulations 2020](#) (“the International Travel Regulations”);

2. Matters of special interest to the Senedd

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force before they could be laid and do not adhere to the 21 day convention. This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. The changes made by these Regulations continue the four nation approach to international travel and ensure continuing alignment with England and the other nations. The law in Wales will apply to travellers regardless of their port of entry. So if the amendment being made by these Regulations was not made urgently, passengers into the UK from Metropolitan France (mainland France including the island of Corsica) would be able to leave isolation on reaching Wales.

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.

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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the [International Travel Regulations](#) provides further information on these powers.

4. Purpose and intended effect of the legislation

At the time proposed changes for exemption from the second post-arrival test and isolation was being considered for fully vaccinated arrivals from amber list countries the position for the risk rating for France was open to interpretation. After decisions at last week’s COVID-O meeting were taken relevant data was received which showed a significant public health risk would be posed by permitting arrivals from mainland France (including Corsica) to come into England without having to isolate. The Secretary of State for Health considered that implementing this exemption for people arriving from France posed an unacceptable increase in danger to public health, and so the regulations for England were prepared to reflect that the exemption should not extend to arrivals from France. The UK Government decided

that the risks posed by such travellers should be managed by maintaining the arrangements of two post-arrival tests and isolation for 10 days.

The equivalent regulations for Wales did not include this provision, as they were made ahead of the relevant data being received. In light of this data the Welsh Ministers also consider the risks to public health to be unacceptable and therefore amend the International Travel Regulations so as to remove the previously introduced vaccination based travel exemptions in relation to travellers from Metropolitan France so they are required to take two post-arrival tests on day 2 and day 8 and must isolate for 10 days.

The opportunity is also being taken in these Regulations to make a minor technical amendment to correct a drafting issue.

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

19 July 2021

Dear Elin

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 4.00 am on 20 July 2021, before it can be laid. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum tomorrow.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

These Regulations remove the previously introduced vaccination based travel exemptions in relation to travellers from Metropolitan France (mainland France including the island of Corsica) so they are required to take two post-arrival tests on day 2 and day 8 and must isolate for 10 days.

Such urgency of coming into force is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. So if the amendment being made by these Regulations was not made urgently, passengers into the UK from Metropolitan France would be able to leave isolation on reaching Wales. In view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Bae Caerdydd • Cardiff Bay
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0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(6)032 - The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a specified period.

These Regulations amend the International Travel Regulations so that certain travellers arriving in Wales from amber list countries do not have to isolate. This includes travellers who have received a full course of an authorised vaccine in a relevant country and travellers who are under 18 and ordinarily resident in a relevant country.

The list of relevant countries includes:

- a member State of the European Union,²
- Andorra,
- Iceland,
- Liechtenstein,
- Monaco,
- Norway,
- San Marino,
- Switzerland,
- the United States of America,
- Vatican City State.

Under these Regulations, such travellers are also not required to take a PCR test on day 8 after arriving in Wales.

These Regulations also amend the Operator Liability Regulations³ so that operators of international passenger services must check that a person:

- (i) who has declared that they are an 'eligible vaccinated arrival' under the International Travel Regulations can provide evidence to support that declaration;

¹ The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)

² Excluding Metropolitan France (but Metropolitan France was subsequently included as a relevant country from 8 August 2021 by virtue of the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No.4) Regulations 2021 (S.I. 2021/926))

³ The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48)



- (ii) seeking to rely on an exemption from certain travel requirements can evidence they are eligible for the exemption.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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 30 July 2021](#).

The letter to the Llywydd states:

“Such urgency of coming into force is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. 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.



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. 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 August 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 915 (W. 208)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
3) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48 (W. 11)) (the “Operator Liability Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a period determined in accordance with those Regulations.

Regulation 3 amends regulation 2A of the International Travel Regulations to introduce exemptions for certain travellers, primarily those who have received a full course of an authorised vaccine in, or who are under 18 and ordinarily resident in, a relevant country. Such travellers are exempted from the requirement to isolate on return from a non-exempt country or territory (except one specified in Schedule 3A to the International Travel Regulations), and are only required to take a day 2 test. These exemptions therefore apply in relation to relevant arrivals from what are commonly known as the ‘amber list’ countries.

The Operator Liability Regulations impose requirements on persons operating international passenger services (“operators”) arriving into Wales from outside the common travel area. In accordance

with those requirements operators must, for example, ensure that passengers travelling on such services possess notification of a negative test result and have made arrangements to take further tests following their arrival.

Regulations 4 to 9 of these Regulations 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' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 915 (W. 208)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
3) Regulations 2021**

Made at 1.38 p.m. on 30 July 2021

*Laid before Senedd
Cymru at 6.00 p.m. on 30 July 2021*

*Coming into force at 4.00 a.m. on 2 August
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 2 August 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1) are amended as follows.

Amendments to regulation 2A

3.—(1) Regulation 2A (exemptions for vaccinated travellers and others) is amended as follows.

(2) In paragraph (3)—

(a) in sub-paragraph (b), after “United Kingdom” insert “or a relevant country”;

(b) after sub-paragraph (b) insert—

“(ba) if the course of doses was received in the United States of America, is ordinarily resident in the United States of America.”;

(c) in sub-paragraph (c)—

(i) after “immigration officer” insert “or the operator of a commercial service on which P travels to Wales from outside the common travel area”;

(ii) for “through the NHS COVID pass” to the end substitute—

“through—

(i) the NHS COVID pass, or equivalent from NHS Scotland, NHS Wales or the Department of Health in Northern Ireland,

(ii) the EU Digital COVID certificate, or

(1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170), S.I. 2021/765 (W. 187), S.I. 2021/826 (W. 193) and S.I. 2021/867 (W. 203).

(iii) the Centers for Disease Control and Prevention vaccination card,”;

(d) after sub-paragraph (c), insert—

“(ca) is able to provide proof if required by an immigration officer or the operator of a commercial service on which P travels to Wales from outside the common travel area of meeting the requirement in sub-paragraph (ba), and”.

(3) In paragraph (4)(b), after “participation” insert “if required by an immigration officer or the operator of a commercial service on which P travels to Wales from outside the common travel area”.

(4) After paragraph (4) insert—

“(4A) P—

- (a) has participated or is participating in a clinical trial in the United States of America by the Food and Drugs Administration of a vaccine for vaccination against coronavirus;
- (b) is able to provide proof of such participation through the Centers for Disease Control and Prevention vaccination card if required by an immigration officer or the operator of a commercial service on which P travels to Wales from outside the common travel area;
- (c) has declared that P meets the COVID-19 vaccination eligibility criteria for reduced isolation and testing requirements using a facility referred to in regulation 4(1); and
- (d) is ordinarily resident in the United States of America and is able to provide proof of that residence if required by an immigration officer or the operator of a commercial service on which P travels to Wales from outside the common travel area.”.

(5) In paragraph (5)(a), after “United Kingdom” insert “or a relevant country”.

(6) In paragraph (10)—

(a) for the definition of “authorised vaccine” substitute—

““authorised vaccine” (*“brechlyn awdurdodedig”*) means a medicinal product for vaccination against coronavirus authorised—

(a) in relation to doses received in the United Kingdom—

- (i) for supply in the United Kingdom in accordance with a marketing authorisation, or
- (ii) by the licensing authority on a temporary basis under regulation 174 of the Human Medicines Regulations 2012;
- (b) in relation to doses received in a relevant country, for supply in that country following evaluation by the relevant regulator for the country;”;
- (b) for the definition of “marketing authorisation” substitute—
 ““marketing authorisation” (*“awdurdodiad marchnata”*)—
- (a) in relation to a vaccine authorised for supply in the United Kingdom or in a member State, has the meaning given in regulation 8(1) (general interpretation) of the Human Medicines Regulations 2012;
- (b) in relation to a vaccine authorised for supply in a relevant country other than a member State, means a marketing authorisation granted by the relevant regulator for the country;”;
- (c) after the definition of “NHS Wales” insert—
 ““relevant country” (*“gwlad berthnasol”*) means a country listed in the first column of the table in paragraph (11);
 “relevant regulator” (*“rheoleiddiwr perthnasol”*), in relation to a relevant country, means the regulator identified in the corresponding row of the second column of the table in paragraph (11), and a reference to a regulator in that table is a reference to the regulatory authority of that name designated as a Stringent Regulatory Authority by the World Health Organization pursuant to the operation of the COVAX Facility(1);”;
- (d) after paragraph (10) insert—
 “(11) The table referred to in the definitions of “relevant country” and “relevant regulator” follows—

| <i>Relevant country</i> | <i>Relevant regulator</i> |
|-------------------------|---------------------------|
| a member State | European Medicines Agency |

(1) A list of the national regulatory authorities designated as Stringent Regulatory Authorities has been published by the World Health Organization and is available online at https://extranet.who.int/pqweb/sites/default/files/documents/Product-Eligibility_COVAX-Facility_Dec2020_0.pdf

| | |
|---------------------------------|-----------------------------------------------|
| Andorra | European Medicines Agency |
| Iceland | European Medicines Agency |
| Liechtenstein | European Medicines Agency |
| Monaco | European Medicines Agency |
| Norway | European Medicines Agency |
| San Marino | European Medicines Agency |
| Switzerland | Swissmedic |
| the United States of America | United States Food and Drug Administration |
| Vatican City State | European Medicines Agency |

”.

Amendments to the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

4. The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021⁽¹⁾ are amended as follows.

Amendment to regulation 4

5. In regulation 4 (interpretation), in the appropriate place insert, ““Schedule 3A passenger” (“*teithiwr Atodlen 3A*”) means a person who has been in a country or territory listed in Schedule 3A to the International Travel Regulations and who is not a person to whom regulation 12E(2) and (3) of those regulations applies;”.

Amendment to regulation 5B

6. In regulation 5B(3) (requirement to ensure passengers possess notification of post arrival testing arrangements), omit the definition of “Schedule 3A passenger”.

New regulations 5C and 5D

7. After regulation 5B insert—

“Requirement to check vaccination status

5C.—(1) An operator must ensure that a passenger, other than a Schedule 3A passenger, (“P”)—

- (a) who is on an international passenger service; and

⁽¹⁾ S.I. 2021/48 (W. 11), amended by S.I. 2021/72 (W. 18), S.I. 2021/171 (W. 39), S.I. 2021/305 (W. 78), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166) and S.I. 2021/826 (W. 193).

- (b) has, using a facility referred to in regulation 4(1) of the International Travel Regulations (requirement to provide passenger information), indicated that P meets the COVID-19 vaccination eligibility criteria for reduced isolation and testing requirements,

is in possession of the required evidence when P arrives in a port in Wales.

(2) In paragraph (1) “the required evidence” means—

- (a) evidence of the description in regulation 2A(3)(c), (3)(ca), (4)(b), (4A)(b) and (d) or (6)(a)(ii) of the International Travel Regulations; or
- (b) where P intends to take advantage of the exemption in regulation 2A(5) or (6)(b) of those regulations (P aged under 18 years and 3 months), evidence of P’s age.

(3) An operator must implement and maintain processes and systems to ensure that the requirement in paragraph (1) is complied with.

(4) This regulation does not apply in the case of the operator of an international passenger service which commences in Metropolitan France.

Requirement to check exemptions

5D.—(1) Where, using a facility referred to in regulation 4(1) of the International Travel Regulations, a passenger who arrives in Wales on an international passenger service indicates that they are a person referred to in a paragraph of Schedule 2 to those Regulations (exemptions), an operator must ensure that the passenger possesses evidence that they are such a person.

(2) Paragraph (1) does not apply in relation to a person described in paragraph 6(2)(d)(i) of Schedule 2 to the International Travel Regulations (road haulage worker), who is the driver of a goods vehicle that has been or will be conveyed to Wales on an international passenger service.”

Amendments to regulation 6

8. In regulation 6 (offences)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (b) omit “or”;
 - (ii) after sub-paragraph (c) insert—

“(d) regulation 5C(1),
(e) regulation 5C(3), or
(f) regulation 5D.”;

(b) after paragraph (5) insert—

“(6) In relation to an offence in paragraph (1)(d), it is a defence for the operator to show that the relevant passenger presented a document purporting to be the required evidence which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not the required evidence.

(7) In relation to an offence in paragraph (1)(e), it is a defence for the operator to show that it was not reasonably practicable to have the processes and systems in place at the relevant time.

(8) In relation to an offence in paragraph (1)(f), it is a defence for an operator to show that the passenger presented a document purporting to be appropriate evidence which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not the appropriate evidence.”

Amendment to regulation 10

9. In regulation 10 (review), for “5A and 5B”, substitute “5A, 5B, 5C and 5D”.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers

At 1.38 p.m. on 30 July 2021

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

30 July 2021

Dear Elin

The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force at 4.00 am on 2 August 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021,

The changes made by today's Regulations will:

- remove the requirements to self-isolate and undertake a day 8 PCR test for fully vaccinated travellers coming to Wales from any of the EU27, EFTA countries (Norway, Switzerland, Iceland, Liechtenstein) and the European microstate countries (Andorra, Monaco, San Marino and Vatican City); or the United States of America;
- provide that for a person to evidence fully vaccinated status they must present for the EU the EU Digital COVID Certificate; or for the USA present a Centers for Disease Control and Prevention vaccination card to evidence this;
- place duties on operators of international passenger services to check evidence of eligibility where they are claiming exemptions from the travel requirements.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Such urgency of coming into force is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. In view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely



Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 3.8

SL(6)035 - The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 4) Regulations 2021

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales from non-exempt countries or territories to isolate for a specified period.

These Regulations amend the International Travel Regulations so that the exemption from the requirement to isolate and take a PCR Day 8 test also applies to travellers who come to Wales from Metropolitan France.

These Regulations also amend the list of green countries and territories by adding the following to the green list:

- Austria,
- Germany,
- Latvia,
- Norway,
- Romania,
- Slovakia,
- Slovenia.

The Regulations also amend the list of red countries and territories by:

- (i) adding the following to the red list:
 - Georgia,
 - Mayotte,
 - Mexico,
 - Réunion;
- (ii) removing the following from the red list:
 - Bahrain,
 - India,
 - Qatar,
 - United Arab Emirates.

¹ The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)



In addition, these Regulations add the Curtis Cup to the list of 'specified events', to which a bespoke testing regime applies for people taking part in and organising etc. the event.

Finally, these regulations make changes to the technical specification for post-arrival tests and consequential amendments to the Operator Liability Regulations in light of the changes referred to above regarding Metropolitan France.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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 6 August 2021](#).

The letter to the Llywydd states:

"Such urgency of coming into force for the changes to the red, amber and green travel lists is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. In view of the changing evidence on risk in relation to this disease especially for those countries where the situation has worsened and they have moved to the "red list" this is considered necessary and justifiable in this case.

The changes in respect of the technical specification of the post-arrival tests also come into force less than 21 days after the Regulations have been laid. This change is being introduced from 23 August which maintains the current four nations approach to international travel and allows for a lead-in period required before implementation by the testing laboratories."



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.

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. 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 August 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 926 (W. 211)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
4) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48 (W. 11)) (the “Operator Liability Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 3 amends regulation 2A of the International Travel Regulations so that the exemptions in regulation 2A now extend to persons travelling from Metropolitan France.

Regulation 4 amends Schedule 3 to the International Travel Regulations to add Austria, Germany, Latvia, Norway, Romania, Slovakia and Slovenia to the list of exempt countries and territories outside the common travel area.

Regulation 5 amends Schedule 3A to the International Travel Regulations, which contains the list of countries and territories subject to additional measures. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A within the last 10 days of arrival, pursuant to regulation 12E of the International Travel Regulations. Regulation 5 adds Georgia, Mayotte, Mexico and Réunion to the list in Schedule 3A and removes Bahrain, India, Qatar and the United Arab Emirates.

Regulation 6 of these Regulations amends Schedule 1E to the International Travel Regulations to add the Curtis Cup to the list of ‘specified events’. This removes relevant persons at the event from the testing provisions in regulation 6AB of the International Travel Regulations and instead requires them to adhere to the requirements in regulation 6L of those Regulations.

Regulation 7 amends paragraphs 1 and 2 of Schedule 1C to the International Travel Regulations to bring the technical requirements for day 8 tests into line with the more stringent requirements for day 2 tests.

The Operator Liability Regulations impose requirements on persons operating international passenger services (“operators”) arriving into Wales from outside the common travel area. In accordance with those requirements operators must, for example, ensure that passengers travelling on such services possess notification of a negative test result and have made arrangements to take further tests following their arrival.

Regulation 8 makes a consequential amendment to regulation 5C of the Operator Liability Regulations in light of the amendment to regulation 2A of the International Travel Regulations to extend the exemptions in regulation 2A to persons travelling from Metropolitan France.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 926 (W. 211)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability) (Wales)
(Miscellaneous Amendments) (No.
4) Regulations 2021**

Made at 2.15 p.m. on 6 August 2021

*Laid before Senedd
Cymru at 5.00 p.m. on 6 August 2021*

*Coming into force in accordance with
regulation 1(2) and (3)*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 4) Regulations 2021.

(2) Except for regulation 7, these Regulations come into force at 4.00 a.m. on 8 August 2021.

(3) Regulation 7 comes into force on 23 August 2021.

⁽¹⁾ 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020⁽¹⁾ are amended in accordance with regulations 3 to 7.

Amendment to regulation 2A

3. In regulation 2A(2), omit “or Metropolitan France”.

Amendments to Schedule 3

4. In Schedule 3 (exempt countries and territories outside the common travel area), in Part 1, at the appropriate places insert—

“Austria”
 “Germany”
 “Latvia”
 “Norway”
 “Romania”
 “Slovakia”
 “Slovenia”.

Amendments to Schedule 3A

5. In Schedule 3A (countries and territories subject to additional measures)—

(a) at the appropriate places insert—
 “Georgia”

(1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170), S.I. 2021/765 (W. 187), S.I. 2021/826 (W. 193), S.I. 2021/863 (W. 202), S.I. 2021/867 (W. 203) and S.I. 2021/915 (W. 208).

“Mayotte”

“Mexico”

“Réunion”;

(b) omit—

“Bahrain”

“India”

“Qatar”

“United Arab Emirates”.

Amendment to Schedule 1E

6. In Schedule 1E (specified testing events), at the appropriate place insert “R & A – The Curtis Cup”.

Amendments to Schedule 1C

7.—(1) Schedule 1C (mandatory testing after arrival in Wales) is amended as follows.

(2) In sub-paragraph (b)(ii) of paragraph 1 (day 2 test requirements)—

(a) after “greater than” insert “or equal to”;

(b) for “with” substitute “or”.

(3) For paragraph 2 (day 8 test requirements) substitute—

“Day 8 test requirements

2. A day 8 test complies with this sub-paragraph where—

(a) it is a semi-quantitative test for the detection of coronavirus which—

(i) targets a minimum of two distinguishable SARS-CoV-2 genes other than the S gene and performance reference controls,

(ii) includes routine in silico assurance against every variant of concern, and

(iii) produces a test solution that provides extracted nucleic acid that is suitable for whole genome sequencing using a specified method,

(b) the manufacturer of any device used for the purposes of the test states that the device—

(i) uses an established molecular detection method,

(ii) has a specificity greater than or equal to 97% (or a 95% two-sided

- confidence interval entirely above 95%),
- (iii) has a sensitivity greater than or equal to 95% (or a 95% two-sided confidence interval entirely above 90%),
- (iv) has a limit of detection of less than or equal to 1000 SARS-CoV-2 copies per millilitre, and
- (v) is suitable for identifying every variant of concern, and
- (c) any device used for the purposes of the test—
 - (i) can be put into service in accordance with Part 4 of the Medical Devices Regulations 2002⁽¹⁾, other than solely by virtue of regulation 39(2) of those Regulations, and
 - (ii) has been validated no more than 18 months before the test is administered or provided to P.”

Amendment to the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

8. In regulation 5C of the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021⁽²⁾, omit paragraph (4).

Eluned Morgan

Minister for Health and Social Services, one of the Welsh Ministers

At 2.15 p.m. on 6 August 2021

⁽¹⁾ S.I. 2002/618.

⁽²⁾ S.I. 2021/48 (W. 11), amended by S.I. 2021/72 (W. 18), S.I. 2021/171 (W. 39), S.I. 2021/305 (W. 78), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/826 (W. 193) and S.I. 2021/915 (W. 208).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 4) 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. 4) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

6 August 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 Legislation, Justice and Constitution Committee

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 the changes made by these Regulations in respect of countries and an addition to specified events subject to a bespoke testing regime 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, especially for those countries where the situation has worsened and they have moved to the “red list”, this is considered necessary and justifiable in this case.

The changes regarding the technical specification of the post-arrival tests need to be made as promptly as possible to ensure alignment with equivalent amendments being introduced in England on the 23 August and provide a lead-in period required for implementation by the testing laboratories.

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:

- **Georgia, Mayotte, Mexico and Reunion** are added to the “red list” of countries and territories
- **Bahrain, India, Qatar and the United Arab Emirates** are removed from the “red list of countries and territories and are added to the “amber list” of countries and territories
- **Austria, Germany, Latvia, Norway, Romania, Slovakia and Slovenia** are removed from the “amber list” and added to the “green list” of countries and territories.
- People who have been in, or travelled through, **Metropolitan France** (mainland France including the island of Corsica) are to be exempt from Day 8 PCR test and isolation requirements for people who are fully vaccinated in UK / EU / USA vaccination programmes; children under the age of 18; and people who have taken part in vaccination trials.
- The R&A Curtis Cup is added to the list of specified events subject to a bespoke testing regime
- Changes to the technical specifications for post-arrival tests.

These Regulations also make a consequential amendment to regulation 5C of the Operator Liability Regulations in light of the amendment to regulation 2A of the International Travel Regulations to extend the exemptions in regulation 2A to persons travelling from Metropolitan France.

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

6 August 2021

Dear Elin

The Health Protection (Coronavirus, International Travel and Operator Liability) (Wales) (Miscellaneous Amendments) (No. 4) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force at 4.00 am on 8 August 2021, with the exception of technical changes to specifications for post-arrival tests which will come into force on 23 August 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021.

The changes made by today's Regulations will at 4.00am on 8 August:

- Add **Georgia, Mayotte, Mexico and Reunion** to the "red list" of countries and territories;
- Remove **Bahrain, India, Qatar and the United Arab Emirates** from the "red list" of countries and territories and add them to the "amber list" of countries and territories;
- Remove **Austria, Germany, Latvia, Norway, Romania, Slovakia and Slovenia** from the "amber list" and add them to the "green list" of countries and territories;
- Permit people who have been in, or travelled through, **Metropolitan France** (mainland France including the island of Corsica) to be exempt from Day 8 PCR test and isolation requirements for people who are fully vaccinated in UK / EU / USA vaccination programmes; children under the age of 18; and people who have taken part in vaccination trials;

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Caerdydd • Cardiff
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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- add the R&A Curtis Cup to the list of specified events subject to a bespoke testing regime

On the 23 August 2021 the amendment will:

- Change the technical specifications for post-arrival tests.

These Regulations also make a consequential amendment to regulation 5C of the Operator Liability Regulations in light of the amendment to regulation 2A of the International Travel Regulations to extend the exemptions in regulation 2A to persons travelling from Metropolitan France. This amendment will also come into force at 4.00am on 8 August. Such urgency of coming into force for the changes to the red, amber and green travel lists is necessary to continue the four nation approach to international travel because the law in Wales will apply to travellers regardless of their port of entry. In view of the changing evidence on risk in relation to this disease especially for those countries where the situation has worsened and they have moved to the “red list” this is considered necessary and justifiable in this case.

The changes in respect of the technical specification of the post-arrival tests also come into force less than 21 days after the Regulations have been laid. This change is being introduced from 23 August which maintains the current four nations approach to international travel and allows for a lead-in period required before implementation by the testing laboratories.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 3.9

SL(6)040 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2021

Background and Purpose

The International Travel Regulations¹ impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions. Certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”. Regulation 4 of these Regulations amends Schedule 3 to add to the list of exempt countries and territories outside the common travel area, as follows: The Azores, Canada, Denmark, Finland, Liechtenstein, Lithuania, Switzerland.

Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A to the International Travel Regulations within the last 10 days of arrival. Regulation 5 of these Regulations amends Schedule 3A to add Montenegro and Thailand to the list of countries and territories subject to additional measures.

The International Travel Regulations permit unaccompanied minors (under 18) to isolate at their destination (rather than elsewhere) where they arrive from a country listed in Schedule 3A and will be attending a boarding school or further education institution in Wales (See Regulation 12E). Regulation 5 of these Regulations amends the International Travel Regulations to include any students under the age of 18 who are coming to Wales to pursue studies in higher education. This approach is consistent with that of the UK Government.

Schedule 4 to the International Travel Regulations sets out a list of specified sporting events. An individual who is required to isolate may leave isolation to compete or train in, or provide coaching or other support to a person competing in, those events. Regulation 6 adds the following to the list-

- The Champions Hockey League competition
- FIH World Cup qualifiers for Men (European group)

¹ The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574)



Procedure

Made 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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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). We further note the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a letter to the Llywydd of 27 August 2021, namely 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 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

31 August 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 126**

Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 967 (W. 227)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 10)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These 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 impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Regulation 12E of the International Travel Regulations prevents non-exempt persons from entering Wales where they have been in a country or territory listed in Schedule 3A to those Regulations within the last 10 days of arrival.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Regulation 3 of these Regulations amends regulation 12E so as to allow entry into Wales for certain students under the age of 18 who have previously been in a country listed in Schedule 3A to the International Travel Regulations. Such persons are subject to specific isolation requirements.

Regulation 4 of these Regulations amends Schedule 3 to the International Travel Regulations to add the Azores, Canada, Denmark, Finland, Liechtenstein,

Lithuania, and Switzerland to the list of exempt countries and territories.

Regulation 5 of these Regulations amends Schedule 3A to the International Travel Regulations to add Montenegro and Thailand to the list of countries and territories subject to additional measures.

Regulation 6 of these Regulations amends Schedule 4 to the International Travel Regulations to update the list of specified sporting events. An individual is able to leave isolation to compete or train in, or provide coaching or other support to a person competing in a sporting event specified in Schedule 4.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 967 (W. 227)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 10)
Regulations 2021**

Made at 1.30 p.m. on 27 August 2021

*Laid before Senedd
Cymru at 4.30 p.m. on 27 August 2021*

*Coming into force at 4.00 a.m. on 30 August
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾, make the following Regulations.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 30 August 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1) are amended as follows.

Amendments to regulation 12E

3.—(1) Regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) is amended as follows.

(2) In paragraph (2)(e)—

- (a) in paragraph (i), for “2020” substitute “2021”;
- (b) in paragraph (ii), for “a boarding school” substitute “an educational institution”.

(3) In paragraph (5)—

- (a) in sub-paragraph (a), for ““boarding school” means a school or college” substitute ““educational institution” means a school, college or higher education provider”;
- (b) after sub-paragraph (c) insert—

“(d) “higher education provider” has the meaning in section 83(1) of the Higher Education and Research Act 2017(2).”

Amendments to Schedule 3

4. In Part 1 of Schedule 3 (exempt countries and territories outside the common travel area), at the appropriate places insert—

-
- (1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26), S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78), S.I. 2021/361 (W. 110), S.I. 2021/454 (W. 144), S.I. 2021/500 (W. 149), S.I. 2021/568 (W. 156), S.I. 2021/584 (W. 161), S.I. 2021/646 (W. 166), S.I. 2021/669 (W. 170), S.I. 2021/765 (W. 187), S.I. 2021/826 (W. 193), S.I. 2021/863 (W. 202), S.I. 2021/867 (W. 203), S.I. 2021/915 (W. 208) and S.I. 2021/926 (W. 211).
- (2) 2017 c. 29.

“The Azores”
“Canada”
“Denmark”
“Finland”
“Liechtenstein”
“Lithuania”
“Switzerland”.

Amendments to Schedule 3A

5. In Schedule 3A (countries and territories subject to additional measures), at the appropriate places insert—

“Montenegro”
“Thailand”.

Amendment to Schedule 4

6. In Schedule 4 (specified sporting events), at the end insert—

“The Champions Hockey League competition
FIH World Cup qualifiers for Men (European group)”.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers

At 1.30 p.m. on 27 August 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) 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) (Wales) (Amendment) (No. 10) Regulations 2021.

Eluned Morgan MS
Minister for Health and Social Services

27 August 2021

1. Description

These Regulations amend the [Health Protection \(Coronavirus, International Travel\) \(Wales\) Regulations 2020](#) (“the International Travel 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. This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. The changes made by these Regulations continue the four nation approach to international travel and ensure continuing alignment with England and the other nations. The law in Wales will apply to travellers regardless of their port of entry.

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.

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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the [International Travel Regulations](#) provides 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:

- **Montenegro and Thailand** are removed from the “amber list” and added to the “red list” of countries and territories
- **The Azores, Canada, Denmark, Finland, Liechtenstein, Lithuania and Switzerland** are removed from the “amber list” and added to the “green list” of countries and territories
- Permit unaccompanied minors travelling from red list countries to attend higher education to be excused from managed quarantine in England and instead isolate at accommodation in Wales
- Add the following events to the list of specified sporting events:

- **The Champions Hockey League competition**
- **FIH World Cup qualifiers for Men (European group)**

The International Travel Regulations already permit unaccompanied minors (under 18) who are arriving from a red list country to attend a boarding school or further education institution in Wales to isolate at their destination rather than in a Managed Quarantine Facility. This covers learners who are staying in school or college-owned accommodation and those who are staying with host families. This exemption is now extended to include any under-18 students from red list countries who are arriving to attend higher education. This will ensure that these students are treated equitably and is consistent with the approach being taken by the UK Government.

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.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

27 August 2021

Dear Elin

**The Health Protection (Coronavirus, International Travel) (Wales) (Amendment)
(No. 10) Regulations 2021**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force at 4.00 a.m. on 30 August 2021, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

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

- remove Montenegro and Thailand from the “amber list” and add them to the “red list” of countries and territories;
- remove The Azores, Canada, Denmark, Finland, Liechtenstein, Lithuania and Switzerland from the “amber list” and add them to the “green list” of countries and territories;
- permit unaccompanied minors travelling from red list countries to attend higher education in Wales to be excused from managed quarantine in England and instead isolate at accommodation in Wales; and
- add the following events to the list of specified sporting events:
 - the Champions Hockey League competition
 - FIH World Cup qualifiers for Men (European group)

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

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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(6)026 - The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021

Background and Purpose

These Regulations make amendments to subordinate legislation in the field of biosecurity controls for the imports of live animals and animal products, as part of a Great Britain-wide approach.

The effect of these Regulations will be further to delay the introduction of documentary and physical checks at border control posts in Wales, in respect of imported animal products. Such checks will now be phased in between 1 October 2021 and 1 March 2022.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is 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 that these Regulations further delay the introduction of documentary and physical checks at border control posts in Wales, in respect of imported animal products, as part of a Great Britain-wide approach. Such checks will now be phased in between 1 October 2021 and 1 March 2022.

As regards the delay, we note what the Welsh Government says in the Explanatory Memorandum to the Regulations:



"Following a review by officials of the implementation plan for import controls including Sanitary and Phytosanitary ("SPS") checks on live animals and products of animal origin, a decision has been made to delay the introduction of documentary and physical checks at designated BCPs. This is because since the end of the transition period, businesses and competent authorities have had to adapt and meet extensive new EU and UK requirements when moving goods under the new trading relationship with the EU.

This revised timetable will allow businesses and competent authorities more time to prepare as they adapt to the new trading relationships and recover from the longer, deeper impacts of the COVID-19 pandemic."

The Explanatory Memorandum also says that the preference of industry stakeholders would be for Great Britain documentary and physical checks to be introduced sooner rather than later, because such import checks have been applied by the European Union since January 2021. We note that Great Britain-wide consultation on these Regulations highlighted the need for governments to provide clarity on future import/export arrangements, but that there was general consensus that this delay is necessary.

We found the following paragraphs from the Explanatory Memorandum helpful and informative:

"Defra, the Scottish and Welsh Governments sent out a private consultation in June 2021, seeking the views of stakeholders on the delay to the implementation of the phased imports regime. The consultation asked whether stakeholders agreed with the delay, or whether they felt that the original planned timeline, with the introduction of full SPS controls, should come into effect as planned from July 31.

The changes being made are operability amendments to existing retained EU law to ensure that the law reflects changes made during the transition period and is operable in a UK context. From ongoing conversations, we are aware that industry stakeholders would prefer GB controls on imports from the EU are introduced sooner rather than later, as they generally feel it is unfair that exports from GB have faced such controls by the EU since January 2021. The wider stakeholder responses highlighted the need for clarity to be provided by government, on future border arrangements both on imports and exports, but showed that there is broad and general consensus that the changes being delivered with this SI to the controls timeline are necessary for effective sector readiness, and failure to implement these changes by the end of July as delivered by this instrument would create "impossible" requirements for importers to meet and for competent authorities to deliver."

Welsh Government response

A Welsh Government response is not required.



Legal Advisers
Legislation, Justice and Constitution Committee
30 July 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under paragraph 7(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 847 (W. 197)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMALS, WALES

**The Trade in Animals and Related
Products (Wales) (Amendment)
(EU Exit) (No. 2) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend deficiencies in the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252) (“the 2011 Regulations”) as a consequence of EU Exit. Regulation 2 amends the 2011 Regulations so that Schedule 5 has effect and remains in force until the end of the transitional staging period (defined in Annex 6 to Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (EUR 2017/625)), and to change the date from which transitional prior notification requirements for products of animal origin apply from 31 July 2021 to 1 October 2021.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under paragraph 7(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 847 (W. 197)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMALS, WALES

**The Trade in Animals and Related
Products (Wales) (Amendment)
(EU Exit) (No. 2) Regulations 2021**

Made 14 July 2021

Laid before Senedd Cymru 16 July 2021

Coming into force 30 July 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(1).

The Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, Senedd Cymru(2).

(1) 2018 c. 16; see section 20(1) for the definition of “devolved authority”. Paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53(2) of Part 2 of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(2) The references in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Title and commencement

1.—(1) The title of these Regulations is the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021.

(2) These Regulations come into force on 30 July 2021.

The Trade in Animals and Related Products (Wales) Regulations 2011

2.—(1) The Trade in Animals and Related Products (Wales) Regulations 2011⁽¹⁾ are amended as follows.

(2) In regulation 2(1), at the appropriate place insert—

““the transitional staging period” (“*y cyfnod graddoli trosiannol*”) has the meaning given in Annex 6 to the Official Controls Regulation⁽²⁾.”

(3) In regulation 26(3), for “day on 31 July 2021” substitute “transitional staging period”.

(4) In Schedule 5—

- (a) in paragraph 5(3), for “31 July 2021” substitute “1 October 2021”;
- (b) in paragraph 6(1)(c)—
 - (i) for “31 July 2021” substitute “1 October 2021”;
 - (ii) after “products of animal origin” insert “or animal by-products”.

Lesley Griffiths

Minister for Rural Affairs and North Wales, and
Trefnydd, one of the Welsh Ministers
14 July 2021

(1) S.I. 2011/2379 (W. 252). Regulation 26(3) was inserted by regulation 19 of S.I. 2020/1612 (W. 337). Schedule 5 was inserted by regulation 32 of S.I. 2020/1612 (W. 337). Paragraphs 5(3) and 6(1)(c) of Schedule 5 were amended by regulation 2 of S.I. 2021/384 (W. 122). There are other amending instruments but none are relevant.

(2) EUR 2017/625. Annex 6 was inserted by S.I. 2020/1481 and amended by S.I. 2021/429.

Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

16 July 2021

Part 1

1. Description

This Explanatory Memorandum relates to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021 (“the Instrument”)

The Instrument is required to ensure alignment with changes which are being brought forward by the UK Government to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the OCR”).

The Instrument will make amendments to subordinate legislation, which applies in relation to Wales and the Welsh zone, in the field of biosecurity controls for the imports of live animals and animal products. The Instrument applies to Wales and will come into force on 30 July 2021.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The Instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

The Instrument is being laid in draft under the “made-affirmative” procedure and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

The Instrument amends deficiencies which remain in the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252) (“the 2011 Regulations”), namely the need to change the date from which transitional prior notification requirements for products of animal origin apply.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converted the majority of directly applicable EU law as it stood immediately before Implementation Period (IP) completion day into domestic law and preserved laws made in the UK which implement EU obligations. The Withdrawal Act also created temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

The Instrument amends deficiencies which remain in the 2011 Regulations. The 2011 Regulations make provision in relation to the trade in animals and related products including establishing a regulatory framework for trade in live animals and genetic material, and for the importation of live animals, genetic material and products of animal origin. In addition, the 2011 Regulations establish various offences, and give the power to the Welsh Ministers to prohibit the importation into Wales of any animal or product in the event of a disease outbreak outside the UK.

Schedule 5 was inserted into the 2011 Regulations by regulation 32 of the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1612) (W. 337). Schedule 5 applies to products and live animals that originate from (a) a territory subject to special transitional import arrangements; or (b) a third country other than a territory subject to special transitional import arrangements where, before importation into Wales, the products or live animals concerned—

- (i) have been presented to a border control post (BCP) designated by the Welsh Ministers;
- (ii) are accompanied by a Common Health Entry Document which has been completed to the satisfaction of the relevant authority; and
- (iii) have been pre-notified.

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/384) (W. 122) ("the 2021 Amendment Regulations") previously amended the 1 April 2021 date in paragraphs 5 and 6 of Schedule 5 to the 2011 Regulations to 31 July 2021 to align with the changes made to other legislation by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (S.I. 2021/429), and to align with Annex 6 of the OCR (which was inserted by the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481), setting out the requirements for the pre-notification checks) which provides for transitional arrangements to expire on 31 July 2021. The Instrument now further amends the reference to the 31 July to align with the policy change agreed by the four administrations, as detailed in paragraph 4 of this EM.

In accordance with the requirements of the Withdrawal Act the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The Instrument will delay the introduction of the pre-notification requirements for relevant goods consisting of products of animal origin from 31 July 2021 to 1 October 2021.

Following a review by officials of the implementation plan for import controls including Sanitary and Phytosanitary (“SPS”) checks on live animals and products of animal origin, a decision has been made to delay the introduction of documentary and physical checks at designated BCPs. This is because since the end of the transition period, businesses and competent authorities have had to adapt and meet extensive new EU and UK requirements when moving goods under the new trading relationship with the EU.

This supports the revised timetable that delays the introduction of documentary and physical checks at designated BCPs. These checks will be introduced in a phased approach (‘the transitional staging period’), from 1 Oct 2021 to 1 March 2022.

This revised timetable will allow businesses and competent authorities more time to prepare as they adapt to the new trading relationships and recover from the longer, deeper impacts of the COVID-19 pandemic.

5. What the instrument does

The Instrument extends the date to which Schedule 5 to the 2011 Regulations remains in force until the end of the transitional staging period, and amends the 31 July 2021 date in paragraphs 5(3) and 6(1)(c) of Schedule 5 and substitutes it for 1 October 2021. This instrument also inserts a reference to the correct definition in legislation for the transitional staging period.

Paragraph 5(3) of Schedule 5 to the 2011 Regulations relates to the pre-notification requirement for relevant goods consisting of products of animal origin.

Paragraph 6(1)(c) of Schedule 5 relates to the requirement that relevant goods consisting of products of animal origins be accompanied by an appropriate

health certificate for third country imports in the form published by the Welsh Ministers or the Secretary of State.

These amendments are needed to ensure alignment with changes being made to the OCR by the UK Government on a GB-wide basis. These proposed changes will in effect delay the introduction of documentary and physical checks at designated BCPs.

6. Consultation

15. Defra, the Scottish and Welsh Governments sent out a private consultation in June 2021, seeking the views of stakeholders on the delay to the implementation of the phased imports regime. The consultation asked whether stakeholders agreed with the delay, or whether they felt that the original planned timeline, with the introduction of full SPS controls, should come into effect as planned from July 31.

16. The changes being made are operability amendments to existing retained EU law to ensure that the law reflects changes made during the transition period and is operable in a UK context. From ongoing conversations, we are aware that industry stakeholders would prefer GB controls on imports from the EU are introduced sooner rather than later, as they generally feel it is unfair that exports from GB have faced such controls by the EU since January 2021. The wider stakeholder responses highlighted the need for clarity to be provided by government, on future border arrangements both on imports and exports, but showed that there is broad and general consensus that the changes being delivered with this SI to the controls timeline are necessary for effective sector readiness, and failure to implement these changes by the end of July as delivered by this instrument would create “impossible” requirements for importers to meet and for competent authorities to deliver.

7. Regulatory Impact Assessment (RIA)

17. The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. Officials considered this is an exceptional and urgent situation. The amendments need to be in place by 30 July to ensure alignment across the UK. Whilst there is discretion in Welsh Ministers’ exercise of statutory powers, taking a divergent approach from the GB-wide imports regime set by UK Government would lead to confusion to traders and disruption to trade. In particular, goods imported into the UK could face different import requirements in different countries within the UK, whilst being able to move freely within the UK once imported. No impact, or no significant impact, on the private, voluntary or public

sector is foreseen, with these regulations affording traders and agencies additional time to prepare for a new regime during a period of recovery from the impacts of Covid, these regulations forming an essential piece of implementing this delay.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sifting | Paragraphs 3(7) and 4(3), Schedule 7 Standing Order 27.1A | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee) |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |

| | | | |
|-------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | committed to make the same statement when exercising powers in Schedule 2 | |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement which the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law. |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the | A statement to explain why it is appropriate to create such a sub-delegated power. |

| | | | |
|---------|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| | | <p>Crown or a Devolved Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p> | |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7 | A statement |

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Rural Affairs and North Wales, and Trefnydd has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Rural Affairs and North Wales, and Trefnydd has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021, and I have concluded they are a reasonable course of action. There are benefits to businesses and local authorities who have to prepare for the new imports regime following the UK’s withdrawal from the EU during the COVID-19 pandemic and recovery period.”

3. Equalities

The Minister for Rural Affairs and North Wales, and Trefnydd has made the following statement:

“The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Rural Affairs and North Wales, and Trefnydd has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021, I, Lesley Griffiths, have had

due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The Explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

The Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my opinion, by reason of urgency, it is necessary to make the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

This is because the Welsh Ministers have concluded that the ‘urgent made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument comes into force before 31 July 2021. If not, from 31 July 2021 importers will have to comply with specific new control measures when importing certain animal commodities.

Using this procedure still allows for scrutiny, and the Senedd will need to approve the Regulations for them to remain in force.”



Ein cyf/Our ref: MA/L/LG/1953/21

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

14 July 2021

Dear Elin,

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021

I have today made the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No.2) Regulations 2021 in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 which come into force on 30 July.

I attach a copy of the statutory instrument which I intend to lay once it has been registered.

In accordance with paragraph 7(3) and 7(4) of Schedule 7 of the European Union (Withdrawal) Act 2018, this instrument must be approved by the Senedd by 5 October 2021 in order for it to remain in effect.

In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 21 September.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Huw Irranca-Davies, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours Sincerely

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's' at the end.

Lesley Griffiths AS/MS

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

SL(6)027 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”).

Regulation 16 of the principal Regulations requires the person responsible for regulated premises to take steps to minimise the risk of exposure to coronavirus, notably taking all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises. This requirement now only applies to indoor premises. However, there remains a requirement for the person responsible for the premises to take reasonable measures to limit close physical interaction between persons on the premises.

Regulation 16 also requires a coronavirus risk assessment to be undertaken. These Regulations now require employers to provide information to their employees on the risks identified in the assessment and the preventive and protective measures being put in place.

Regulation 17 of the principal Regulations sets out particular measures that must be taken by persons responsible for licensed premises. These Regulations amend the requirements so that persons attending regulated gatherings or events at such premises no longer have to be seated to consume food or drink. The same position applies to other types of event: the showing of a film, a live sporting event, and a live theatrical performance. The requirement to be seated in licensed premises remains in force in all other circumstances.

The following changes are made to Schedule 1. This Schedule relates to Alert Level 1 which currently applies to the whole of Wales.

Any six people, or the members of any two households (however many they number) are permitted to meet indoors in private homes and holiday accommodation, even if they are not members of the same household or extended household.

Organised indoor events for up to 1,000 seated or 200 standing can take place (subject to the requirements set out in Regulation 16 of the principal Regulations – as explained above).

The previous limit of 30 on the number of people who are permitted to gather in all outdoor premises is removed (subject to the requirements set out in Regulation 16 of the principal Regulations – as explained above). Up to 30 children (not just primary school children as was the case previously) are permitted to gather at holiday or travel accommodation for well-being, developmental or educational gatherings. Ice rinks are permitted to re-open.



Procedure

Made Affirmative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three 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 Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage 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...These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."

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 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."

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 Memorandum provides that a regulatory impact assessment has not been carried out 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. It goes on to state that a summary impact assessment was prepared and will be published as soon as practicably possible.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

28 July 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 159

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 862 (W. 201)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 14) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”).

The Regulations amend Schedule 1 to the principal Regulations (which sets out the restrictions and requirements that currently have effect in Wales as an Alert Level 1 area) to—

- allow any 6 persons, or the members of no more than 2 households, to gather indoors in private dwellings and holiday or travel accommodation, even if those persons aren’t members of the same extended household (and in determining the

number of persons gathering, no account is to be taken of children under 11 and the carers of persons gathering);

- remove the previous limit of 30 on the number of people that are allowed to gather outdoors (but persons responsible for regulated premises outdoors must still comply with regulation 16 of the principal Regulations by taking all reasonable measures, based on a risk assessment, to minimise the risk of exposure to coronavirus at the premises);
- allow indoor regulated events to be organised, provided that no more than 1,000 (where every person attending is normally seated) or 200 (for other events) people attend at any time;
- removing the restriction on people gathering at a regulated gathering or event held indoors (but again, the person responsible for the premises must comply with the maximum number that can attend and regulation 16 of the principal Regulations, including taking all reasonable measures, based on a risk assessment, to ensure that a distance of 2 metres is maintained between people on the premises, apart from between members of groups of up to 6 people that are gathering together at the event or members of the same household);
- allow up to 30 children (of any age) to gather at holiday or travel accommodation (for example, for overnight stays) where the gathering is related to a regulated gathering for the development or well-being of children, such as those provided for children outside of school hours and during school holidays at places such as outdoor education centres, or is related to a gathering at which the children are participating for the purpose of accessing or receiving education;
- remove the previous limit (of 4,000 or 10,000 people) on the number of people that may attend outdoor regulated events at any time (but event capacities will need to continue to be set in light of the reasonable measures to be taken, based on a risk assessment, under regulation 16 of the principal Regulations);
- allow ice skating rinks to open.

The Regulations also amend regulations 16 and 17 of the principal Regulations.

The amendments to regulation 16 provide that a person responsible for regulated premises must provide information to persons working at the premises about the assessment of the risk of exposure to coronavirus and the measures to be taken to minimise the risk. They also provide that the specific requirement to take all reasonable measures to ensure

that a distance of 2 metres is maintained between people on premises now only applies to indoor premises (but there is still a duty to take reasonable measures to mitigate risks at outdoor premises, which can include limiting close physical interaction between people on the premises).

The amendments to regulation 17 provide that persons attending regulated gatherings or events at licensed premises are not required to be seated when consuming food or drink.

The Regulations also make other minor amendments, including amendments that are consequential on the amendments set out above.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 862 (W. 201)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 14) Regulations
2021**

Made at 3.51 p.m. on 16 July 2021

Laid before Senedd
Cymru at 5.30 p.m. on 16 July 2021

Coming into force 17 July 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021.

(2) These Regulations come into force on 17 July 2021.

Amendment to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 16(1)—

- (a) under the “*Step 2*” heading, after “coronavirus” insert “, including information to those working at the premises about the risk of exposure to coronavirus identified under the assessment undertaken under Step 1, and the measures to be taken under Step 3 and Step 4 to minimise the risk”;
- (b) under the “*Step 3*” heading—
 - (i) in sub-paragraph (a), after “persons” insert “indoors”;
 - (ii) in sub-paragraph (b), after “wait” insert “indoors”;
- (c) under the “*Step 4*” heading—
 - (i) in the words before sub-paragraph (a), for “in close proximity” substitute “on the premises”;
 - (ii) in sub-paragraph (c), in the words before paragraph (i)—
 - (aa) for “face-to-face” substitute “physical”;
 - (bb) after “premises” insert “, in particular face-to-face interaction”.

(3) In regulation 17(4A)—

(1) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40), S.I. 2021/210 (W. 52), S.I. 2021/307 (W. 79), S.I. 2021/413 (W. 133), S.I. 2021/502 (W. 150), S.I. 2021/542 (W. 154), S.I. 2021/583 (W. 160), S.I. 2021/668 (W. 169), S.I. 2021/686 (W. 172) and S.I. 2021/722 (W. 183).

- (a) in the words before sub-paragraph (a), for “Sub-paragraphs (b)(i) and (ii) of paragraph (1) do” substitute “Paragraph (1)(b) does”;
- (b) in sub-paragraph (b), omit “that is held outdoors”.

(4) In Schedule 1—

(a) in paragraph 1—

(i) for sub-paragraph (1) substitute—

“(1) No person may, without a reasonable excuse, participate in a gathering indoors in a private dwelling which consists of more than 6 people unless—

- (a) all the persons participating in the gathering are members of the same household or extended household, or
- (b) where all the persons participating in the gathering are not members of the same household or extended household, all the persons participating in the gathering are members of no more than 2 households.”;

(ii) omit sub-paragraph (1A);

(iii) in sub-paragraph (2)—

- (aa) in the words before paragraph (a), for “(1A)” substitute “(1)”;
- (bb) in paragraph (a), for “30” substitute “6”;

(iv) omit sub-paragraph (5)(d);

(b) in paragraph 2—

(i) for sub-paragraph (1) substitute—

“(1) No person may, without a reasonable excuse, participate in a gathering which takes place indoors other than in a private dwelling or in holiday or travel accommodation which consists of more than 6 people unless all the persons participating in the gathering are members of the same household.”;

(ii) for sub-paragraph (1A) substitute—

“(1) No person may, without a reasonable excuse, participate in a gathering which takes place indoors in holiday or travel accommodation which consists of more than 6 people unless—

- (a) all the persons participating in the gathering are members of the same household or extended household, or
- (b) where all the persons participating in the gathering are not members of the same household or extended household, all the persons participating

- in the gathering are members of no more than 2 households.”;
- (iii) omit sub-paragraph (1B);
- (iv) in sub-paragraph (2)—
 - (aa) in the words before paragraph (a), for “(1B)” substitute “(1A)”;
 - (bb) for paragraph (a) substitute—
 - “(a) any children under the age of 11, as long as the persons participating in the gathering (including any children under the age of 11) are from no more than 6 households, or”;
- (v) in sub-paragraph (5)—
 - (aa) for paragraph (i) substitute—
 - “(i) participating in, attending or facilitating a regulated gathering or event that takes place to any extent indoors other than at holiday or travel accommodation;”;
 - (bb) omit paragraphs (j) and (k);
 - (cc) in paragraph (ka)—
 - (i) in the words before sub-paragraph (i), for “primary school children” substitute “no more than 30 children”;
 - (ii) for paragraph (i) substitute—
 - “(i) a regulated gathering for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);”;
- (vi) omit sub-paragraph (6);
- (c) in paragraph 4—
 - (i) in sub-paragraph (1)—
 - (aa) in paragraph (a), at the end insert “and”;
 - (bb) omit paragraph (b), including the “and” at the end;
 - (cc) in paragraph (c), at the beginning insert “where the event is held to any extent indoors,”;
 - (ii) in sub-paragraph (1A)—
 - (aa) in paragraph (a), for “10000” substitute “1000”;
 - (bb) in paragraph (b), for “4000” substitute “200”;
 - (iii) in sub-paragraph (2)—

- (aa) omit paragraphs (f) and (ga);
- (bb) in paragraph (k), for “all of the people in attendance are members of the same household or extended household.” substitute “—
 - (i) no more than 6 people are in attendance,
 - (ii) all of the people in attendance are members of the same household or extended household, or
 - (iii) where all the people in attendance are not members of the same household or extended household, all of the people in attendance are members of no more than 2 households.”;
- (d) in paragraph 7(1), in the words before paragraph (a), for “, 10 or 11” substitute “or 10”;
- (e) omit paragraph 11.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 3.51 p.m. on 16 July 2021

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) 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 Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021.

Mark Drakeford
First Minister

16 July 2021

1. Description

The Regulations amend the [Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) Regulations 2020](#) (“the principal Regulations”).

2. Matters of special interest to Senedd Cymru

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these Regulations, engage 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to preventing the spread of coronavirus.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections

45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the continued threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the [Coronavirus Control Plan](#). This plan was updated on 14 July 2021.

On 7 June the whole of Wales began to move into Alert Level 1 of the Coronavirus Control Plan as in force at that time. The full move to Alert Level 1 was delayed due to increasing prevalence rates of coronavirus, as a result of the “delta variant”.

Whilst cases of coronavirus are rising in the community, our high vaccination rates mean hospital admissions remain low and we are now able to complete the move to Alert Level 1 of the Coronavirus Control Plan.

The following changes are to be made to Schedule 1 to the principal Regulations to complete the phased move to Alert Level 1 of the Control Plan from 17 July:

- Any six people, or the members of any two households, can meet indoors in private homes and holiday accommodation, even if those persons aren’t members of the same household or extended household.
- Organised indoor events for up to 1,000 seated or 200 standing can take place subject to the requirements in regulation 16 of the principal Regulations being met.
- Ice rinks can re-open.

Schedule 1 to the principal Regulations is also to be amended to-

- remove the previous limit of 30 on the number of people that are allowed to gather in all outdoor premises (but persons responsible for regulated premises outdoors must still comply with regulation 16 of the principal Regulations by taking steps to minimise the risk of exposure to coronavirus at the premises).
- allow up to 30 children (of any age, not just primary school children as was the case previously) to gather at holiday or travel accommodation for well-being, developmental or educational gatherings (e.g. supervised residential visits).

Regulations 16 and 17 of the principal Regulations are also to be amended. These regulations apply across all Alert Levels, and will continue to apply after Wales moves to Alert Level zero as set out in the updated Coronavirus Control Plan published on 14 July.

Regulation 16 of the principal Regulations requires the person responsible for regulated premises to take steps to minimise the risk of exposure to coronavirus. The steps currently include taking all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises. These Regulations adjust the steps so that the requirement to take all reasonable measures to maintain a distance of 2 metres only applies to indoor premises. However, there remains a requirement for the person responsible for the premises to take reasonable measures to limit close physical interaction between persons on the premises. As such, the requirement to ensure physical distancing remains one of a package of measures that may be required to be taken for the purpose of minimising the risk of exposure to coronavirus.

Regulation 16 also requires a coronavirus risk assessment to be undertaken. These Regulations amend the requirements so that employers are now also required to provide information to their employees on the risks identified in the assessment and the preventive and protective measures being put in place. This will mean more information being provided to employees.

Regulation 17 of the principal Regulations sets out particular measures that must be taken by persons responsible for licensed premises. These Regulations amend the requirements so that persons attending regulated gatherings or events at such premises no longer have to be seated to consume food or drink. The same position applies to other types of event: the showing of a film, a live sporting event, and a live theatrical performance. The requirement to be seated in licensed premises remains in force in all other circumstances.

5. Consultation

Given the continued 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 and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

16 July 2021

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984, which come into force on 17 July 2021. I attach a copy of the statutory instrument and I intend to lay this and the accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 7 October 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to include the debate for this item of subordinate legislation in the proposed Plenary business on 21 September 2021.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(6)034 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021

Background and Purpose

These Regulations provide that from 7 August 2021, no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations¹ apply. The effect is that:

- there are no specific limits on the number of people who can gather together, including in private homes and in public places;
- there are no specific limits on the number of people that may attend regulated events at any time;
- there are no requirements for any particular types of businesses or services to close.

However, other restrictions continue to apply, including requirements on persons responsible for regulated premises to take reasonable measures to minimise the risk of exposure to coronavirus at the premises, and requirements to wear face coverings on public transport and in particular indoor public places.

Despite the relaxation of the rules on people gathering and attending events, the reasonable measures that continue to be required on regulated premises mean that those responsible for the premises may need to set limits on the numbers of people who can gather, and on the capacity of events.

These Regulations also amend the requirement for a person to isolate after being notified by a contact tracer that they have had close contact with a person who has tested positive for coronavirus. The Regulations insert a new exemption so that adults are no longer required to isolate after such a notification if they have completed, in the United Kingdom, a course of doses of an authorised vaccine at least 14 days before they had the close contact, or are participating in a clinical trial in the United Kingdom of a vaccine against coronavirus. Also, there is no longer a requirement for persons aged under 18 to isolate after such a notification.

There is no change to the requirements for persons to isolate after being notified that they have tested positive for coronavirus.

¹ The Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020 (S.I. 2020/1609)



The Regulations also:

- provide that the principal Regulations expire at the end of the day on 26 November 2021 (rather than 27 August 2021);
- remove the specific requirement for the person responsible for regulated premises to take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons indoors on the premises (but the person responsible must continue to take all reasonable measures, based on a risk assessment, to minimise the risk of exposure to coronavirus at the premises, which may include physical distancing);
- remove the requirement to wear a face covering in indoor public areas of premises where food or drink is sold for consumption on the premises (but where different types of businesses also operate from such premises, face coverings must still be worn in those parts of the premises where food or drink is not sold for consumption on the premises).

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following two 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 Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to preventing the spread of coronavirus.

These amending Regulations further reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."

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

"Given the continued 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

12 August 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 925 (W. 210)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 15) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”).

The Regulations amend the principal Regulations to provide that from 6.00 a.m. on 7 August 2021, no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations apply. The effect is that:

- there are no specific limits on the number of people who can gather together, including in private homes and in public places;

- there are no specific limits on the number of people that may attend regulated events at any time;
- there are no requirements for any particular types of businesses or services to close.

The restrictions and requirements in other parts (aside from Schedules 1 to 4) of the principal Regulations continue to apply, including requirements on persons responsible for regulated premises to take reasonable measures to minimise the risk of exposure to coronavirus at the premises, and requirements to wear face coverings on public transport and in particular indoor public places.

Despite the relaxation of the rules on people gathering and attending events, the reasonable measures (under regulation 16 of the principal Regulations) that continue to be required on regulated premises mean that those responsible for the premises may need to set limits on the numbers of people who can gather, and on the capacity of events.

These Regulations also amend the requirement in Part 3 of the principal Regulations for a person to isolate after being notified by a contact tracer that they have had close contact with a person who has tested positive for coronavirus. The Regulations insert a new exemption at regulation 10(5) of the principal Regulations to provide that adults are no longer required to isolate after such a notification if they have completed, in the United Kingdom, a course of doses of an authorised vaccine at least 14 days before they had the close contact, or are participating in a clinical trial in the United Kingdom of a vaccine against coronavirus. The amendments also omit regulation 9 of the principal Regulations so that there is no longer a requirement for persons aged under 18 to isolate after such a notification.

The Regulations also insert new regulation 10A into the principal Regulations to provide that where a child, or a person to whom the new exemption at regulation 10(5) applies, is required to isolate immediately before these Regulations come into force after being notified that they have had close contact with a person who has tested positive for coronavirus, the isolation requirement comes to an end at the beginning of the day on 7 August 2021.

There is no change to the requirements for persons to isolate after being notified that they have tested positive for coronavirus.

The Regulations also amend the principal Regulations to—

- provide that the principal Regulations expire at the end of the day on 26 November 2021 (rather than 27 August 2021);
- remove the specific requirement in regulation 16 of the principal Regulations for the person responsible for regulated premises to take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons indoors on the premises (but the person responsible must continue to comply with the remainder of regulation 16 by taking all reasonable measures, based on a risk assessment, to minimise the risk of exposure to coronavirus at the premises, which may include physical distancing);
- remove the specific requirements in regulations 17 and 17A of the principal Regulations for persons responsible for licensed premises and retail premises to take particular measures to minimise the risk of exposure to coronavirus (but again, those persons must continue to comply with regulation 16 of the principal Regulations, and the measures that may be reasonable to take under that regulation may include measures that were previously specifically required to be taken under regulation 17 (for example, requiring customers to be seated when being served with food or drink in licensed premises) or regulation 17A (for example, limiting the number of customers who are on retail premises at any one time));
- remove the requirement to wear a face covering in indoor public areas of premises where food or drink is sold for consumption on the premises (but where different types of businesses also operate from such premises, face coverings must still be worn in those parts of the premises where food or drink is not sold for consumption on the premises).

The Regulations also make other minor amendments, including amendments that are consequential on the amendments set out above.

The Regulations also amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 235)) to change their expiry date to 26 November 2021.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 925 (W. 210)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 15) Regulations
2021**

Made at 12.16 p.m. on 6 August 2021

*Laid before Senedd
Cymru at 4.00 p.m. on 6 August 2021*

*Coming into force in accordance with
regulation 1(2) and (3)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021.

(2) These Regulations, apart from paragraphs (3), (12) to (14), (16) to (18) and (22) to (26) of regulation 2, come into force at the beginning of the day on 7 August 2021.

(3) Paragraphs (3), (12) to (14), (16) to (18) and (22) to (26) of regulation 2 come into force at 6.00 a.m. on 7 August 2021.

Amendment to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 3, for “27 August” insert “26 November”.

(3) After regulation 4(6) insert—

“(6ZA) But Schedule 5 may provide that none of Schedules 1 to 4 apply to an area by specifying that no alert level applies to the area.”

(4) In regulation 5(2), for “regulations 6 and 8” substitute “regulation 6”.

(5) Omit regulation 9.

(6) In regulation 10—

(a) in paragraph (1), for “, 8(2) or 9(2)” substitute “or 8(2)”;

(b) in paragraph (3), for “, 8(2) and 9(2)” substitute “and 8(2)”;

(c) after paragraph (4) insert—

“(5) Regulation 8(2) does not apply to a person who—

⁽¹⁾ S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40), S.I. 2021/210 (W. 52), S.I. 2021/307 (W. 79), S.I. 2021/413 (W. 133), S.I. 2021/502 (W. 150), S.I. 2021/542 (W. 154), S.I. 2021/583 (W. 160), S.I. 2021/668 (W. 169), S.I. 2021/686 (W. 172), S.I. 2021/722 (W. 183) and S.I. 2021/862 (W. 201).

- (a) has completed a course of doses of an authorised vaccine, and—
 - (i) that course of doses was administered to the person in the United Kingdom,
 - (ii) the day on which the person had the close contact which resulted in the notification described in regulation 8(1) is more than 14 days after the day on which the person completed that course of doses, and
 - (b) if requested to do so by the contact tracer who gave the notification described in regulation 8(1), provides evidence that they have completed the course of doses of an authorised vaccine in accordance with sub-paragraph (a).
- (6) Regulation 8(2) does not apply to a person who—
- (a) has participated in, or is participating in, a clinical trial of a vaccine for vaccination against coronavirus carried out in the United Kingdom in accordance with the requirements of the Medicines for Human Use (Clinical Trials) Regulations 2004⁽¹⁾, and
 - (b) if requested to do so by the contact tracer who gave the notification described in regulation 8(1), provides evidence that they have participated in, or are participating in, a clinical trial in accordance with sub-paragraph (a).
- (7) For the purposes of paragraph (5), a person has completed a course of doses if that person has received the complete course of doses specified—
- (a) in the summary of product characteristics approved as part of the marketing authorisation for the authorised vaccine, or
 - (b) in the instructions for usage approved as part of the authorisation by the licensing authority on a temporary basis under regulation 174 of the

(1) S.I. 2004/1031 as amended by section 116 of the Care Act 2014 (c. 23) and by S.I. 2004/3224, S.I. 2005/2754, S.I. 2005/2759, S.I. 2006/562, S.I. 2006/1928, S.I. 2006/2984, S.I. 2007/289, S.I. 2007/3101, S.I. 2008/941, S.I. 2010/231, S.I. 2010/551, S.I. 2010/1882, S.I. 2011/2581, S.I. 2012/134, S.I. 2012/504, S.I. 2012/1641, S.I. 2012/1916, S.I. 2013/532, S.I. 2016/190, S.I. 2016/696, S.I. 2019/593, S.I. 2019/744, S.I. 2019/1094 and S.I. 2020/1488.

Human Medicines Regulations 2012⁽¹⁾
for the authorised vaccine.

(8) In this regulation—

- (a) “authorised vaccine” means a medicinal product—
 - (i) authorised for supply in the United Kingdom in accordance with a marketing authorisation, or
 - (ii) authorised by the licensing authority on a temporary basis under regulation 174 of the Human Medicines Regulations 2012,
- for vaccination against coronavirus;
- (b) “clinical trial” has the meaning given in regulation 2(1) of the Medicines for Human Use (Clinical Trials) Regulations 2004;
- (c) “the licensing authority” has the meaning given in regulation 6(2) of the Human Medicines Regulations 2012;
- (d) “marketing authorisation” has the meaning given in regulation 8(1) of the Human Medicines Regulations 2012;
- (e) “medicinal product” has the meaning given in regulation 2 of the Human Medicines Regulations 2012.”

(7) After regulation 10 insert—

“Transitional provision: isolation requirements

10A. Where—

- (a) a person—
 - (i) satisfies the conditions in regulation 10(5) or (6), or is a child, and
 - (ii) is required to not leave or be outside of the place where the person is living by virtue of regulation 8(2) or 9(2) immediately before 7 August 2021, and
- (b) the last day of the person’s isolation (as determined in accordance with regulation 8(4) or (5) or regulation 9(4) or (5)) is 7 August 2021 or later,

(1) S.I. 2012/1916.

the requirement to not leave or be outside of the place where the person is living comes to an end at the beginning of 7 August 2021.”

(8) In regulation 11—

- (a) in paragraph (1)(a), omit “or 9(2)”;
- (b) in paragraph (5)(b), omit “or 9 as the case may be”;
- (c) omit paragraph (6).

(9) In regulation 12, omit “or 9(2)”.

(10) In regulation 13(1)(a), for “, 8(1) or 9(1)” substitute “or 8(1)”.

(11) In regulation 14—

- (a) in paragraph (2)(a), in the words before paragraph (i), for “, 8(2) or 9(2)” substitute “or 8(2)”;
- (b) in paragraph (2)(a)(ii), for “, 8(1) or 9(1)” substitute “or 8(1)”;
- (c) in paragraph (2)(a)(iii), for “, 8 or 9” substitute “or 8”.

(12) In regulation 16—

(a) in paragraph (1)—

(i) omit—

“Take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons indoors on the premises, except between members of a permitted group;
- (b) where persons are required to wait indoors to enter the premises, that a distance of 2 metres is maintained between them, except between members of a permitted group.

Step 4”;

(ii) under the “*Step 2*” heading, omit “and *Step 4*”.

- (b) omit paragraph (2);
- (c) in paragraph (5)(a), for “regulations 16, 17 and 17A” substitute “regulation 16”;
- (d) omit paragraph (6).

(13) Omit regulations 17 and 17A.

(14) In regulation 18(1), omit “, 17(1) or 17A”.

(15) In regulation 19—

- (a) in paragraph (1), for “on” substitute “in an indoor part of”;
- (b) omit paragraph (3)(c)(i), including the “or” at the end.

(16) In regulation 20—

- (a) in paragraph (1), after “access” insert “, other than premises where food or drink is sold, or otherwise provided, for consumption on the premises”;
- (b) omit paragraph (3)(h);
- (c) after paragraph (3) insert—
 - “(4) For the purposes of paragraph (1), where—
 - (a) a business (“business A”) sells, or otherwise provides, food or drink for consumption on the business premises,
 - (b) business A forms part of a larger business (“business B”), and
 - (c) business B also carries on its business on the premises, but does not sell, or otherwise provide, food or drink for consumption on those premises,
 P is to be treated as being in premises where food or drink is sold, or otherwise provided, for consumption on the premises only where P is in the part of the premises at which business A carries on its business.”
- (17) In regulation 25(3)(a)(i), omit “, 17(1) or 17A”.
- (18) In regulation 26, omit “, 17(1) and 17A”.
- (19) In regulation 30, in the words before sub-paragraph (a), for “, 8(2) or 9(2)” substitute “or 8(2)”.
- (20) In regulation 40—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (a), omit “, 9(2)”;
 - (ii) in sub-paragraph (b), for “, 8(3) or 9(3)” substitute “or 8(3)”;
 - (b) in paragraph (2)(a), for “, 8(3) or 9(3)” substitute “or 8(3)”.
- (21) In regulation 57(5), after sub-paragraph (a) insert—
 - “(aa) a vehicle, or a part of a vehicle, is indoors if it is enclosed within the meaning given by that regulation;”.
- (22) In Schedule 1, paragraph 5(4A), for “regulations 16, 17 and 17A” substitute “regulation 16”.
- (23) In Schedule 2, paragraph 5(4A), for “regulations 16, 17 and 17A” substitute “regulation 16”.
- (24) In Schedule 3, paragraph 6(4A), for “regulations 16, 17 and 17A” substitute “regulation 16”.
- (25) In Schedule 5, in Column 3, for “1” substitute “No alert level”.
- (26) In Schedule 8—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1)(a), omit “, 17 or 17A”;
 - (ii) in sub-paragraph (2)(b), omit “, 17 or 17A”;
- (b) in paragraph 2—
 - (i) in sub-paragraph (3)(a), omit “, 17 or 17A”;
 - (ii) in sub-paragraph (4)(b)(ii), omit “, 17 or 17A”;
 - (iii) in sub-paragraph (4)(c), omit “, 17 or 17A”;
- (c) in paragraph 3(3)(c), omit “and, where relevant, regulation 17 or 17A”;
- (d) in paragraph 4(1)(b), omit “and, where relevant, regulation 17 or 17A”.

Amendment to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

3. In regulation 3(1) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020⁽¹⁾, for “27 August” substitute “26 November”.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 12.16 p.m. on 6 August 2021

⁽¹⁾ S.I. 2020/1011 (W. 225) as amended by S.I. 2020/1100 (W. 250), S.I. 2020/1149 (W. 261), S.I. 2020/1219 (W. 276), S.I. 2020/1409 (W. 311), S.I. 2020/1609 (W. 335), S.I. 2021/57 (W. 13), S.I. 2021/307 (W. 79), S.I. 2021/542 (W. 154) and S.I. 2021/583 (W. 160).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) 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 Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021.

Mark Drakeford
First Minister

6 August 2021

1. Description

The Regulations amend the [Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) Regulations 2020](#) (“the principal Regulations”) and the [Health Protection \(Coronavirus Restrictions\) \(Functions of Local Authorities etc.\) \(Wales\) Regulations 2020](#).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these Regulations, engage 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to preventing the spread of coronavirus.

These amending Regulations further reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the continued threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the [Coronavirus Control Plan](#). This plan was updated on 14 July 2021 to set out how Wales will move beyond Alert Level One to a set of baseline restrictions, being referred to Alert Level Zero.

On 17 July the whole of Wales completed a phased move into Alert Level 1.

These Regulations now further amend the principal Regulations so that from 6.00am on 7 August, no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations applies. As such:

- all the remaining legal limits and caps on the number of people who can gather together (including in private homes, public places or at events) are removed; and
- there are no requirements for any particular types of businesses and services to close, so nightclubs and adult entertainment venues may reopen.

Whilst none of the alert level restrictions and requirements set out in Schedules 1 to 4 of the principal Regulations currently apply, the other restrictions and requirements continue, subject to certain amendments. As set out in the Explanatory Note to the Regulations (being made today) this includes the:

...requirements on persons responsible for regulated premises to take reasonable measures to minimise the risk of exposure to coronavirus at the premises, and requirements to wear face coverings on public transport and in particular indoor public places.

It will be for each business operator and organisation to determine, on the outcome of their risk assessment, the reasonable measures that they should have in place to control the spread of coronavirus (including in relation to limiting close physical interaction between persons on the premises). This may mean that individual premises may set limits on the numbers of people who can gather, and on the capacity of events.

Under the Regulations, face coverings will no longer be required to be worn in hospitality settings.

These Regulations also amend (from the beginning of 7 August) the requirements for persons to isolate after being notified by a contact tracer that they have had close contact with a person who has tested positive for coronavirus: persons under 18 will no longer be required to isolate if contacted, and adults will no longer be required to isolate if contacted by a tracer if they:

- a) have received both doses of a coronavirus vaccine (in the UK) at least 14 days before they were contacted; or
- b) are participating in a clinical trial in the UK of a coronavirus vaccine.

If a person has been notified that they have tested positive for coronavirus, they must continue to isolate. These Regulations do not amend this requirement.

In addition to making minor technical and consequential amendments to the principal Regulations, these Regulations also amend the expiry date of the principal Regulations and the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to 26 November 2021.

5. Consultation

Given the continued 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 and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.



Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

6 August 2021

Dear Elin,

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 15) Regulations 2021

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984, which comes into force at the beginning of 7 August in part, and at 6.00 a.m. on the same day for the remaining purposes. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 10 October 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 21 September 2021.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(6)041 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 16) Regulations 2021

Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) ("the principal Regulations").

The amendments make the following changes.

- (i) It will no longer be a requirement for persons to wear a face-covering when attending the solemnisation of a marriage, the formation of a civil partnership or an alternative wedding ceremony.
- (ii) the requirement on those responsible for election campaigning to take reasonable measures to minimise risk is amended so that it more closely reflects similar requirements placed on persons responsible for premises. The requirement to maintain a distance of two metres between persons campaigning is specifically removed.
- (iii) Part 6 of the principal Regulations are omitted. These provided for circumstances in which schools were required to be open to allow the children of critical workers or vulnerable children to attend.
- (iv) Finally, the amendments add clarity as regards the reasonable measures listed at sub-paragraph (a)(ii) under Step 3 of regulation 16(1) of the principal Regulations. The reference to preventing "any person who has had close contact in the previous 10 days with a person who has tested positive for coronavirus" is now a reference only to those close contacts who are required to isolate in accordance with regulation 8(2) of the principal Regulations.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the



Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following two 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 Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."



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 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

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

31 August 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 970 (W. 228)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 16) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”) to—

- clarify that in the reasonable measure listed at sub-paragraph (a)(ii) under Step 3 of regulation 16(1) of the principal Regulations, the reference to preventing “any person who has had close contact in the previous 10 days with a person who has tested positive for coronavirus” is a reference to only those close contacts who are required to isolate in accordance with regulation 8(2) of the principal Regulations;

- amend the requirement on those responsible for election campaigning to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, so that it more closely reflects similar requirements placed on persons responsible for premises;
- remove the requirement to wear a face covering when attending a marriage, civil partnership or alternative wedding ceremony;
- omit Part 6 of the principal Regulations, which provides for circumstances in which schools may be required to be open when they may otherwise be closed to allow children of critical workers or children who are vulnerable to attend.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 970 (W. 228)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 16) Regulations
2021**

Made at 2.40 p.m. on 27 August 2021

Laid before Senedd Cymru
at 5.30 p.m. on 27 August 2021

Coming into force 28 August 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 16) Regulations 2021.

(2) These Regulations come into force on 28 August 2021.

Amendment to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 16(1), under the “*Step 3*” heading, in sub-paragraph (a)(ii), for “has had close contact in the previous 10 days with a person who has tested positive for coronavirus” substitute “is required to not leave or be outside of the place where the person is living by virtue of regulation 8(2)”.

(3) In regulation 18A(2)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (b), in the words before paragraph (i), for “other measures which limit close face-to-face interaction and” substitute “measures which limit close physical interaction between persons participating in the gathering, in particular face-to-face interaction, and measures to”.

(4) In regulation 20(2), after sub-paragraph (a) insert—

“(aa) where P is attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony;”.

(5) Omit Part 6.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 2.40 p.m. on 27 August 2021

⁽¹⁾ S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40), S.I. 2021/210 (W. 52), S.I. 2021/307 (W. 79), S.I. 2021/413 (W. 133), S.I. 2021/502 (W. 150), S.I. 2021/542 (W. 154), S.I. 2021/583 (W. 160), S.I. 2021/668 (W. 169), S.I. 2021/686 (W. 172), S.I. 2021/722 (W. 183), S.I. 2021/862 (W. 201) and S.I. 2021/925 (W. 210).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 16) 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 Restrictions) (No. 5) (Wales) (Amendment) (No. 16) Regulations 2021.

Mark Drakeford
First Minister

27 August 2021

1. Description

The Regulations amend the [Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) Regulations 2020](#) (“the principal Regulations”).

2. Matters of special interest to Senedd Cymru

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these Regulations, engage 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the [Explanatory Memorandum](#) to the principal Regulations.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the [Coronavirus Control Plan](#). This plan was last updated on 16 July 2021.

The principal Regulations are now amended, with effect from the beginning of 28 August 2021, as follows:

- it will no longer be a requirement for persons to wear a face-covering when attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony. Those in attendance will still be expected to follow reasonable measures that the person responsible for a regulated premise or organising the event have put in place to minimise the risk of exposure to coronavirus.
- clarify that in the reasonable measures (listed at sub-paragraph (a)(ii) under Step 3 of regulation 16(1) of the principal Regulations), the reference to preventing *“any person who has had close contact in the previous 10 days with a person who has tested positive for coronavirus”* is a reference to only those close contacts who are required to isolate in accordance with regulation 8(2) of the principal Regulations
- the requirement on those responsible for election campaigning to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, is amended so that it more closely reflects similar requirements placed on persons responsible for premises;
- Part 6 of the principal Regulations, which provides for circumstances in which schools may be required to be open when they may otherwise be closed to allow children of critical workers or children who are vulnerable to attend, is omitted.

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 and other impact assessments

A regulatory impact assessment has not been prepared 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. However, a summary impact assessment was prepared and considered as part of the 21 day coronavirus review process in order to inform the decisions made. The summary impact assessment will be published as soon as practicably possible.



Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

27 August 2021

Dear Elin,

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 16) Regulations 2021

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984, which come into force at the beginning of 28 August 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 10 October 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 21 September 2021.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 4.1

SL(6)031 - The Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations amend the following statutory instruments relating to food and drink standards and labelling:

- The Food Information (Wales) Regulations 2014; and
- The Country of Origin of Certain Meats (Wales) Regulations 2015

The amendments are required to address deficiencies arising from EU Exit and ensure that the statute book can operate effectively following the UK's exit from the EU.

Procedure

Negative.

These Regulations are made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

These Regulations were laid for sifting before a committee of Senedd Cymru in accordance with Standing Order 27.9A.

On 12 July 2021 the Sifting Committee agreed that the appropriate procedure for these Regulations is the negative resolution procedure.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is 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

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 August 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

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W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 911 (W. 207)

**EXITING THE EUROPEAN
UNION, WALES**

FOOD, WALES

**The Food and Drink (Transitional
Provisions) (Wales) (EU Exit)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations insert transitional provisions into subordinate legislation applying in relation to Wales in the field of food and drink standards and labelling and relate to amendments to retained EU law made by other EU Exit statutory instruments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 911 (W. 207)

**EXITING THE EUROPEAN
UNION, WALES**

FOOD, WALES

**The Food and Drink (Transitional
Provisions) (Wales) (EU Exit)
Regulations 2021**

Sift requirements satisfied 12 July 2021

Made 28 July 2021

Laid before Senedd
Cymru 30 July 2021

Coming into force 23 August 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(1).

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate Senedd Cymru(2) procedure for these Regulations) have been satisfied.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in

(1) 2018 c. 16. There are amendments to paragraph 1 of Schedule 2 which are not relevant to these Regulations. Paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(2) The reference in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

matters of food safety⁽¹⁾ there has been open and transparent public consultation during the preparation of these Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021.

(2) These Regulations come into force on 23 August 2021.

The Food Information (Wales) Regulations 2014

2. In the Food Information (Wales) Regulations 2014⁽²⁾, after regulation 14 insert—

“Transitional provisions: withdrawal from the EU

15.—(1) An authorised officer of a food authority must not serve on a person an improvement notice relating to a failure to comply with Article 9(1)(h), and Article 9(1)(i) as read with Article 26(3), if—

- (a) the improvement notice would relate to a product that was placed on the market on or before 30 September 2022, and
- (b) the matter would not have constituted a failure to comply with those provisions as they had effect immediately before IP completion day.

(2) An authorised officer of a food authority must not serve on a person an improvement notice relating to a failure to comply with Article 7(1) or Article 36(2)(a) or (b) if—

- (a) the improvement notice would relate to a specified product that was placed on the market before IP completion day, and
- (b) the labelling of the specified product would not have constituted a failure to comply with those provisions as they had effect immediately before IP completion day.

(3) Products to which paragraph (1) or (2) applies may continue to be marketed until stocks are exhausted.

(1) EUR 2002/178, to which there are amendments not relevant to these Regulations.

(2) S.I. 2014/2303 (W. 227), to which there are amendments not relevant to these Regulations.

(4) An authorised officer of a food authority must not serve on a person an improvement notice relating to a failure to comply with Article 7(1) or Article 36(2)(a) or (b) if—

- (a) the improvement notice would relate to a specified product placed on the market within the period beginning with IP completion day and ending on 31 December 2023, and
- (b) the labelling of the specified product would not have constituted a failure to comply with those provisions as they had effect immediately before IP completion day.

(5) Wine products to which paragraph (4) applies may continue to be marketed until stocks are exhausted.

(6) Other products to which paragraph (4) applies may continue to be marketed until 31 December 2023.

(7) In this regulation—

“improvement notice” (*“hysbysiad gwella”*) means an improvement notice pursuant to regulation 12(1);

“specified product” (*“cynnyrch penodedig”*) means an individually identifiable product, including a wine product, bearing an indication listed in point 5, 6 or 7 of Annex 10 to Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs⁽¹⁾ as that Regulation had effect immediately before IP completion day;

“wine product” (*“cynnyrch gwin”*) means a product to which Part 2 of Annex 7 to Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products⁽²⁾ as that Regulation had effect immediately before IP completion day applies.”

(1) OJ No L 179, 19.6.2012, p. 36.

(2) OJ No L 347, 20.12.2013, p. 671, as last amended by Regulation (EU) No 2020/2220 (OJ No L 437, 28.12.2020, p. 1).

The Country of Origin of Certain Meats (Wales) Regulations 2015

3. In the Country of Origin of Certain Meats (Wales) Regulations 2015(1), after regulation 6 insert—

“Transitional provision: withdrawal from the EU

7.—(1) An authorised officer must not serve on a person an improvement notice relating to a failure to comply with the second subparagraph of Article 5(1), Article 6 or Article 7 if—

- (a) the improvement notice would relate to a product that was placed on the market before IP completion day; and
- (b) the matter constituting the alleged failure to comply would not have constituted a failure to comply with those provisions as they had effect immediately before IP completion day.

(2) An authorised officer must not serve on a person an improvement notice relating to a failure to comply with the second subparagraph of Article 5(1), Article 6 or Article 7 if—

- (a) the improvement notice would relate to a product placed on the market on or before 30 September 2022;
- (b) the product bears one of the indications provided for in those provisions as they had effect immediately before IP completion day; and
- (c) the use of the indication would not constitute a failure to comply with those provisions as they had effect immediately before IP completion day.

(3) In this regulation, “improvement notice” (*“hysbysiad gwella”*) means an improvement notice pursuant to regulation 6(1) as read with Part 1 of the Schedule to these Regulations.”

Lynne Neagle

Deputy Minister for Mental Health and Wellbeing
under authority of the Minister for Health and Social
Services, one of the Welsh Ministers
28 July 2021

(1) S.I. 2015/1519 (W. 177), to which there are amendments not relevant to these Regulations.

Explanatory Memorandum to the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021.

I have made the statements required by the European Union (Withdrawal) Act 2018. The statements can be found in Part 2 of the Annex to this Memorandum.

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing

30 July 2021

PART 1

1. Description

- 1.1. The Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 ("this Instrument") amend the Food Information (Wales) Regulations 2014 and the Country of Origin of Certain Meats (Wales) Regulations 2015. These amendments are required to address deficiencies arising from EU Exit and to ensure that the statute book can operate effectively following the UK's exit from the EU.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").
- 2.2 This instrument was laid for sifting before a committee of Senedd Cymru in accordance with Standing Order 27.9A.
- 2.3 On 12 July 2021 the Sifting Committee agreed that the appropriate procedure for this instrument is the negative resolution procedure (<https://senedd.wales/media/1czie5tb/cr-ld14443-e.pdf>).

3. Legislative background

- 3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act which provides any power to make regulations under the 2018 Act includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision. In accordance with the requirements of that Act the Deputy Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before Implementation Period Completion Day (IPCD)?

Food Information (Wales) Regulations 2014

These Regulations, in relation to Wales, provide for the execution and enforcement of certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulation (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC,

Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.

Regulation (EU) No. 1169/2011 brought EU rules on general and nutrition labelling together into a single Regulation to simplify and consolidate existing labelling legislation and sets out the requirements for the labelling, advertising and presentation of foodstuffs.

Country of Origin of Certain Meats (Wales) Regulations 2015

These Regulations, in relation to Wales, provide for the execution and enforcement of Implementing Regulation (EU) No. 1337/2013, laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry.

Why is it being changed?

The changes made by this Instrument are necessary to ensure that the domestic legislation enforcing the retained EU law continues to operate effectively following the UK's withdrawal from the EU and to add a transitional adjustment period that will end on 30 September 2022 for certain changes.

The specific changes being proposed to the Regulations detailed at 1.1 above are as follows:

What will it now do?

Food Information (Wales) Regulations 2014

- Insert a 21 months transitional provision into the legislation, ensuring an authorised officer must not serve an improvement notice relating to non-compliance with labelling changes if the products was placed on the market on or before 30 of September 2022.

Country of Origin of Certain Meats (Wales) Regulations 2015

- Insert a 21 months transitional provision into the legislation, ensuring an authorised officer must not serve an improvement notice relating to non-compliance with labelling changes if the products was placed on the market on or before 30 September 2022.

5. Consultation

Several FSA and Defra consultations have been published over the last few years in relation to proposed changes to laws as a consequence of leaving the EU. Industry and local authorities in Wales are aware of these proposals and are supportive. The

concept of the transitional adjustment period ending on 30 September 2022 is already in the public domain.

6. Regulatory Impact Assessment (RIA)

- 6.1 An Impact Assessment has not been prepared for this instrument as its purpose is to maintain the operability of the existing regimes. No significant impact on the private, voluntary or public sectors is foreseen as a result of these Regulations.
- 6.2 This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

Annex 1

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sifting | Paragraphs 3(7) and 4(3), Schedule 7 Standing Order 27.1A | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee) |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |

| | | | |
|-------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | committed to make the same statement when exercising powers in Schedule 2 | |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law. |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. | A statement to explain why it is appropriate to create such a sub-delegated power. |

| | | | |
|---------|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority | |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7 | A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion. |

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Deputy Minister for Mental Health and Wellbeing has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure).”

There is no change to policy.

2. Appropriateness statement

The Deputy Minister for Mental Health and Wellbeing has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate.”

This is the case because all the changes being made are solely in order to maintain operational effectiveness following the exit from the EU. There is no change to policy.

3. Good reasons

The Deputy Minister for Mental Health and Wellbeing has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

These are that failure to make this legislation would result in Welsh legislation relating to food hygiene and safety, food compositional standards and labelling and seeds failing to operate effectively following the UK's departure from the EU.

4. Equalities

The Deputy Minister for Mental Health and Wellbeing has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006, or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Deputy Minister for Mental Health and Wellbeing has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lynne Neagle, Deputy Minister for Mental Health and Wellbeing, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021**

DATE **12 July 2021**

BY **Lesley Griffiths MS, Minister for Rural Affairs and North Wales and Trefnydd.**

SI laid in Parliament, which amends Retained EU Law and secondary legislation in a devolved area

The Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021

The 2021 Regulations amend the following retained European Union (“EU”) legislation:

EU Legislation amended

- Regulation (EC) No 1308/2013 of the European Parliament and of the Council

Domestic Legislation amended

- The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulation 2020 (S.I. 2020 No. 1452)
- The direct amendment to Regulation (EU) No 1308/2013 is supported by a revocation of regulation 6(3) of S.I. 2020/1452. That amendment was rendered ineffective by regulation 7(4) of S.I. 2020/1446 and is being removed for clarity.

Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence

Welsh Government officials are of the view that the 2021 Regulations contain provisions, which are within the scope of the Senedd’s legislative competence, and as such the related functions should not be solely for the Secretary of State.

DEFRA take the view that amendments in the 2021 Regulations relate to reserved matters. On this basis, DEFRA intend to transfer various functions relating to Wine GIs to the Secretary of State.

The purpose of the amendments

The purpose of the 2021 Regulations is to address deficiencies in retained EU law. The instrument makes a correction to the legislation governing the wine geographical indications (“GIs”) scheme. It corrects Article 107 of Regulation (EU) No 1308/2013, concerning protected wine names and traditional terms. Article 107 was amended by regulation 7 of S.I. 2019/828, which was subsequently amended by S.I. 2020/1452. However, regulation 7 of S.I. 2019/828 was omitted in error by S.I. 2020/1446, meaning that the amendments to Article 107 did not come into effect on the last day of the transition period as intended. These regulations make equivalent amendments to Article 107 to those intended to come into force on 31 December 2020. However this has resulted in a change in the UK scheme registration date for most GI wines and traditional terms – from 31 December 2020 to 10 March 2021.

The correction will ensure that all established wine GIs and traditional terms are protected and appear on the public register of wines and traditional terms protected in GB. This in turn ensures that the UK Government fully complies with its GI commitments under the EU Withdrawal Agreement.

The 2021 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments are available here:

Insert link

<https://www.legislation.gov.uk/ukxi/2021/279/memorandum/contents>

Response to the UK Government

The Welsh Government’s position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2021 Regulations is reserved. Therefore, the UK Government has not sought the consent of Welsh Ministers.

The Welsh Government’s view is that the above functions directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Intergovernmental Agreement, the consent of Welsh Ministers should have been sought prior to laying the 2021 Regulations.

The Welsh Ministers have written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence.

UK MINISTERS ACTING IN DEVOLVED AREAS

001 - The Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021

Laid in the UK Parliament: 10 March 2021

Sifting

| | |
|----------------------------------------------------------------------------------------|------------------|
| Subject to sifting in UK Parliament? | No |
| Procedure: | Made affirmative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | N/A |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | N/A |
| Date sifting period ends in UK Parliament | N/A |
| SICM under SO 30A (because amends primary legislation) | Not required |

Scrutiny procedure

| | |
|--------------------------------------------------------------------------------------|------------------|
| Outcome of sifting | N/A |
| Procedure | Made affirmative |
| Date of consideration by the Joint Committee on Statutory Instruments | 24 March 2021 |
| Date of consideration by the House of Commons Statutory Instruments Committee | Not known |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | 23 March 2021 |

Background

These Regulations were made on 9 March 2021 by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("EUWA").

Summary

These Regulations make a correction to the legislation governing the wine geographical indications ("GIs") scheme. The need for the correction arises from an error made in a previous statutory instrument which made operability amendments to retained EU legislation to take effect at the end of the transition period.

The Explanatory Memorandum for the Regulations states that they were made under an urgent procedure under paragraph 5(3) of Schedule 7 of EUWA, meaning that they were made without a draft of the Regulations being laid before, and approved by resolution of, each House of Parliament. The Explanatory Memorandum goes on to state that this procedure was used because the Regulations needed to enter into force

as soon as possible to secure the proper functionality of the wine GI scheme and ensure that relevant GIs are protected under domestic law in accordance with the EU Withdrawal Agreement.

GIs are a form of intellectual property protection for the names of food, drink and agricultural products with qualities or characteristics which are attributable to the place they are produced and/or the traditional methods by which they are made. UK examples include: Scotch Whisky, English and Welsh Wine, Welsh Lamb and Lough Neagh Eels. Having GI status gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 12 July 2021 regarding the effect of these Regulations.

The Welsh Government's position is that agriculture and the Common Agricultural Policy ("CAP") are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the written statement confirms that the UK Government does not agree and believes the subject matter of the Regulations is reserved. Therefore, the UK Government has not sought the consent of Welsh Ministers.

The Welsh Government's view is that the above functions directly relate to the objectives of the Common Market Organisations to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Intergovernmental Agreement on the European Union (Withdrawal) Bill, the consent of Welsh Ministers should have been sought prior to laying the Regulations.

The Welsh Ministers have written to the UK Government to inform them of their view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Health Security (EU Exit) Regulations 2021**

DATE **14 July 2021**

BY **Lesley Griffiths MS, Minister for Rural Affairs, North Wales and Trefnydd**

The Health Security (EU Exit) Regulations 2021

Policy Overview of the SI:

Whilst public health protection and health security is a devolved competency in the UK, all four nations were required to comply with EU law on health security. The Health Security (EU Exit) Regulations 2021 addresses failures of retained European Union (EU) law on health security and provides a legislative regime for epidemiological surveillance and response to serious cross border health threats to ensure a coordinated response within the UK to human health protection as well as to provide an effective response to international obligations. They were laid before the UK Parliament on the 7th June: [Timeline - SI 2021 - Statutory Instruments - UK Parliament](#)

The Regulations implement the health security arrangements agreed between the UK and the EU under the UK-EU Trade and Cooperation Agreement (TCA). The Regulations are also necessary to ensure the UK can best meet its international obligations under the International Health Regulations (2005) (an international treaty requiring all World Health Organization Member States to work together for global health security).

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Law which is being amended:

- Regulation EC No. 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control;
- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC;
- Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning and response system established in relation to serious cross-border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision 1082/2013;
- Commission Implementing Decision (EU) 2018/945 of 22 June 2018 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions.

The purpose of the amendments

These regulations revoke and restate, with modifications, retained EU law on health security and establish a standalone regime to ensure the four UK nations continue to co-ordinate on data sharing, epidemiological surveillance and the collective approach to the prevention and control of serious cross-border threats to health. This will maintain the UK's health security capability domestically, supporting a coordinated response by the UK authorities to serious cross-border health threats which pose a risk to the UK population, in order to ensure a high level of human health protection.

Crucially, the regulations will provide for more specific implementation of the health security arrangements agreed with the EU under the TCA. These arrangements support effective future working and information sharing between the UK and the EU in the event of a serious cross-border threat to health.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: [The Health Security \(EU Exit\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2021/12/1/1)

Any impact the SI may have on the Welsh Ministers' executive competence

The legislative regime to be put in place across the UK, is intended to ensure the continued sharing of comparable and compatible information with respect to serious cross-border threats to health for the purposes of coordination and collaboration. The arrangements are based on existing strong collaborative working between England, Scotland, Wales and Northern Ireland and will support continued health security for the whole of the UK.

The Welsh Government remains responsible for public health protection and health security policies in Wales. Public Health Wales remains a distinct delivery organisations with operational autonomy and is accountable to the Welsh Government. The legislation will not prevent the Welsh Government or Public Health Wales from implementing different public health measures or undertaking additional surveillance for health protection purposes.

Any impact the SI may have on the legislative competence of the Senedd

The SI has no impact on the Senedd's legislative competence.

Why consent was given

It is appropriate for UK Government to correct deficiencies in retained EU law on Welsh Ministers behalf in this instance, as there is no policy divergence between UK and Welsh Government. It is also appropriate for there to be a UK wide system to respond to emerging health threats.

Whilst the Regulations will transfer some functions from the EU Commission to a newly established UK Health Protection Committee and some to the Secretary of State, we consider this is appropriate in the circumstances. Moreover, the Secretary of State will have to obtain the consent of the Welsh Ministers (and other Devolved Nations) before exercising any of the functions. This will ensure a UK-wide approach will have to be agreed before functions can be exercised. Similarly in relation to the UK Health Protection Committee's functions, the Committee will consist of representatives of the Welsh Ministers and from Public Health Wales and, therefore, Welsh views and interests will be represented.

UK MINISTERS ACTING IN DEVOLVED AREAS

002 - The Health Security (EU Exit) Regulations 2021

Laid in the UK Parliament: 7 June 2021

Sifting

| | |
|----------------------------------------------------------------------------------------|-------------------|
| Subject to sifting in UK Parliament? | No |
| Procedure: | Draft affirmative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | N/A |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | N/A |
| Date sifting period ends in UK Parliament | N/A |
| SICM under SO 30A (because amends primary legislation) | Not required |

Scrutiny procedure

| | |
|--------------------------------------------------------------------------------------|-------------------|
| Outcome of sifting | N/A |
| Procedure | Draft affirmative |
| Date of consideration by the Joint Committee on Statutory Instruments | 16 June 2021 |
| Date of consideration by the House of Commons Statutory Instruments Committee | Not known |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | 22 June 2021 |

Background

The Health Security (EU Exit) Regulations 2021 (“the Regulations”) are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and section 31 of the European Union (Future Relationship) Act 2020 (“the 2020 Act”).

Summary

The Regulations address failures of retained EU law to operate effectively in a domestic context. They revoke and restate, with modifications, retained EU law on health security and establish a standalone regime to ensure the four UK nations continue to co-ordinate on data sharing, epidemiological surveillance and the collective approach to the prevention and control of serious cross-border threats to health. Whilst public health protection and health security is devolved in the UK, all four nations were previously required to comply with EU law on health security. The Regulations were laid before the UK Parliament on the 7th June.

The Regulations implement the health security arrangements agreed between the UK and the EU under the UK-EU Trade and Cooperation Agreement (“TCA”). The Regulations are also necessary to ensure the UK can best meet its international obligations under the International Health Regulations (2005) (an international treaty requiring all World Health Organization Member States to work together for global health security). Crucially, the Regulations will provide for more specific implementation of the health security arrangements agreed with the EU under the TCA. These arrangements support effective future working and information sharing between the UK and the EU in the event of a serious cross-border threat to health.

The functions previously exercised by the EU have been modified and transferred to a new UK Health Protection Committee and to the UK Health Security Agency, acting in cooperation with the public health agencies for the other parts of the UK.

The retained EU law being amended is:

- Regulation EC No. 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control;
- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC;
- Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning and response system established in relation to serious cross-border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision 1082/2013; and
- Commission Implementing Decision (EU) 2018/945 of 22 June 2018 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 14 July 2021 regarding the effect of these Regulations.

The Welsh Government states:

“The SI has no impact on the Senedd’s legislative competence.”

However, it is not clear whether this assertion is correct and we invite further explanation.

Where a function is conferred on a Minister of the Crown in an area which falls within the legislative competence of the Senedd, this may have the effect of restricting the Senedd's ability to legislate in that area in future. This is because an Act of the Senedd cannot remove or modify a function of a Minister of the Crown that relates to a "qualified devolved function" unless the appropriate UK Government Minister consents (see paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006).

The Explanatory Memorandum to the Regulations states:

"Section 29 (general implementation of agreements) of EUFRA is currently being relied on, in conjunction with operational guidance to the UK's public health agencies, to ensure the UK meets its TCA obligations for health security, including informing the EU and sharing with them information about serious cross-border health threats affecting the UK and at least one member State. This instrument relies on the power in section 31 of the EUFRA to provide more specific implementation and prescribe a UK-wide approach for addressing serious cross-border health threats.

.....

The TCA also makes provision for cooperation on scientific and technical matters between the ECDC and the UK body responsible for surveillance, epidemic intelligence and scientific advice on infectious disease...

These Regulations provide specific implementation of the health security provisions of the TCA...

.....

The Regulations provide for epidemiological surveillance to be undertaken and make arrangements for coordination and information sharing between the UK's four nations in the planning and response to serious cross border health threats. These also support the arrangements with the EU under the TCA. The Regulations accordingly:

- Identify, for the purposes of the Regulations, the UK public health agencies responsible for health security in the respective parts of the UK.*

.....

- Require UKG, the devolved administrations and the UK's public health agencies to consult each other with a view to coordinating their efforts to develop, strengthen and maintain their respective capacities for monitoring, early warning and assessment of, and response to, serious cross border health threats and to inform each other of any*

substantial revisions to preparedness and response planning.”

It would appear that the various TCA-related provisions described in the Explanatory Memorandum were made under section 31 of the 2020 Act, as that section makes specific provision for implementation of the TCA. For example, regulation 11 of the Regulations requires consultation between the UK authorities¹ on various matters, particularly under regulation 11(3) as follows:

“(3) Where a relevant Minister or a UK public health agency intends to adopt in the part of the United Kingdom for which it is responsible public health measures to combat a serious cross-border health threat, it must, before adopting those measures, inform and consult the other UK authorities on the nature, purpose and scope of the measures, unless the need to protect public health is so urgent that the immediate adoption of the measures is necessary.”

If these Regulations confer functions on a Minister of the Crown that relate to health security then, to the extent that those functions are:

- (i) “qualified devolved functions” for the purposes of Schedule 7B to the Government of Wales Act 2006, and
- (ii) conferred on a Minister of the Crown pursuant to section 31 of the 2020 Act,

the Senedd will not have competence to remove those functions without the consent of the UK Government. This is despite the fact that the function will operate in a devolved area. As such, we request the Welsh Government further considers and explains the potential impact on the Senedd’s legislative competence.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

As it is unclear from the Welsh Government’s statement dated 14 July 2021 the impact the Regulations may have on the Senedd’s legislative competence and, as such, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the

¹ Section 1 of the Regulations: ““UK authority” means in respect of a part of the United Kingdom— (a) the UK public health agency for that part; and (b) the relevant Minister for that part”, and “relevant Minister” means— (a) in England, the Secretary of State; (b) in Scotland, the Scottish Ministers; (c) in Wales, the Welsh Ministers; (d) in Northern Ireland, a Minister within the meaning of the Northern Ireland Act 1998(b) or a Northern Ireland department”.

Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Document is Restricted

Huw Irranca-Davies MS
[Chair of Legislation, Justice and Constitution Committee](#)

Paul Davies MS
[Chair of Economy, Trade, and Rural Affairs Committee](#)

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

12 July 2021

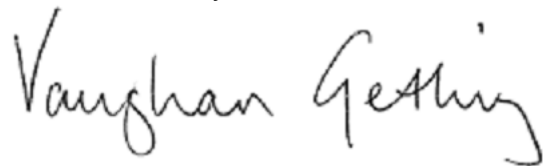
Dear Chairs,

I am writing to you under the inter-institutional relations agreement to inform you that a meeting of the Ministerial Forum for Trade will take place on the 14 July 2021.

The agenda will include updates on the Australia and New Zealand FTA negotiations and initial discussions on forthcoming Canada, Mexico and India FTA negotiations.

I will write to you again following the meeting.

Yours sincerely,



Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Huw Irranca-Davies MS
[Chair of Legislation, Justice and Constitution Committee](#)

Paul Davies MS
[Chair of Economy, Trade, and Rural Affairs Committee](#)

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

26 July 2021

Dear Chairs,

I am writing to inform you that I attended the Ministerial Forum for Trade on the 14 July, with Greg Hands, Minister of State for Trade Policy and Ivan McKee, Minister for Business, Trade, Tourism and Enterprise. In this meeting, a general update was provided on on-going Free Trade Agreement (FTAs) negotiations, including the Comprehensive Trans-Pacific Partnership (CPTPP), EEA EFTA, Australia and New Zealand.

I raised concerns about the size of the Tariff Rate Quotas (TRQs) agreed in the Australia FTA and issues on animal welfare standards. I have asked for further information on the trade agreement to be shared when it is available and for these concerns to be taken into account as future deals are negotiated

Future trading arrangements with India, Canada and Mexico were also raised, and I have since provided a written response to Greg Hands outlining our initial views on each of these potential trade deals.

I will write to you again to inform you of the date of the next meeting.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Huw Irranca–Davies MS

Chair

Legislation, Justice and Constitution Committee

14 July 2021

Dear Chair

Committee Timetable

I am writing to inform you of the Committee Timetable agreed by Business Committee at its meeting of 13 July.

The Business Committee has agreed a timetable that provides committees with fortnightly meetings, with the exception of the Legislation Justice and Constitution Committee which meets weekly due to the need to consider Statutory Instruments to strict deadlines.

A key message from the Chair's Forum of the Fifth Senedd was to ensure that there is flexibility within the arrangements for committees so that peaks in workload, or new tasks, can be managed. The Business Committee has sought to introduce this flexibility by varying the meeting time allocated to different committees. This reflects the type of work that different committees might need to undertake and reflects how working practices have evolved in recent years.

To this end, the timetable is fortnightly and has a number of additional meeting slots available within it, to accommodate peaks in the work of particular committees e.g. the Finance Committee when considering a draft budget, or a committee with Stage 1 legislative scrutiny responsibilities. By under-committing the timetabling capacity, there are greater opportunities for committees to work together as the possibility of membership clashes in each meeting slot is reduced.



In recognition of the known and expected legislative scrutiny responsibilities of some committees, the following committees are provided with a double meeting slot i.e. a morning and afternoon slot on a Thursday:

- Children, Young People, and Education;
- Climate Change, Environment, and Infrastructure;
- Economy, Trade, and Rural Affairs; and
- Health and Social Care.

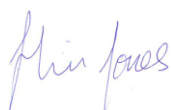
The remaining committees are provided with a single meeting slot i.e. one morning or afternoon meeting slot per fortnight. These committees are:

- Culture, Welsh Language, Communications, Sport, and International Relations;
- Equality and Social Justice;
- Finance;
- Local Government and Housing;
- Petitions;
- Public Accounts and Public Administration; and
- Standards of Conduct.

In order to provide some additional capacity for Bill scrutiny work, Fridays are also made available for committee Stage 2 scrutiny of Bills i.e. to provide an additional (and potentially longer) meeting for committees at this stage of the legislative process. The Business Committee will determine the allocation of any additional slots following a request from a committee.

The Business Committee has already indicated its intention to keep timetabling under review, so that it can respond to the needs of committees as the tasks they face change. Flexibility and responsiveness is at the heart of its decisions around timetabling for committees, and the Business Committee intends to review the committee structure and timetable around Easter 2022.

Yours sincerely



Elin Jones MS

Y Llywydd and Chair of the Business Committee



Agenda Item 6.3

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

15 July 2021

Dear Huw,

I am writing in accordance with the inter-institutional relations agreement, following on from my letter to the Llywydd on 8 June where I informed her that I would be representing the Welsh Government at an Inter-Ministerial Group for Elections and Registrations meeting on 9 June.

I have today issued a Written Ministerial Statement which can be found at:

[Written Statement: Inter-ministerial Group for Elections and Registration \(IMG Elections\) \(15 July 2021\) | GOV.WALES](#)

Yours sincerely,

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref 2021/09/29 IGR

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

12 August 2021

Dear Huw

I am writing in accordance with the inter-institutional relations agreement to let you know that I will be representing the Welsh Government at an Inter-Ministerial Group for Elections and Registration on 29 September. The discussion is likely to focus on the UK Government Bills to discuss electoral reform.

The meeting will be held virtually and on this occasion I have agreed to Chair following the agreement to rotate chairing arrangements between Ministers. Other attendees will be Chloe Smith MP, the UK Government's Minister for the Constitution and Devolution, George Adam MSP, Minister for Parliamentary Business, Scottish Government, Robin Walker MP, Minister of State at the UK Government's Northern Ireland Office who may also attend.

I will write again following the meeting.

Yours sincerely

Mick Antoniw AS/MS
Gwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Huw Irranca-Davies MS

Chair, Legislation, Justice and Constitution Committee

16 July 2021

Dear Huw

Legislative Consent Memorandum – Police, Crime, Sentencing and Courts Bill

Thank you for your letter of 2 July 2021 in relation to the referral of the LCM on the Police, Crime, Sentencing and Courts Bill to your committee for scrutiny.

Business Committee initially discussed this LCM at its meeting of 29 June, referring it to your committee only as, in deciding the committee remits, we wished to ensure that you are able to consider the future devolution of justice and policing as part of your wider constitutional affairs remit. However, in the light of your letter of 2 July, we did suggest at our meeting of 6 July that your committee may wish to invite the Chair of the Equality and Social Justice Committee to attend any meetings at which this LCM may be discussed.

As was the case in the Fifth Senedd, the remits of policy and legislation committees are not prescriptive or restrictive. We have deliberately allowed them to remain broad and we decided not to provide a definitive list of subjects attached to each committee. As in the previous two Seneddau, we believe that providing committees with the ability to pursue issues across portfolios and subject areas makes for better scrutiny and avoids the risk of too narrow an approach.

Business Committee specifically considered where the responsibility for justice should sit within the committee structure at its meeting of 13 July. We agreed that high-level justice policy matters, such as the devolution of justice and policing, and any matters which relate to law-making, should be assigned to the LJC Committee. Other matters which relate to the practical application of justice



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policy should be open to scrutiny by appropriate policy and legislation committees. In the same vein, LJC Committee is not expected to consider the wider policy interactions with the justice system and policing that currently exist.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'Elin Jones'.

Elin Jones MS

Y Llywydd and Chair of the Business Committee



Elin Jones MS
Llywydd
Chair, Business Committee

2 July 2021

Dear Llywydd

Legislative Consent Memorandum - Police, Crime, Sentencing and Courts Bill

On 29 June 2021, the Business Committee referred the Legislative Consent Memorandum (LCM) on the Police, Crime, Sentencing and Courts Bill to the Legislation, Justice and Constitution Committee for scrutiny with a reporting deadline of 14 October 2021. In doing so I note that the Business Committee did not also refer the LCM to either the Equality and Social Justice Committee or the Local Government and Housing Committee.

I understand that the remits of the new Senedd Committees have been designed in a way so as not to preclude committees from undertaking work that may be cross-cutting in nature. Further, the remit of certain committees do appear to have intentionally been drawn with overlap in some areas. As such, to help improve understanding and transparency around our remit and, as a consequence, our relationship with other committees, I would be grateful if you could provide further clarity on the reasons for the referral of this particular LCM to us only.

Yours sincerely,



Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: RE/570/21

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
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19 July 2021

Dear Huw,

I am writing to inform you that a meeting of the Finance Ministers' Quadrilateral will take place on 20 July.

The agenda will cover the UK Government's proposals for the Spending Review, Covid response and recovery, as well as economic growth and levelling up. The agenda also includes an item on the Finance Inter-ministerial Standing Committee Terms of Reference which, under the Intergovernmental Relations Review, will formalise the arrangements of the Finance Ministers' Quadrilateral.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

To:

Climate Change, Environment, and Infrastructure Committee
Culture, Communications, Welsh Language, Sport, and International Relations Committee
Economy, Trade, and Rural Affairs Committee
Equality and Social Justice Committee
Finance Committee
Health and Social Care Committee
Legislation, Justice and Constitution Committee
Local Government and Housing Committee
Petitions Committee
Public Accounts and Public Administration Committee

20 July 2021

Dear Chairs,

Children and young people's priorities for the Sixth Senedd

As the Senedd Committee responsible for scrutinising all matters relating to children and young people, it is our intention to ensure that the voices of children and young people are heard as a matter of course in our Committee's work. At our first meeting on 14 July, we agreed that this would be a key priority for us.

In order to inform our strategic planning and forward work programme, we intend to undertake a programme of tailored and meaningful engagement with children and young people. This work will begin in the autumn term. Our initial focus will be on asking children and young people what they think the priorities of the Sixth Senedd should be.

Given that the range of views held by children and young people will be of relevance to your respective committee remits, we will ensure that the results of this activity are shared with you, to ensure that your work can take account of their opinions. Our Committee team will ensure that your teams are kept up to date on the plans as they develop, and will confirm timescales in due course.

Kind regards,



Jayne Bryant MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English.



Huw Irranca-Davies MS
Chair
The Legislation, Justice and Constitution Committee
Senedd Cymru/Welsh Parliament
Cardiff Bay
CF99 1SN

From: Andrea Coscelli CBE
Chief Executive

Direct line: 020 3738 6286

27 July 2021

Dear Mr Irranca-Davies,

Update on work to establish the Office for the Internal Market (OIM)

Thank you for your letter of 16 July, and congratulations on your appointment as the new Chair of the Senedd's Legislation, Justice and Constitution Committee.

As you stated in your letter, during the fifth Senedd I wrote to your predecessor to outline the CMA's plans to establish a new Office for the Internal Market (OIM). I am able to provide an update on this work.

On 27 May the CMA published draft guidance which provides general advice and information about how it will approach the exercise of its new internal market functions under the Act. In developing the approach set out in the draft guidance, OIM officials have had constructive and helpful engagement with officials in several departments across the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive.

The OIM will monitor and report on how the UK internal market is working and provide non-binding technical and economic advice to all four governments in the UK on the effect of specific regulatory provisions on the UK internal market. Its work will assist governments in understanding how effectively companies are able to sell their products and services across the four nations of the UK, and the impact of regulatory provisions on this, including the impact on competition and consumer choice, for assessment alongside wider policy considerations.

The OIM must lay its annual and five-yearly monitoring reports, and certain reports provided upon request, before each House of Parliament, the Scottish Parliament, Senedd Cymru/Welsh Parliament and the Northern Ireland Assembly.

The Act provides that the OIM must have regard to the need to act even-handedly in relation to the UK Government and all the devolved administrations, and this is

reflected in the proposed approach to prioritisation of the OIM's discretionary work laid out in the draft guidance.

The draft guidance also provides an overview of the analysis that the OIM expects to undertake, and outlines procedures the OIM will adopt, such as how it expects to receive and manage requests for advice from national authorities and how it will gather information. This includes developing an online interface, which will allow consumers, businesses and other stakeholders to provide intelligence to the OIM about issues relating to the effective operation of the internal market.

The CMA has also published a draft Statement of Policy on the enforcement by the OIM of its information-gathering powers as set out in the Act. The OIM must have regard to this Statement when reaching decisions about what action to take for failure to comply with an information notice.

Consultations on the [draft guidance](#) and [Statement of Policy](#) closed on 22 July and the CMA aims to finalise both documents ahead of launch of the OIM in September.

I welcome your suggestion for engagement with the Legislation, Justice and Constitution Committee regarding this work and my office will work with the Committee Clerk to arrange a suitable date for this.

Best regards

A handwritten signature in black ink, appearing to read 'A. Coscelli', with a stylized flourish at the end.

Andrea Coscelli CBE
Chief Executive
andrea.coscelli@cma.gov.uk

Andrea Coscelli CBE
Chief Executive
Competition and Markets Authority

16 July 2021

Dear Mr Coscelli,

Office for the Internal Market

Further to your correspondence with my predecessor, Mr Mick Antoniw, in March of this year, Senedd Committees have now been established following the Senedd General Election in May and I am writing to introduce myself as the new Chair of the Senedd's Legislation, Justice and Constitution Committee.

Your letter to my predecessor noted that, as the Office for the Internal Market (OIM) prepares to start its work, engagement with the Senedd will be important. You also stated that the Competition and Markets Authority (CMA) intended to consult on guidance relating to how it will approach the exercise of its internal market functions. I note that that consultation opened in June and is due to close very shortly.

I would welcome early engagement with you regarding the work the CMA is doing to establish the new OIM, including any feedback you can provide regarding the outcome of the consultation. I have asked the Committee Clerk to liaise with your office to make the necessary arrangements.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair





Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

27 July 2021

Dear Chair

Inter-Institutional Relations Agreement

Thank you for our recent meeting and discussion about early business for the Sixth Senedd, including ways of working and a new agreement for inter-institutional relations.

I am committed to strengthening transparency and accountability for inter-governmental relations in the UK and my Ministerial team therefore continue to update and report to the Senedd on our relations, engagement and joint working with the UK, Scottish and Northern Ireland governments.

The Welsh Government will continue to operate in line with the Inter-Institutional Relations Agreement and I have asked my officials to contact yours and to work jointly on potential changes and improvements to the agreement.

Best wishes

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
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Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Rt Hon Mark Drakeford MS
First Minister of Wales

16 July 2021

Dear Mark

Inter-Institutional Relations Agreement

We met this week to discuss and agree our ways of working and early business for this Sixth Senedd. We agreed that one of our early priorities is to seek to put in place an Inter-Institutional Relations Agreement for the Sixth Senedd which, like the Agreement in the Fifth Senedd, would cover the information that the Welsh Government would, where appropriate, provide to the Senedd with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding.

My purpose in writing is therefore to seek your in principle agreement to resurrect the Agreement and if so, to suggest that the Clerking team contact relevant officials in the Welsh Government to explore any changes that may be necessary, prior to it being formalised and drawn to the attention of the Senedd.

I look forward to hearing from you at the earliest opportunity,

Yours sincerely



Huw Irranca-Davies
Chair

Ein cyf/Our ref MA/JJ/2056/21

28 July 2021

Dear Huw Irranca-Davies MS,

You will be aware the UK Emissions Trading Scheme (UK ETS) was established in law in 2020.

The legislation underpinning the UK ETS is being delivered incrementally, through a series of statutory instruments. The timing and order of this series has been designed to ensure that specific legal provisions are introduced as they become operationally necessary. All legislation required to establish the scheme was made in 2020. There are, however, outstanding legal provisions required, which, whilst not essential for the establishment of the UK ETS on the 1st January 2021, are considered necessary for effective operation of the scheme.

On 28 July, the UK ETS Authority, comprising the four Governments of the UK, will publish a consultation and two separate draft statutory instruments to address a number of technical and operational issues identified during the development and amendment of legislation to establish the UK ETS.

The statutory instruments are expected to be laid in November as Orders in Council:

- The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 will be introduced under the negative procedure, following Privy Council.
- The Greenhouse Gas Emissions Trading Scheme (Amendment) (No.2) Order 2021 will be introduced under the draft affirmative procedure with introduction also expected in November 2020, prior to submission to Privy Council.

Both Orders will make amendments to the existing Greenhouse Gas Emissions Trading Scheme Order 2020.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I will be publishing a written statement on 28 July alerting the Senedd to the consultation and draft statutory instruments. The consultation will run over the recess period and close on 7 Medi.

The provisions are technical and operational in nature, however, in the interests of transparency and affording the maximum opportunity for scrutiny of the provisions, I wanted to personally alert you. I am also sharing with the Chair of the Climate Change, Environment and Infrastructure Committee.

Following the summer recess I expect to issue a further statement setting out initial options to develop the UK ETS further, aimed at delivering a more impactful scheme.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Consultation on proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020

DATE 28 July 2021

BY Julie James, Minister for Climate Change

The UK Emissions Trading Scheme (UK ETS) was established in law in 2020, with the Greenhouse Gas Emissions Trading Scheme Order 2020 (GGETS Order 2020) introducing the majority of legal provisions under the powers granted by the Climate Change Act 2008 (CCA 2008). Amendments to the GGETS Order 2020 were subsequently made at the end of 2020 to enable the UK ETS to operate from 1 January 2021.

The legislation underpinning UK ETS is being delivered incrementally, through a series of statutory instruments. The timing and order of this series has been designed to ensure that specific legal provisions are introduced as they become operationally necessary. All legislation required to establish the scheme was made in 2020. There are, however, outstanding legal provisions required, which, whilst not essential for the establishment of the UK ETS on the 1st January 2021, are considered as necessary for operation of the scheme.

On 28 July, the UK ETS Authority comprising the four Governments of the UK, will publish a consultation and two separate draft statutory instruments to address a number of technical and operational issues identified during the development and amendment of the GGETS Order 2020.

The statutory instruments are expected to be laid in November as Orders in Council.

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 is expected to be introduced under the negative procedure, following Privy Council.

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No.2) Order 2021 will be introduced under the draft affirmative procedure with introduction also expected in November 2020, prior to submission to Privy Council.

Both Orders will make amendments to the existing Greenhouse Gas Emissions Trading Scheme Order 2020.

The UK ETS remains an important policy in this Government's pursuit of decarbonisation. Following the summer recess I expect to issue a further statement setting out initial options to develop the UK ETS further, aimed at delivering a more impactful scheme.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.



Huw Irranca Davies MS,
Chair,
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

30 July 2021

Dear Mr Irranca-Davies,

Thank you for your letter of 21st July in response to our correspondence about a potential short inquiry into the speech, language and communication needs of young people in the youth justice estate.

It is very helpful to receive your update with regards the future remit of the committee and are pleased to hear that our proposal will be considered as part of the committee's strategic planning in the autumn term.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'P. Cotterill', enclosed in a light grey rectangular box.

Pippa Cotterill,
Head of Wales Office
Royal College of Speech and Language Therapists

Pippa Cotterill
RCSLT Cymru Wales
Transport House
Cardiff CF11 9SD

21 July 2021

Dear Ms Cotterill

WORK PROGRAMME

Thank you for your letter of 5 July 2021 on behalf of the Royal College of Speech and Language Therapists raising the possibility of a short inquiry into the speech, language and communication needs of young people in the youth justice estate.

We considered your letter at our meeting on 12 July and agreed to consider proposals for future work as part of our strategic planning in the autumn term.

Since that meeting, the Business Committee has written to us indicating where the responsibility for justice should sit within the Senedd Committee structure. It has advised that high-level justice policy matters, such as the devolution of justice and policing, and any matters which relate to law-making, fall within our remit. Other matters relating to the practical application of justice should be open to scrutiny by other Senedd Committees, including the wider policy interactions with the justice system and policing that currently exist.

We will consider the Business Committee's correspondence in early September as we shape our work programme for the first year. However, we do expect the programme to be heavily focused on legislative scrutiny in light of the Welsh Government's recent legislative programme announcement.



I will write again in the autumn once we have finalised our programme for the next year.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



**Equality and Social Justice
Committee**

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To the Chairs of:

the Climate Change, Environment, and Infrastructure Committee; the Culture,
Communications, Welsh Language, Sport, and International Relations
Committee; the Finance Committee; the Health and Social Care Committee;
the Legislation, Justice and Constitution Committee; the Petitions Committee;
and the Public Accounts and Public Administration Committee

10 August 2021

Dear Chair,

Joint working between committees in the Sixth Senedd

As the Senedd committee responsible for scrutinising all aspects of equality, social justice, and the Well-Being of Future Generations Act, our broad remit includes a number of important cross-cutting issues of mutual interest and potential joint working.

On behalf of the Equality and Social Justice Committee, I would like to invite you to consider opportunities for joint working as part of any strategic planning discussions you may be having in your Committee in the autumn term. If your Committee has any ideas for joint working you would like to discuss, please contact the clerking team.

I am writing in similar terms to other Chairs of Senedd Committees.

Yours sincerely,



Jenny Rathbone MS
Chair of the Equality and Social Justice Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Lord Kinnoull,
Chair of the European Union
Committee, House of Lords (by e-mail)

25 August 2021

Dear Lord Kinnoull,

As you are aware a number of committees within the Scottish Parliament, Northern Ireland Assembly and Welsh Senedd have raised a possible role for the devolved legislatures in the UK-EU Parliamentary Partnership Assembly.

Further to this correspondence we are now writing to jointly request that the three devolved legislatures are formally consulted on our role prior to any final decision being made at Westminster regarding the UK delegation to the PPA.

We are copying this letter to Sir Oliver Heald.

Yours Sincerely,

Clare Adamson *Colin McGrath* *Huw Irranca-Davies*

Clare Adamson, Convener, Constitution, Europe, External Affairs and Culture Committee, Scottish Parliament

Colin McGrath, Chair, Committee for the Executive Office, Northern Ireland Assembly

Huw Irranca-Davies, Chair, Legislation, Justice and Constitution Committee, Welsh Senedd

The Earl of Kinnoull
Chair, Lords European Affairs Committee

16 July 2021

Dear Lord Kinnoull

The UK-EU Parliamentary Partnership Assembly

Senedd Committees have now been established following the Senedd General Election in May and I am writing to introduce myself as the new Chair of the Senedd's Legislation, Justice and Constitution (LJC) Committee. The LJC Committee has taken on responsibility for some of the functions previously carried out by the Fifth Senedd's External Affairs and Additional Legislation (EAAL) Committee. This includes the Senedd's engagement with the European Union and overarching scrutiny of UK-EU relations.

I am aware that the Chair of the EAAL Committee had begun conversations with you about a possible role for the devolved legislatures in the UK-EU Parliamentary Partnership Assembly and, in my role as Chair of the LJC Committee, I would welcome the opportunity to re-open these conversations with you and with Sir Oliver Heald, whom I have written to separately.

Moreover, as a previous member of the EAAL Committee I very much welcome the close working relationship that developed between that Committee and European committees in the House of Lords and look forward to continuing this important work with you in the Sixth Senedd.

I know that this issue will be of similar interest to colleagues in the Northern Ireland Assembly and Scottish Parliament and have therefore copied this letter to Colin McGrath MLA, Chair of the Committee of the Executive Office in the Northern Ireland Assembly, and Clare Adamson MSP, Convener of the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee.

I have asked the Committee Clerk to liaise with your office in order to facilitate a meeting, should you consider that would be helpful.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Sir Oliver Heald

16 July 2021

Dear Sir Oliver

The UK-EU Parliamentary Partnership Assembly

Senedd Committees have now been established following the Senedd General Election in May and I am writing to introduce myself as the new Chair of the Senedd's Legislation, Justice and Constitution (LJC) Committee. The LJC Committee has taken on responsibility for some of the functions previously carried out by the Fifth Senedd's External Affairs and Additional Legislation (EAAL) Committee. This includes the Senedd's engagement with the European Union and overarching scrutiny of UK-EU relations.

I am aware that the Chair of the EAAL Committee had begun conversations with colleagues in the House of Lords about a possible role for the devolved legislatures in the UK-EU Parliamentary Partnership Assembly and, in my role as Chair of the LJC Committee, I would welcome the opportunity to re-open these conversations with you and with Lord Kinnoull, whom I have written to separately.

As you will be aware, significant areas of devolved policy are covered by the UK-EU Trade and Cooperation Agreement. The devolved legislatures, through their scrutiny of their respective governments, will play a key role in ensuring that the Agreement is properly implemented. They therefore have an important contribution to make to the work of the Parliamentary Partnership Assembly.

I know that this issue will be of similar interest to colleagues in the Northern Ireland Assembly and Scottish Parliament and have therefore copied this letter to Colin McGrath MLA, Chair of the Committee of the Executive Office in the Northern Ireland Assembly, and Clare Adamson MSP, Convener of the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee.



I have asked the Committee Clerk to liaise with your office in order to facilitate a meeting, should you consider that would be helpful.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
The Chair
Legislation, Justice and Constitution Committee
Senedd,
Cardiff Bay,
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07 September 2021

Dear Huw

Thank you for your letter of 16 July. This is a period of considerable activity in the Common Frameworks area and I welcome the opportunity to update you on developments in the programme.

On 31 August, the first fully complete and scrutinised framework, on Hazardous Substances (Planning), was published. This is clearly a landmark in the frameworks programme and illustrates that, though four-Government working is not necessarily a quick and easy process, it is possible to reach agreement on complex issues on an equitable basis across all the nations of the United Kingdom.

The Common Frameworks have been operating as provisional agreements between officials since the end of last year. Over this period many framework policy areas have seen a more open and collaborative approach between the Devolved Governments and the UK Government. For example, in the framework area where I am also the Portfolio Minister, Procurement, officials are finding that they are now working much more as partners. In this way the Common Frameworks programme has been a considerable success. Although some framework areas are more advanced in this regard than others, I consider what we have seen so far to be hugely encouraging and a powerful affirmation of the Common Frameworks programme.

There are, however, several issues which need to be resolved before the Common Frameworks programme can be finalised, most significantly the issues relating to the UK Internal Market Act (the UKIM Act). During the passage of the UK Internal Market Bill through Parliament, the Welsh Government was clear that this legislation was unnecessary and heavy handed.

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Correspondence.Mick.Antoniw@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The uncertainty caused by the UKIM Act in terms of the Senedd's ability to legislate in certain areas, prompted my predecessor to commence legal proceedings challenging the UKIM Act by way of judicial review.

However, I recognise the need to progress work on the processes underpinning the Common Frameworks. I have therefore instructed Welsh Government officials to engage in further discussions about the interaction between the UKIM Act and the Common Frameworks on the strict understanding that our engagement is without prejudice to the position taken on the litigation. We remain committed to work with the UK Government, the Scottish Government and the Northern Ireland Executive in good faith, and without prejudice to the legal action, to move this programme forward.

In addition to the interaction between the UKIM Act and the Common Frameworks, officials continue to make progress on significant work to address the difficulties posed by other cross-cutting issues, namely the effect of the Northern Ireland Protocol, references to International Relations and the outcome of the Intergovernmental Relations Review. Progress is being made in all of these areas. The Devolved Governments have shown considerable flexibility and good faith in developing the Common Frameworks programme, most recently demonstrated in changes to the clearance process for provisional frameworks.

The importance of effective scrutiny of these frameworks cannot be overstated. It is essential that the relevant committees of all legislatures are given the opportunity to perform their role in this area. This is a complex and innovative programme of work. It covers a number of subjects, departments, Ministers and, of course, four different Governments. The quality of the final product is important. Deadlines can provide an impetus, but we should not seek to meet deadlines to the detriment of quality. Scrutiny by legislatures, in particular, takes time. Failure to make sufficient progress on all cross-cutting issues would prevent the scrutiny and finalisation of the frameworks. I am meeting with Ministers from the other three Governments on 8 September to discuss, in part, how best to meet the challenges of the programme in a timely fashion.

Policy leads in the framework areas in the four Governments have reached out to their stakeholders in the development of the frameworks. I understand that, as the frameworks move to completion, additional consultation will take place as appropriate. The frameworks programme represents a significant change in the workings of government and stakeholders should be given input into its development.

I look forward to speaking to the committee on 20 September about Common Frameworks and other issues.

I attach, as an appendix to this letter, updates on individual Common Frameworks.

Yours sincerely

A handwritten signature in blue ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Appendix

Updates on Individual Common Frameworks

(by UK Government departmental areas)

MHCLG Framework

Hazardous Substances (Planning)

This framework was finalised and published on 31 August 2021.

DHSC Frameworks

Organs Tissues and Cells

The version agreed earlier this year remains the most up to date. Officials are expecting updated versions soon for review.

Blood Safety and Quality

The version agreed earlier this year remains the most up to date. Officials are expecting updated versions soon for review.

Nutrition, Health Claims, Composition and Labelling

The current version of the Nutrition and Health Claims Framework which was reviewed by the Senedd remains the same. Officials have been working with the UK Government to agree wording on International Relations, and the Policy Team are now working to build standard text on the TCA into the Framework and Concordat. Cabinet Office have also shared a timeline for publishing the Framework and are meeting with officials in early September to finalise the framework and concordat.

Public Health Protection and Health Security

The framework was provisionally signed off in December 2020. This version of the framework did not recognise the arrangements agreed between the UK and the EU under the Trade and Co-operation Agreement. The framework has now been updated to reflect the TCA and also the Health Security (EU Exit) Regulations 2021.

The updated framework is in the process of being readied for publication and will be shared in due course.

BEIS Frameworks

Late Payments

The version agreed earlier this year is the most up to date. All the Devolved Governments are content. No further changes are currently expected.

Recognition of Professional Qualifications

BEIS recommenced work on the Common Framework, now titled Recognition of Professional Qualifications (RPQ), on June 14 2021, and has presented options for developing the scope of a framework. Welsh Government officials have indicated a preference for arrangements which facilitate the recognition of professional qualifications in line with the scope of returning EU powers, but that all developments must be considered alongside the Recognition of Professional Qualifications Bill's progression through parliament. BEIS has been made aware that UKIM Act implementation should not be a part of the Common Framework.

The Welsh Government expects to see a first draft of a framework by early September.

The Welsh Government has indicated concerns with the timetable outlined for the framework to be completed by 31 December 2021, as this leaves very little time for stakeholder engagement and scrutiny.

Provision of Services

Work on the Provision of Services Framework was postponed at the end of 2020 by consensus agreement of all four Governments of the UK, because of the lack of time to undertake the process with sufficient time to develop a framework before 31 December 2020.

On 20 November 2020 the then Counsel General wrote to BEIS to reiterate the Welsh Government's support for the Common Frameworks programme and to indicate that the Welsh Government would like to see this framework picked up as a matter of priority in 2021. A response was received from Lord Grimstone dated 6 January 2021 outlining that BEIS officials would be in touch to progress the work on both the Services and RPQ Frameworks.

On 17 August BEIS officials contacted Welsh Government officials to review the 2020 work on the Provision of Services Framework and to consider options and next steps.

Should the Minister decide to proceed with the development of the Provision of Services Framework, it is anticipated that work would commence at pace in September 2021.

Public Procurement

Although there have also been some drafting amendments, these have not altered the essence of what was presented to the Senedd previously.

The Outline Framework Agreement and the Concordat are currently separate documents but they are very similar. To avoid duplication, consideration is being given to keeping just one of the two documents, though this work is yet to be started. Text on International Relations needs to be added once it is agreed. The same is true for the text on dispute resolution.

Food Standards Agency Frameworks

Food and Feed Hygiene and Safety

The version agreed earlier this year is the most up to date. The Food Standards Agency is working with Food Standards Scotland to update the current version of the Food and Feed Hygiene and Safety Framework (which was scrutinised by the EAAL Committee on 1 February 2021) to account for committee recommendations and cross-cutting issues once these have been agreed centrally. Subject to agreement on the approach to cross-cutting issues, it is the intention to finalise the Food and Feed Safety and Hygiene Framework.

Food Compositional Standards and Labelling

The version agreed earlier this year is the most up to date. All Devolved Governments are content with content. The current version of the Food Compositional Standards and Labelling Framework which was reviewed by the Senedd remains the same. Subject to agreement on the approach to cross-cutting issues, it is the intention to finalise the Food Compositional Standards and Labelling Framework.

Defra Frameworks

Implementation of EU Emissions Trading System

The summary of the framework is still relevant in that it explains the legislative underpinning and non-legislative arrangements the four Governments have adopted and still have in place. Since the framework was created a range of legislation has been implemented to enable the UK ETS to operate. Stakeholders have also been engaged (including a Call for Evidence and a current Consultation) on developments to the UK ETS. Whilst this will have the effect of making changes to the UK ETS the governance and therefore the intent expressed in the framework remain unchanged.

Radioactive Substances

The framework summary still represents the overall position. The four Governments have progressed work on developing the framework.

Organics

A summary of the Organics Framework is due to be completed in the near future and will be shared with the Senedd. The four Governments continue to work on the further development of the provisional framework, including finalising a draft concordat and operationalising some of the governance arrangements.

Plant Varieties and Seeds

The framework summary still represents the overall position. However, some minor amendments will be made ahead of further stakeholder engagement by the four Governments planned for the early autumn. Work continues between the four Governments to develop the framework further, including finalising a draft concordat.

The following Defra Frameworks are in a similar position:

- **Fertilisers**
- **Agricultural Support**
- **Air Quality**
- **Plant Health**
- **Best Available Techniques**
- **F-Gas & ODS**
- **Zootechnics**

Where summaries exist for these frameworks, they still represent the overall position. For provisional frameworks, work continues between the four Governments to develop each framework further, including updating Framework Outline Agreements and drafting/finalising Concordats as appropriate, and refining/operationalising governance arrangements. Work is also ongoing to consider further stakeholder engagement and the impact of cross-cutting issues.

Mick Antoniw MS
Counsel General and Minister for the Constitution

16 July 2021

Dear Mick

Common Frameworks

We met this week to discuss and agree our ways of working and early business for this Sixth Senedd. We agreed that one of our early priorities would be to seek an update on the current position regarding common frameworks.

I would therefore be grateful if you could provide the Committee with the following:

- an update on the common frameworks programme, including progress towards agreement on how frameworks will manage international obligations and interactions with the UK Internal Market Act 2020;
- a date by which all provisional frameworks now in operation will be published, in the interests of transparency for stakeholders affected by the decisions being made on laws and policies in these areas;
- in the absence of this information, confirmation that the summary frameworks shared with the Senedd earlier this year still represent the latest position, highlighting in addition where there have been any developments;
- specific updates on all individual common frameworks (to help with developing our forward work programme for the next 12 months).

In addition, it would be useful if you could advise on how intergovernmental relationships have been functioning as part of the programme.

I would welcome a response by 7 September 2021.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

08 September 2021

Dear Huw,

Apologies that I could not attend the committee to give evidence on 13th September, due to a clash with a whole day Cabinet event which has gone into the calendar at late notice. I'm grateful that the new date, 20th September 2021 has been organised so quickly and look forward to a discussion on my wide ranging portfolio remit as we begin the new Senedd term.

Yours sincerely,

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mick Antoniw MS

Counsel General and Minister for the Constitution

16 July 2021

Dear Mick

Invitation to give evidence – 13 September 2021

Congratulations on your appointment as Counsel General and Minister for the Constitution.

The extensive nature of your responsibilities are reflected in the breadth of our remit, and we look forward to establishing and maintaining a productive working relationship.

As we begin our work in this new Sixth Senedd we would like to have an early opportunity to hear from you on matters within your portfolio and to help set the scene as we develop our work programme for what is likely to be a busy five year term.

For this purpose, we would like to invite you to our meeting on 13 September 2021, from 1.30 – 3.00 pm.

I would be grateful if you could confirm, at your earliest convenience, whether you will be able to attend.

Yours sincerely,



Huw Irranca-Davies

Chair

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

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Eich cyf/Your ref
Ein cyf/Our ref MA/JJ/2670/21

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee

6 August 2021

Dear Huw,

Thank you for your letter of 14 July about the Legislative Consent Memorandum for the UK Government's Environment Bill. Please accept my apologies for not meeting your deadline. I am pleased to provide additional information as requested below.

1. For every regulation-making power identified in Annex A to the Memorandum, you agreed to write and indicate when you intend to use each such power.

To assist the Committee, I attach information on the proposed timing of the subordinate legislation under this Bill at Annex A to this letter, with the caveat that this is an initial view and subject to prioritisation and scheduling considerations.

2. Please will you (a) provide the Committee with a copy of the guidance [on Welsh Ministers' consent to the UK exercising powers in relation to Wales] that you referred to in the committee meeting, and (b) confirm whether you will be formally seeking the Senedd's views before giving Ministerial consent to any relevant regulations to be made under the Bill (once enacted).

I attach a copy of the guidance at Annex B.

For UK Government Statutory Instruments under the Environment Act (once enacted) where the consent of the Welsh Ministers is required, I will write to the relevant policy committees to inform them of an intention to consent, and, where time allows, provide an opportunity for the Senedd to express a view before Ministers give consent. I will also lay written statements in the Senedd after the laying of the Statutory Instruments in Parliament.

3. You confirmed that an amendment had been tabled to the Bill on 9 June that consequently amended the Government of Wales Act 2006, which would then allow the Senedd to remove concurrent plus functions given to the Secretary of State under the Bill. Please can you provide an update on the status of this amendment, and whether it was agreed to.

The amendment was debated and agreed to on 14 July.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

4. You said that you were working with all the other Governments in the UK to determine the requirements that arise from the UK-EU Trade and Co-operation Agreement (TCA). Please can you provide a more detailed update regarding these UK-wide discussions on the implications of the TCA and on the Welsh Government's plan to ensure it remains in compliance when exercising powers provided by the Bill.

The TCA has a complex governance structure, the specifics of which are being clarified. Environmental issues will fall under the remit of the Level Playing Field for Open and Fair Competition (LPFOFC) Trade Specialised Committee. This Committee is led by the Cabinet Office with BEIS support.

Some key level playing field provisions include the agreement not to regress on environmental protection standards in a way which gives trade advantage to either the UK or the EU, and to cooperate on monitoring and enforcement.

Welsh Government officials are part of Defra co-ordinated cross UK Environment Working Group. This Group will provide a link on environmental matters to BEIS and the (LPFOFC) Specialised Committee. We are working with the other UK administrations to determine how the requirements in the TCA translate into practical measures to support implementation. It is not clear precisely at this stage what degree of oversight is required at a domestic level to comply with these requirements, or how an impact on trade or trade distortion will be determined and how will it be used (by EU and UK). Discussions are currently underway to clarify roles and responsibilities in relation to this oversight.

Once the required clarity emerges we will be in a position to determine what mechanisms are required in Wales for us to contribute to meeting the TCA requirements.

5. When responding to questioning regarding bilingual Welsh law you indicated that there was an ongoing conversation about UK Government Bills being made available in Welsh. Please could you provide us with more information on this interesting development.

I am sorry to disappoint the Committee but I was referring in general terms to ongoing debates within the public sphere about the accessibility of the law and strengthening the use of the Welsh language across all domains of life, rather than to specific conversations.

Yours sincerely



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Summary of timing for subordinate legislation in the UK Environment Bill

(A)= Affirmative Procedure (N) = Negative Procedure

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Clause 50 Schedule 4 Producer responsibility obligations (A) with exceptions. | Welsh Ministers, or the Secretary of State in relation to Wales with the consent of the Welsh Ministers. | Confers a power to make Regulations to impose producer responsibility obligations on specified persons and in relation to specified products or materials | Autumn 2022 - secondary legislation to implement extended producer responsibility for packaging waste. |
| Clause 51 Schedule 5 Producer responsibility for disposal costs (A) | Welsh Ministers, or the Secretary of State in relation to Wales with the consent of the Welsh Ministers | Confers a power to make Regulations that require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products. | Autumn 2022 - secondary legislation to implement extended producer responsibility for packaging waste. |
| Clause 52 Schedule 6 Resource efficiency information (A) | Welsh Ministers, or the Secretary of State in relation to Wales with the consent of the Welsh Ministers. | Confers a power to make regulations that set requirements for manufacturers and producers to provide information about the resource efficiency of their products. | Autumn 2022 – these clauses will be first used for proposed mandatory labelling requirements in both Extended Producer Responsibility for packaging waste and a deposit return scheme for drink containers. |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|---------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Clause 53 Schedule 7 Resource efficiency requirements (A) | Welsh Ministers | Confers a power on the relevant national authority to make regulations that set resource efficiency requirements that products are required to meet. | No timetable as yet for secondary legislation to use these powers. |
| Clause 54 Schedule 8 Deposit schemes (A) With exceptions. | Welsh Ministers | Confers a power on the relevant national authority to make regulations establishing deposit schemes | Autumn 2022 – secondary legislation to implement a deposit return scheme for drink containers. |
| Clause 55 Schedule 9 Charges for single use plastic items (A) With exceptions. | Welsh Ministers | Regulation making power to make provision about charging by sellers of goods for the supply of single-use items. | No timetable as yet for secondary legislation to use these powers. |
| Clause 58 Electronic waste | Welsh Ministers | Confers powers on Welsh Ministers to introduce electronic (digital) waste tracking and to establish an | Autumn 2022 - secondary legislation to implement electronic waste tracking. |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|--------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| tracking: Great Britain (N) with exceptions. | | electronic system for that purpose by regulations | |
| Clause 60 Hazardous waste: England and Wales (N) with exceptions. | Welsh Ministers | <p>Confers a power to make regulations to make provision about, or connected with, the regulation of hazardous waste.</p> <p>This is a power to ensure we can continue to maintain current subordinate hazardous waste legislation as and when, needed. Repeal of the European Communities Act 1972 removed the current power to amend or replace secondary legislation.</p> | Changes will need to be made to the existing Hazardous Waste (Wales) Regulations 2005 when we make secondary legislation to introduce the mandatory waste tracking system. The Regulations will go before the Senedd in Autumn 2022. |
| Clause 68 Littering enforcement (N) | Welsh Ministers | Amends Part 4 of the Environmental Protection Act 1990 in relation to enforcement against littering, and other offences of littering from a vehicle and the unauthorised distribution of free printed material. | Late 2022/ Early 2023. Development of conditions and statutory guidance will be subject to public consultation so this may impact timescales for introduction. |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>Confers a new Regulation making power on the Welsh Ministers in section 88 of the 1990 Act to prescribe conditions that must be met by an authorised officer operating on behalf of a litter authority, and to make provision requiring a litter authority to revoke an officer's authorisation if that officer fails to meet the prescribed conditions.</p> <p>Also confers guidance making powers on the Welsh Ministers.</p> | |
| <p>Clause 69 Fixed Penalty Notices (N)</p> | <p>Welsh Ministers</p> | <p>Amends sections 33ZA, 33ZB, 34ZA and 34ZB of the EPA 1990 to provide powers to vary Fixed Penalty Notice levels and how payment can be made</p> | <p>To be reviewed in 2022 in line with draft Litter & Fly-tipping Prevention Plan commitments.</p> |
| <p>Clause 78 Water resources management plans, drought plans and joint proposals</p> | <p>Welsh Ministers (in relation to water undertakers wholly or mainly in Wales)</p> | <p>Newly inserted section 39E allows Welsh Ministers to give a direction to two or more water undertakers to publish a joint proposal.</p> <p>Newly inserted section 39F gives Welsh Ministers a power to make Regulations about the procedure for preparing and publishing water</p> | <p>Water companies are due to update water resource management plans for 2022 and water resources regional groups are producing regional plans.</p> <p>There is no specific timetable for the introduction of subordinate legislation yet.</p> |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|------------------------------------------------------------------------|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| (N) | | <p>resources management plans, a drought plan and a joint proposal.</p> <p>Newly inserted section 39G says that the Regulation making power under section 39F may confer on the Minister powers to make provisions by direction.</p> <p>Newly inserted section 39H makes various miscellaneous supplementary provision about the aforementioned regulation making powers.</p> | |
| <p>Clause 79 Drainage and sewerage management plans</p> <p>(N)</p> | Welsh Ministers (in relation to water undertakers wholly or mainly in Wales) | <p>This clause makes provision in relation to drainage and sewerage management plans and the preparation and review of such.</p> <p>The newly inserted section 94A(7) includes a power for Welsh Ministers to issue directions specifying the form in which a drainage and sewerage management plan must take or the planning period to which such a plan must relate.</p> | Spring 2023 |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|---------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| | | <p>Further, newly inserted s.94B includes a power for Welsh Ministers to, by Order, amend the period of time by which a sewerage undertaker must publish a plan (that provision is in s.94A(6)(c))</p> <p>The newly inserted section 94C gives Welsh Ministers a regulation making power to make provision about the procedure for preparing and publishing drainage and sewerage management plans. This includes allowing provision to be made for information sharing, consultation on draft plans and responses to such, circulation of draft plans, and a provision conferring a power on Ministers to make any (further) provision by directions- see s.94C(8).</p> <p>The newly inserted section 94D makes supplementary provision for the regulations made under s.94C.</p> <p>Newly inserted section 94E make provision regarding the form of any directions made under s.94C(8).</p> | |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| | | | |
| Clause 86 Water quality: powers of Welsh Ministers (N) | Welsh Ministers | Power to amend legislation to make technical updates in the field of water quality, following the departure from the EU. | No timetable at present. |
| Clause 91 Valuation of other land in drainage district: Wales (A) | Welsh Ministers | Amendment to the Environment (Wales) Act 2016 which amends the Land Drainage Act 1991. Restates existing Regulation making powers in light of amendments to the 1991 Act, including the related regulation making power introduced in clause 88. | 2022 -2023 |
| Clause 92 Valuation of agricultural land in drainage district: England and Wales (A) | Welsh Ministers | Confers power to make regulations providing an alternative methodology for the calculation of drainage rates | 2022 - 2023 |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Clause 93 Disclosure of Revenue and Customs information (A) | Welsh Ministers | This provision amends the Land Drainage Act 1991 to allow HMRC to share information to qualifying persons for qualifying purposes. A regulation making power is conferred to enable the list of 'qualifying persons' to be added to. | 2022-2023 |
| Schedule 21 para 1(1) Amendment of the REACH regulation (A) | Secretary of State with consent of Welsh and Scottish Ministers | Confers a power on Welsh Ministers to consent to the Secretary of State making regulations amending the UK REACH Regulation which applies to GB as a whole. | <p>From 2022 onwards.</p> <p>Secondary legislation to be made by SoS and consented to by Welsh Ministers.</p> <p>Use of the powers will be required intermittently to update UK REACH, for example following updates by the EU and to address implementation issues arising the operation of UK REACH.</p> <p>It should be stressed that the amending powers cannot be used to change the fundamental principles of UK REACH.</p> |
| Schedule 21 2(1) Amendment of the REACH Enforcement Regulations | Welsh Ministers, or the Secretary of State in relation to Wales with the | Confers a powers on Welsh Ministers to amend the REACH Enforcement Regulations 2008 (S.I. 2008/2852) under this provision to the extent that the exercise of that | Use of the powers will be required intermittently to update UK REACH enforcement regulations. Such updates are likely to be required when changes are made to the obligations placed on organisations and individuals by the main UK |

| Section or schedule of the Bill | Power conferred on | Effect | Timing for Subordinate Legislation |
|-----------------------------------|---------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------|
| 2008 (S.I. 2008/2852). (A) | consent of the Welsh Ministers. | power would be within legislative competence. | REACH Regulation, in order to ensure those obligations are appropriately enforced. |

Guidance for Welsh Government officials on concurrent powers

1. Concurrent Powers

A concurrent power is a power which can be exercised:

- (a) by Welsh Ministers, in relation to Wales; or
- (b) by UK Ministers in relation to Wales (for example, where UK Ministers are exercising powers in relation to the whole of the UK; or in relation to England and Wales).

UK Ministers should not normally exercise their powers in relation to Wales without the agreement of the Welsh Ministers, but (unless it is a concurrent plus power – see below) they are not legally required to obtain consent in order to legislate.

2. “Concurrent plus” powers

A “concurrent plus” power is a special type of concurrent power which can be exercised:

- (a) by the Welsh Ministers, in relation to Wales; or
- (b) **provided** that the Welsh Ministers consent, by UK Ministers in relation to Wales.

When the Welsh Ministers are considering whether to give consent to UK Ministers exercising a concurrent plus power, they are exercising a statutory function. If they do not consent, UK Ministers cannot exercise these powers in relation to Wales. An example of a “concurrent plus” power is:

[The Transmissible Spongiform Encephalopathies and Animal By-Products \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

Regulation (EC) No. 999/2001, which lays down the rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, provides that each Member State shall draw up a list of establishments, plants and operators which have been approved or registered in accordance with this regulation within its territory. As this reference in retained EU law will be deficient post exit, regulation 2(22) of the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 provides for this to be exercised by the appropriate authority within its constituent nation. The appropriate authority includes the Secretary of State in respect of England and devolved administrations in respect of Wales and Scotland, and the NI Department of Agriculture, Environment and Rural Affairs in respect of Northern Ireland. It further provides that the Secretary of State may also be the appropriate authority for Wales, Scotland or Northern Ireland with the consent of the relevant devolved administration or NI Department.

This is concurrent plus because the substantive power is transferred to the Welsh Ministers in relation to Wales, the only way it can become exercisable by the UK Ministers in relation to Wales is if the Welsh Ministers give their statutory consent to the UK Ministers to do so. It is this statutory consent power of the Welsh Ministers that is the “plus” element of a “concurrent plus” power.

We use the term “concurrent powers” in this guidance to cover both concurrent and concurrent plus powers, except where we say otherwise.

3. Concurrent functions created by UK Brexit SIs and UK Brexit Bills

The Government of Wales Act 2006 (GoWA) as amended requires Minister of the Crown consent for Senedd legislation modifying or removing concurrent powers.

The Government of Wales Act 2006 (Amendment) Order 2021 made under s109 of GoWA, commonly known as a “section 109 Order”, removed this requirement in relation to the removing of concurrent powers created in specific Brexit enactments only.

4. Exercise of concurrent functions

Ministers have agreed the following principles for exercise of concurrent functions.

Principle 1: There must be robust governance arrangements – i.e. clearly defined processes covering detailed policy negotiations at official level right through to oversight by Ministerial forums – to enable intergovernmental agreement about the exercise of functions.

Work is underway to map intergovernmental machinery and assess its robustness with a view to agreeing a consistent set of principles which can apply across intergovernmental relations, frameworks and negotiations.

Principle 2: If we are recommending consent for expediency in the absence of fully developed governance arrangements, or if we are not certain about how the functions will be exercised at the point when consent is sought, we should ensure that our consent is as narrowly defined as possible in terms of:

- exactly what exercise of what functions we are consenting to;
- the period for which we are giving consent – preferably a short period, with a defined review mechanism, and without prejudice to longer term arrangements;
- the minimum requirements for ongoing intergovernmental engagement.

Principle 3: Officials must be able to provide assurance to Ministers that they have:

- carefully considered the longer term policy rationale and wider constitutional principle that the Welsh Ministers exercise functions in

relation to Wales, in the expectation that capacity issues are only material in the short term;

- evaluated the Wales only option and found it undesirable in this case;
- considered whether or not the governance arrangements are robust enough to protect Wales' interests;
- designed the best possible terms and process for giving consent which safeguards our position in the longer term (with clearly defined scope and duration as well as full involvement at all stages of policy development and implementation); and
- taken a consistent approach to decision making, so that the Welsh Government overall is acting coherently – at both portfolio level and more widely.

Principle 4: A decision on whether to give consent for the UK Government to exercise a concurrent function in relation to Wales for the first time should be presented to the Counsel General and the portfolio Minister at the earliest possible stage in the process.

Principle 5: Ministers should write to the relevant policy committees to inform them of an intention to consent to the UK Government exercising a concurrent plus legislative function in relation to Wales, and where time allows provide an opportunity for the Senedd to express a view before Ministers give consent.

Principle 6: The same principles around intergovernmental working, Ministerial agreement and notifying the Senedd apply to both providing and withdrawing consent to exercise a concurrent function.

5. Removal of concurrent functions

Principle 7: Concurrent functions should be removed at the first opportunity.

The removal of concurrent functions by way of provisions in an Act of the Senedd trigger the requirement in GoWA to obtain Minister of the Crown consent. It is important, given their constitutional implications (i.e. they limit legislative competence) that opportunities to remove functions are taken as soon as possible.

6. Proposals for new concurrent powers

Principle 8: New concurrent functions should only be created in very exceptional circumstances and teams should ensure that a carve out will apply such that no consent will be required when removing them (to protect legislative competence), and that they are concurrent plus (to protect executive competence).

Given that the creation of concurrent powers confines the Senedd in exercising its legislative competence, and GoWA is constructed on the basis that the number of concurrent powers will reduce, rather than increase, we should avoid

seeking or agreeing to new concurrent powers wherever possible. Alternative solutions such as taking the powers for the Welsh Ministers only, implementing intergovernmental agreements through separate regulations, or composite instruments, should be sought.

Where a new concurrent power is proposed, Ministers (including the Counsel General **through whom all MAs proposing a new power of this sort must be routed**) will need assurance that there is a very clear and strong rationale for requiring the power to be created in this way. Welsh Government officials should also satisfy themselves that a carve out will apply to the power being created, to ensure that removal of the power, in an Act of the Senedd, would not trigger any consent requirement.



Ein cyf/Our ref: A35572821

Elin Jones MS
Y Llywydd and Chair of the Business Committee
Senedd Cymru

Elin.jones@senedd.wales

19 July 2021

Dear Elin,

The Chairs of both the Climate Change, Environment and Infrastructure (CCEI) Committee and the Legislation, Justice and Constitution (LJC) Committee wrote to you on 2 July raising concerns regarding the timetable for scrutiny for the Legislative Consent Memorandum (LCM) on the Environment Bill.

We recognise the importance of the Senedd's scrutiny process where the UK Government proposes to legislate in matters of devolved competence and share the view the Sixth Senedd Committee members require the opportunity to carry out full scrutiny of the LCM. However, the setting of the scrutiny period and debate date is subject to the UK Parliamentary timetable for consideration of the Bill, over which we have no control.

However, I am pleased to confirm the Minister for Climate Change has received a favourable response to her letter of 2 July to the Secretary of State for Agriculture and Food requesting Lords Third Reading be scheduled to allow more time for Senedd Committee scrutiny of the LCM. Consequently, we now propose the debate takes place on 28 September and the time is extended to allow the Senedd additional time to debate the LCM on this Bill.

Bae Caerdydd • Cardiff Bay
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0300 0604400

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Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Accordingly, we propose a revised reporting deadline of 23 September. Whilst we recognise this is still shy of the at least six sitting weeks' scrutiny period we would normally afford to the Committees, to assist the Committees in their scrutiny of the LCM, the Minister for Climate Change has attended at both Committees prior to the summer recess and has committed to formally responding prior to the debate to scrutiny Committee reports published by the revised deadline.

I am copying this letter to the Chairs of the LJC and CCEI Committees.

Regards,

A handwritten signature in cursive script, reading 'Lesley Griffiths'.

Lesley Griffiths AS/MS

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Julie James MS
Minister for Climate Change

14 July 2021

Dear Julie

Legislative Consent Memorandum on the UK Government's Environment Bill – follow-up to 12 July 2021 committee meeting

Thank you for attending our Committee meeting on Monday morning to discuss the Welsh Government's Legislative Consent Memorandum on the UK Environment Bill.

There are a number of matters that we would like to pursue with you in further detail, which I have set out below.

1. For every regulation-making power identified in Annex A to the Memorandum, you agreed to write and indicate when you intend to use each such power.
2. In responding to questioning related to the widely drawn regulation-making powers in the Bill, you said:

*"If the UK Government used the powers with the consent of Welsh Ministers, **the guidance on Welsh Ministers' consent to the UK exercising powers in relation to Wales provides specifically that the Senedd is given an opportunity to provide a view before Ministers provide consent** (emphasis added). So, a written statement would be laid before the Senedd in that regard, and then a debate could be scheduled and Members' views can be sought. Also, before consenting to anything that the UK Government are using on behalf of the Welsh Government, we would have been fully involved in policy development and implementation through our inter-governmental governance arrangements, and so it will be perfectly possible*

for us to keep the committee informed as to where we were with that, and I'm happy to do that"

Please will you (a) provide the Committee with a copy of the guidance that you referred to in the committee meeting, and (b) confirm whether you will be formally seeking the Senedd's views before giving Ministerial consent to any relevant regulations to be made under the Bill (once enacted).

3. You confirmed that an amendment had been tabled to the Bill on 9 June that consequently amend the Government of Wales Act 2006, which would then allow the Senedd to remove concurrent plus functions given to the Secretary of State under the Bill. Please can you provide an update on the status of this amendment, and whether it was agreed to.
4. You said that you were working with all the other Governments in the UK to determine the requirements that arise from the UK-EU Trade and Co-operation Agreement (TCA). Please can you provide a more detailed update regarding these UK-wide discussions on the implications of the TCA and on the Welsh Government's plan to ensure it remains in compliance when exercising powers provided by the Bill.

Furthermore, and while not strictly linked to our consideration of the Memorandum, when responding to questioning regarding bilingual Welsh law you indicated that there was an ongoing conversation about UK Government Bills being made available in Welsh. Please could you provide us with more information on this interesting development.

We would be grateful to receive your response by 30 July, so that we may have opportunity to consider this additional information in sufficient time for it to be incorporated into the drafting of our report on the Memorandum.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee

Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

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Jeremy Miles MS

Minister for Education and the Welsh Language

12 August 2021

Dear Jeremy

Legislative Consent Memorandum on the Professional Qualifications Bill

You will be aware that the Legislative Consent Memorandum on the Professional Qualifications Bill has been formally referred to the Legislation, Justice and Constitution Committee for scrutiny, and that we have been asked to report to the Senedd by 30 September.

Within the context of this deadline, and in light of the concerns set out in the Memorandum and your current position that you will not recommend that the Senedd gives its consent to the relevant provisions in the Bill, there are a number of matters which I would like to raise with you at this stage.

1. The Bill was introduced into the House of Lords on 12 May 2021. The Legislative Consent Memorandum was not laid until 17 June 2021, approximately 5 weeks later. Standing Order 29.2(i) requires a Legislative Consent Memorandum such as this to be laid normally no later than two weeks after the introduction of the Bill. Can you provide reasons for the delay on this occasion?
2. At paragraph 30 of the Memorandum you state that "The Welsh Government is unconvinced that the majority of the measures contained in this Bill are necessary."

What was the Welsh Government's role during the development of the Bill?

When did you become involved in the development of the Bill?

How would you describe intergovernmental relations on the development of this Bill?

Why is the Welsh Government unconvinced that "the majority" of the measures contained in the Bill are necessary?

Which provisions does the Welsh Government consider are necessary and why?

3. At paragraph 41 of the Memorandum you state that “the Welsh Government will not be in a position to recommend that consent be given unless the Bill is substantially amended to address our significant concerns.”

What specific amendments to the Bill have you requested?

What is the current status of your discussions with the UK Government regarding the changes you will need to see made to the Bill before you would recommend that consent is given?

If no specific amendments have been requested, what changes would you need to see made to the Bill in order to address your concerns?

4. At paragraphs 32 to 35 of the Memorandum you set out how, without the consent of the Senedd or the Welsh Ministers, the Secretary of State or Lord Chancellor would be able to exercise regulation-making powers to amend primary legislation, including Senedd Acts. Can you confirm whether it is your understanding that the powers in the Bill would enable the Secretary of State or Lord Chancellor to amend the Government of Wales Act 2006 (the 2006 Act)?
5. At paragraph 35 you note that the UK Government has stated that “it does not intend to use concurrent powers in the areas of devolved competence without the agreement of the relevant [Devolved Administrations]”.

Where and when did the UK Government make this statement?

Have any discussions taken place as to the inclusion of this commitment on the face of the Bill?

6. At paragraph 36 and 37 of the Memorandum you set out how the Bill includes a “restriction unique to the Welsh Minister’s powers”, whereby the restrictions imposed by paragraphs 8 to 11 of Schedule 7B to the 2006 Act are effectively imported into the regulation-making process.

What specific discussions have you had with the UK Government about this restriction on the exercise of regulation-making powers conferred on the Welsh Ministers?

What explanation have you received as to why this particular “unique” restriction is imposed on the Welsh Minister’s powers?

The provision in question, clause 14(5) of the Bill, states that the Welsh Ministers may not make any provision using their regulation making powers in the Bill without the consent of a Minister of the Crown, where such provision would, if made in an Act of the Senedd, require Minister of the Crown consent. Is there anything outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue in this regard?

7. At paragraph 38 you outline a range of policy concerns arising from the Bill. One concern relates to scope and you state that “the definition used in the Bill fails to clearly define scope” and you are unclear whether further education is in the scope of the Bill.

Which definition are you referring to?

What are the implications for the Welsh Government if further education is within the scope of the Bill?

If this issue is not resolved, how will this impact on whether or not you recommend consent?

8. Another concern outlined in paragraph 38 relates to how the Bill links professional qualifications and trade policy which you state "reduces Welsh Minister's powers further since decisions could be badged as 'trade' rather than 'professional qualification' decisions and imposed on Wales in contravention of the Sewel Convention". You further state "Whilst assurances from UK Government Ministers and published guidance state this is not the intention, this is a clear risk due to the drafting of this Bill."

Where and when did the UK Government provide the assurances you refer to in the Memorandum?

In what published guidance does it state that it is not the UK Government's intention to badge relevant decisions as trade-related rather than relating to professional qualifications?

What discussions has the Welsh Government had with the UK Government regarding the inclusion of provisions on the face of the Bill to give effect to the "assurances" ?

9. As regards financial concerns you state in paragraph 38 that there will be an "impact on Welsh Government budget considerations" and that the situation "could ultimately impact on costs for the Welsh Government". Please can you explain how the Welsh Government could be impacted financially and how the costs relate to those identified for devolved regulators (as identified in paragraph 39)?

I would welcome a response from you by 8 September, so that it may inform our consideration of the Memorandum at our meeting on 13 September.

Yours sincerely,



Huw Irranca-Davies
Chair

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Agenda Item 12

By virtue of paragraph(s) vi of Standing Order 17.42

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