

SL(5)666 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) to add Bonaire, Sint Eustatius and Saba; Israel; the City of Jerusalem; Namibia; the Northern Mariana Islands; Rwanda; Sri Lanka; Uruguay and the US Virgin Islands to the list of exempt countries and territories in the International Travel Regulations and to make transitional provisions. Travellers from these countries, territories and parts of countries will not be required to isolate on arrival in Wales.

These Regulations also:

- amend regulation 4 of the International Travel Regulations (requirement to provide passenger information) so that passenger information must be provided on or before arrival in Wales;
- amend Schedule 2 (exempt persons) to the International Travel Regulations, including:
 - the exemption for representatives at international or UK conferences, so as to clarify that the reference to conferences is to those conferences held in the UK;
 - the exemption for Crown servants and government contractors;
 - to add a new exemption for subsea telecommunication workers; and
- make miscellaneous amendments to the International Travel Regulations, including a correction to the Welsh language text of those Regulations to remedy a technical point raised by the Committee in its report on the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020.

These Regulations came into force at 4.00 am on 21 November 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

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Schedule 2 (exempt persons) to the International Travel Regulations exempts certain categories of worker from having to provide passenger information and from having to isolate.

Regulation 6(5) of these Regulations inserts a new category of exempt persons as paragraph 39 of Schedule 2 to the International Travel Regulations, namely:

“A person —

(a) who is engaged in the installation, maintenance or repair of subsea fibre optic telecommunications infrastructure,

(b) whose role directly supports the installation, maintenance or repair of subsea fibre optic telecommunications infrastructure,

where they have travelled to the United Kingdom in the course of their work.”

The Explanatory Memorandum to these Regulations states that this amendment is *“made to the sectoral exemptions ... adding a new exemption for subsea telecommunication workers”*.

Regulation 9(2)(b) of the International Travel Regulations provides that regulations 7 and 8 of the International Travel Regulations, which contain the requirements to self-isolate, do not apply to a person described in paragraphs 2 to 38 of Schedule 2. To give affect to newly inserted paragraph 39, it appears necessary to amend regulation 9(2) of the International Travel Regulations to include reference to paragraph 39.

A Welsh Government response is requested.

Merits Scrutiny

The following 6 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 Government’s explanation contained in the Explanatory Memorandum that:

“Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Bonaire,



Sint Eustatius and Saba; Israel; the City of Jerusalem; Namibia; the Northern Mariana Islands; Rwanda; Sri Lanka; Uruguay and the US Virgin Islands has decreased."

Further, in the Explanatory Memorandum to these Regulations, the Welsh Government states:

"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 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."

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 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 20 November 2020, it is also explained that:

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

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 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 20 November 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."

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.

When considering the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020, the Committee



reported on the absence of an equality impact assessment for those Regulations and the International Travel Regulations.

We note that the Welsh Government responded to the reports in relation to the No. 18 and No. 19 Regulations 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."

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

Regulation 6(2) of these Regulations substitutes paragraph 13 of Schedule 2 to the International Travel Regulations, which exempts certain categories of worker from having to isolate when returning to Wales.

Prior to amendment by these Regulations, the International Travel Regulations defined "essential government work" as "*work that has been designated as such by the Welsh Ministers or the relevant Department or employer*". These Regulations amend that definition so that there is no reference to the Welsh Ministers, and therefore designations are made only by "the relevant Department". The Explanatory Memorandum does not explain why the power to designate essential government work is no longer required by the Welsh Ministers.

A Welsh Government response is requested.

6. Standing Order 21.3(v) – that it imperfectly achieves its policy objectives.

The Explanatory Memorandum states that:

"The following additional amendments are being made to the sectoral exemptions from the requirements to provide passenger information and to self-isolate: ... amending the exemption for Crown servants and government contractors so it is broader in scope and covers their dependents"

It is not clear how these Regulations provide either for the exemption to be broader in scope, and how they cover the dependents of Crown servants and government contractors.

A Welsh Government response is requested.

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.



Legal Advisers
Legislation, Justice and Constitution Committee
25 November 2020



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee