

SL(5)697 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

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 (“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 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.

The International Travel Regulations also confer powers on specified persons in specified circumstances to issue fixed penalty notices in relation to offences committed under the regulations, including in relation to offences for failure to comply with the requirements to isolate.

These Regulations amend the International Travel Regulations to:

- implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health. Regulation 2 removes the Canary Islands from the list of exempt countries and territories, whilst regulation 4 adds Botswana and Saudi Arabia to the list of exempt countries and territories; and
- change the amount of the fixed penalty notice that may be issued in relation to a failure to isolate under the International Travel Regulations. Regulation 6 replaces the fixed sum of £1,000 with a sliding scale starting at £500 for a first offence.

The Public Health Information Regulations require the operators of commercial air or sea passenger services that arrive in Wales to provide certain information to passengers using those services. The information relates to measures being taken in the United Kingdom in response to coronavirus, including measures required by the International Travel Regulations.

These Regulations amend the Public Health Information Regulations to:



- change the amount of the fixed penalty notice that may be issued under the Public Health Information Regulations. Regulations 8 of these Regulations replaces the fixed sum of £4,000 with a sliding scale starting at £1,000 for a first offence; and
- make consequential amendments to reflect amendments made by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 to the International Travel Regulations to reduce the period for which a person is required to isolate from 14 days to 10 days.

These Regulations came into force at 4.00 a.m. on 12 December 2020.

Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul these 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 four 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 negative resolution instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 11 December 2020. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and 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 or the Public Health Information Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate."

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

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

"Given the 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."

In a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 11 December, it is also explained that:

"Due to the immediacy of the Regulations they have not been subject to consultation."

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note that there has been no regulatory impact assessment in relation to these Regulations. The Explanatory Memorandum provides that there has been no regulatory impact assessment:

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

When considering previous regulations that amended the International Travel Regulations, the Committee reported on the absence of an equality impact assessment for the amending Regulations and the International Travel Regulations.

The Welsh Government responded to the reports in relation to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) No. 18 and No. 19 Regulations No. on 24 November 2020. In particular, we note the following:

"Regulations have been made to respond to a public health emergency, so it has not been possible to produce and publish an Equality Impact Assessment alongside them. An Integrated Impact Assessment of international travel isolation requirements will be published in due course."

Implications arising from exiting the European Union

None.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee