

# 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: 8 November 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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## Informal pre-meeting (13.00–13.30)

- 1 Introductions, apologies and substitutions  
13.30
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3  
13.30–13.35 (Page 1)  
LJC(6)–12–21 – Paper 1 – Statutory instruments with clear reports  
Made Negative Resolution Instruments
- 2.1 SL(6)066 – The Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2021
- 3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3  
13.35–13.40  
Made Negative Resolution Instruments
- 3.1 SL(6)071 – The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021  
(Pages 2 – 7)  
LJC(6)–12–21 – Paper 2 – Draft report



LJC(6)–12–21 – **Paper 3** – Letter from the Minister for Health and Social Services to the Llywydd, 29 October 2021

[Regulations](#)

[Explanatory Memorandum](#)

Draft Affirmative Resolution Instruments

**3.2 SL(6)067 – The Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021**

(Pages 8 – 12)

LJC(6)–12–21 – **Paper 4** – Draft report

LJC(6)–12–21 – **Paper 5** – Letter from the Minister for Finance and Local Government, 26 October 2021

[Regulations](#)

[Explanatory Memorandum](#)

**3.3 SL(6)069 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) Regulations 2021**

(Pages 13 – 19)

LJC(6)–12–21 – **Paper 6** – Draft report

LJC(6)–12–21 – **Paper 7** – Letter from the First Minister, 29 October 2021

LJC(6)–12–21 – **Paper 8** – Written statement by the Welsh Government, 29 October 2021

[Regulations](#)

[Explanatory Memorandum](#)

**3.4 SL(6)070 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 20) Regulations 2021**

(Pages 20 – 22)

LJC(6)–12–21 – **Paper 9** – Draft report

[Regulations](#)

[Explanatory Memorandum](#)

## **4 Papers to note**

13.40–13.45

### **4.1 Correspondence with Lord Thomas of Cwmgiedd: Evidence session on the Commission on Justice in Wales report**

(Pages 23 – 25)

LJC(6)–12–21 – Paper 10 – Letter from Lord Thomas, 2 November 2021

LJC(6)–12–21 – Paper 11 – Letter to Lord Thomas, 26 October 2021

### **4.2 Written statement by the Welsh Government: Consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales**

(Pages 26 – 27)

LJC(6)–12–21 – Paper 12 – Written statement by the Welsh Government, 1 November 2021

## **5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

13.45

## **6 Legislative Consent Memorandum on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill – consideration of draft report**

13.45–14.00

(Pages 28 – 41)

LJC(6)–12–21 – Paper 13 – Draft report

LJC(6)–12–21 – Paper 14 – Letter from the Minister for Finance and Local Government, 2 November 2021

LJC(6)–12–21 – Paper 15 – Letter to the Minister for Finance and Local Government, 19 October 2021

## **7 Legislative Consent Memoranda – briefing**

14.00–14.15

(Pages 42 – 73)

LJC(6)–12–21 – Paper 16 – Research Service briefing

LJC(6)–12–21 – Paper 17 – Letter to the Business Committee, 29 October 2021

**8 International agreements considered on 1 November 2021 –  
consideration of draft report**

14.15–14.20

(Pages 74 – 78)

LJC(6)–12–21 – Paper 18 – Draft report

## Statutory Instruments with Clear Reports 08 November 2021

### SL(6)066 – The Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2021

#### Procedure: Made Negative

Certain agricultural tenancies carry succession rights. In these cases, under the Agricultural Holdings Act 1986, a close relative of the deceased or retiring tenant can apply to the Agricultural Land Tribunal (ALT) for a direction as to whether the relative is entitled to succeed to a tenancy. One of the tests in establishing a right of succession involves satisfying the ALT that the applicant does not already occupy “a commercial unit of agricultural land” elsewhere. If this were the case, the close relative would not be eligible for automatic succession.

This [Order](#) sets out figures for agricultural incomes which are associated with various farming activities, and are used in determining whether or not the land in question is a ‘commercial unit of agricultural land’.

The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2021 which covers the period from 12 September 2019 to 11 September 2020. This Order will cover the period from 12 September 2020 to 11 September 2021.

**Parent Act:** Agricultural Holdings Act 1986

**Date Made:** 22 October 2021

**Date Laid:** 26 October 2021

**Coming into force date:** 01 December 2021



# Agenda Item 3.1

## **SL(6)071 - The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021**

### **Background and Purpose**

The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021 ("the Regulations") are made in reliance on the powers in sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. They amend the:

- Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations");
- Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the Restriction Regulations");
- Health Protection (Notification) (Wales) Regulations 2020 ("the Notification Regulations", and
- Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Public Health Information Regulations").

Part 2 of the Regulations amends the International Travel Regulations. The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include requirements for booking and undertaking coronavirus tests 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 make specific provisions for "regulation 2A travellers"; including individuals who have been fully vaccinated in prescribed countries and territories.

Regulation 3 of the Regulations amends regulation 2A (exemptions for vaccinated travellers and others) of the International Travel Regulations, extending the recognition of vaccinations to further countries and territories.

Regulation 4 amends regulation 6AB (requirement to book and undertake tests) of the International Travel Regulations so as to enable regulation 2A travellers to use lateral flow device ("LFD") tests for the purposes of the Regulations.

Regulation 6 contains provision requiring a person to undertake a confirmatory polymerase chain reaction ("PCR") test where they receive a positive test result on a LFD test, as well as containing provision on isolation requirements following positive results.



Regulation 8 introduces an offence for failing to undertake a confirmatory PCR test.

Regulations 5, 7 to 9, and 11 make further provision in relation to the introduction of LFD testing.

Regulation 10 amends Schedule 1 to the International Travel Regulations to remove the requirement for passengers to list their seat numbers on Passenger Locator Forms ("PLF").

Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A (countries and territories subject to additional measures) to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

Regulation 12 of the Regulations amends Schedule 3A to remove various countries from the list of countries or territories to which regulation 12E applies.

Part 3 of the Regulations amends the Notification Regulations, in consequence of the introduction of LFD testing in the International Travel Regulations to ensure Public Health Wales is notified of test results.

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. Part 4 of the Regulations amends the Public Health Information Regulations, in consequence of the PLF amendments made to the International Travel Regulations at regulation 10.

Part 5 of the Regulations amends regulation 16A(12) of the Restrictions Regulations, further extending the list of countries and territories in that paragraph so that evidence of vaccination in those countries with vaccines authorised in the United Kingdom is also acceptable for the purposes of what is commonly known as the COVID-pass. The amendment is required to maintain consistency with regulation 2A of the International Travel Regulations.

## 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(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

The first line of regulation 3 incorrectly refers to “Regulation 12” when, in fact, the correct reference should be ‘Regulation 2A’.

## **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 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 29 October 2021.

In particular, we note what the letter says regarding why these regulations breach the 21 day rule:

*“There 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.”*

We note also the following in the Explanatory Memorandum:

*“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.”*

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

We note that 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."*

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

The section in the Explanatory Memorandum dealing with the European Convention on Human Rights refers to the "Operator Liability Regulations". The Regulations do not amend the Operator Liability Regulations, and reference to them in this way has the potential to cause confusion about the purpose and effect of the Regulations.

## **Welsh Government response**

A Welsh Government response is required in relation to the Technical reporting point and the fourth Merits reporting point.

### **Legal Advisers**

### **Legislation, Justice and Constitution Committee**

**4 November 2021**





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

29 October 2021

Dear Elin

**The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that one part of this Statutory Instrument will come into force at 04:00 on 31 October 2021 and the remaining changes will come into force at 04:00 a.m. on 1 November 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"); the Health Protection (Notification) (Wales) Regulations 2010 ("the Notification Regulations"); the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Public Health Information Regulations") and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the Restrictions Regulations").

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

- Amending the requirement for post-arrival tests to include lateral flow tests as well as PCR tests;
- Removing Colombia, Dominican Republic, Ecuador, Haiti, Panama, Peru and Venezuela from the red list;

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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.

- Adding the following countries to the list of relevant countries with recognised vaccination certification:

Angola; Anguilla; Argentina; Armenia; Azerbaijan; Belize; Bermuda; Botswana; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cambodia; Cayman Islands; Costa Rica; Djibouti; Eswatini; Falkland Islands; Gibraltar; Guernsey; Guyana; Honduras; Isle of Man; Jersey; Lebanon; Lesotho; Madagascar; Mauritius; Mongolia; Montserrat; Nepal; Occupied Palestinian Territories; Panama; Pitcairn, Henderson, Ducie and Oeno Islands; Saint Helena, Ascension and Tristan da Cunha; South Georgia and the South Sandwich Islands; The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus; Turks and Caicos Islands; Peru; Rwanda; Seychelles; Sierra Leone; Sri Lanka; Suriname; Tanzania; Trinidad and Tobago; Tunisia; Uganda and Uruguay;

- Removing the requirement for seat numbers from the passenger information requirements.

These Regulations amend the Notification Regulations so as to require private test providers to notify PHW of the results of LFD tests provided under ITR.

These Regulations also make consequential amendments to the Public Health Information Regulations to reflect the changes to the restrictions on international travel made by these Regulations.

These Regulations also amend the Restrictions Regulations, further extending the list of countries and territories, so that evidence of vaccination in those countries with vaccines authorised in the United Kingdom is also acceptable for the purposes of what is commonly known as the COVID-pass. The amendment is required to maintain consistency with the vaccine recognition amendments to the International Travel 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



**Eluned Morgan AS/MS**

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

# Agenda Item 3.2

## **SL(6)067 - The Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021**

### **Background and Purpose**

The [Representation of the People \(Amendment\) \(Wales\) \(Coronavirus\) \(No. 2\) Regulations 2021](#) ("the Regulations") are made under paragraph 4(2) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000.

These Regulations make provision in relation to proxy voting at certain local government by-elections held between the coming into force of these Regulations and 28 March 2022.

Regulation 2 amends the Representation of the People (England and Wales) Regulations 2001, so as to extend to 28 March 2022 the provisions which provide applicants with additional grounds for applying for emergency proxy votes at these by-elections. These additional grounds relate to persons who cannot reasonably be expected to vote in person at a polling station as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus, as well as allowing those who have an existing proxy vote to change their nominated proxy in the event the nominated individual has to self-isolate.

Electoral law currently provides for scenarios where electors may need to apply for an emergency proxy vote because they are complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus. However, the current rule will not apply to by-elections taking place on or after 5 November 2021. The Welsh Government has been made aware of a small number of by-elections scheduled for after this date, and therefore Welsh Government must extend the current rule for polls taking place in the near future, when the Covid-19 virus is still likely to be prevalent in communities.

The provisions are time limited and will cease to have effect after 28 March 2022.

### **Procedure**

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

### **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 of 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:

*“Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. However, views were sought and taken into consideration on the first set of Regulations - The Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021 - which this statutory instrument extends to 28th March 2022. The Electoral Commission have been made aware of the intention to extend these provisions to support the democratic rights of those wishing to participate in local government by-elections.”*

We note also the following explanation provided by Rebecca Evans MS, Minister for Finance and Local Government, in a letter to the Chair of the Legislation, Justice and Constitution Committee dated 26 October 2021:

*“Given the current rising number of Covid-19 cases it has become necessary for us to extend the rule to allow those self-isolating on and after the 5 November 2021 to take part in any scheduled local government by-election.*

*My officials have recently been made aware of three by-elections, scheduled for 11, 18 and 25 November. So that these provisions are in place for the first of those by-elections, I am asking you to consider the Regulations to an expedited timetable and report on them in time for a plenary debate on 9 November 2021.”*

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

The Welsh language Explanatory Memorandum (“Welsh EM”) contains errors and is missing some of the detail included in the English language Explanatory Memorandum (“English EM”). Such inconsistencies arise at paragraphs 2.1 (matters of interest to LJC), 3.1 (Legislative background) and 5.1 (Consultation).

At paragraph 2.1 of the English EM it is provided that “subject to the will of the Senedd, the Regulations will come into force on 10 November 2021”. The Welsh EM contains an incorrect date and does not refer to the Senedd’s role. The text in the Welsh EM translates as “the Regulations come into force on 10 November 2022” (Daw’r Rheoliadau i rym ar 10 Tachwedd 2022).

Paragraph 3.1 refers to the powers conferred on the Welsh Ministers by the Representation of the People Act 2000 (“the 2000 Act”). These Regulations are made under paragraphs 4(2)



and 6(7) and **(8)** of Schedule 4 to the 2000 Act. There are brackets missing in the Welsh EM, which gives the impression the Regulations are made under paragraph 8 of Schedule 4, not 6(8) of Schedule 4. The same error does not arise in the English language EM.

Paragraph 5.1 of the Welsh EM does not contain information that is included in the English EM regarding the Electoral Commission.

The name of the Minister for Finance and Local Government is also incorrectly spelt in the Welsh EM.

Whilst the Explanatory Memorandum does not form part of the law, these errors taken together may serve to confuse the citizen about the effect of the Regulations.

## **Welsh Government response**

A Welsh Government response is required in respect of the second Merits reporting point only.

### **Legal Advisers**

### **Legislation, Justice and Constitution Committee**

**2 November 2021**





Huw Irranca-Davies MS  
Chair of the Legislation, Justice and Constitution Committee

26 October 2021

Dear Huw,

I am writing to you in relation to the Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021.

These Regulations amend the Representation of the People (England and Wales) (Coronavirus) Regulations 2001 to extend a rule introduced earlier this year which provides electors at a local government by-election who are unable to attend a polling station in person, as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus, an emergency proxy vote without medical attestation. This means that those people required to self-isolate the days before, or the day of the election, are still able to exercise their democratic rights while self-isolating.

As currently drafted, the rule will not apply on or after 5 November 2021, which is the last date on which a notice of a local government by-election may be given. However, the by-election itself may take place after this date and the current Regulations do not allow for the non-medically attested proxy vote to be available to anyone self-isolating after the 5 November.

Given the current rising number of Covid-19 cases it has become necessary for us to extend the rule to allow those self-isolating on and after the 5 November 2021 to take part in any scheduled local government by-election.

My officials have recently been made aware of three by-elections, scheduled for 11, 18 and 25 November. So that these provisions are in place for the first of those by-elections, I am asking you to consider the Regulations to an expedited timetable and report on them in time

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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.

for a plenary debate on 9 November 2021.

I would like to thank the Committee in advance for their assistance in providing for continued support for self-isolating voters wishing to exercise the democratic rights.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government



## SL(6)069 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) Regulations 2021

### Background and Purpose

From 11 October 2021, the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the principal Regulations") have required certain premises to take reasonable measures to ensure that adults (and this means a person aged 18 years or over) are only present if they have what is commonly referred to as a "COVID pass".

These [Regulations](#) amend the principal Regulations by adding cinemas, concert halls and theatres to the list of premises where a COVID pass is required. The changes take effect from 7.00 a.m. on 15 November 2021.

### Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

### 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.**

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 spread 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."*

**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 ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."*

**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 is no equality impact assessment for these Regulations. We note the following paragraph in the Explanatory Memorandum in relation to a summary impact assessment:

*"A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place 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 (which includes an Equality Impact Assessment and Human Rights Impact Assessment) will be published as soon as practicably possible."*

## Welsh Government response

A Welsh Government response is not required.







Huw Irranca-Davies MS  
Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
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29 October 2021

Dear Huw,

**Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) Regulations 2021**

I have laid the draft Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) Regulations 2021 and an accompanying Explanatory Memorandum. The Regulations will be subject to the draft affirmative procedure and I would be grateful if you would consider the Regulations to an expedited timetable and report on them in time for a plenary debate on 9 November 2021.

I am copying this letter to the Llywydd.

Yours sincerely

**MARK DRAKEFORD**

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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.



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Review of the Health Protection (Coronavirus Restriction) (No.5) (Wales) Regulations 2020**

**DATE**            **29 October 2021**

**BY**                **First Minister, Mark Drakeford MS**

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 require a review of the coronavirus restrictions is undertaken every three weeks. The most recent review was due by 28 October.

The situation in Wales is serious. Cases of coronavirus have risen sharply since the last three-week review of the regulations and have reached their highest point since the start of the pandemic, at more than 700 cases per 100,000 people.

Vaccination has helped to weaken the link between infections, serious illness and hospitalisations but it has not broken the link. The current sustained high rates of infections in the community are sadly translating into higher numbers of people being admitted to hospital with Covid-19. This is against a background of non-Covid-19 urgent and emergency pressures in health and social care services, which comparable to that normally experienced during the most difficult periods of winter. Sadly, we have seen an increase in Covid-19-related deaths.

If these high rates of community infection and transmission continue, we are likely to see increased pandemic-related pressures on the NHS and more people needing hospital care.

Wales will remain at alert level zero over the next three weeks. But we can only do so by strengthening the protective measures we have in place. It is hoped these measures, combined with increasing vaccination coverage, will help to reduce the high levels of community transmission we are currently seeing and protect people's health.

If case rates continue to rise over this three-week cycle, Ministers will have to consider raising the alert level at the next review and re-introducing restrictions.

Vaccines remain our best defence against the virus. Discussions have been held with the Joint Committee on Vaccination and Immunisation about the best interval between the second dose of the vaccine and the booster.

To strengthen protective measures at alert level zero, we intend to extend the use of the COVID Pass, making it a requirement for entrance to cinemas, theatres and concert halls from 15 November, subject to a debate and vote in the Senedd. These are all venues where large numbers of people gather indoors for periods of time, often without face coverings.

If the public health situation does not improve, the next review of the coronavirus regulations will consider a further expansion of the COVID Pass to include more hospitality settings.

The self-isolation guidance will be changed. Fully vaccinated adults and children aged five to 17 must self-isolate if someone in their household has symptoms or tests positive for Covid-19 until they have had a negative PCR test result. If they are not vaccinated, they must self-isolate for 10 days.

This change is being made to reflect evidence that, while being fully vaccinated does reduce the risk of becoming infected, there may be a one in four chance of a fully vaccinated person contracting Covid-19 from someone you live with.

It is critical all businesses and organisations understand the nature and importance of the alert level zero baseline measures – these will help keep us all safe and help keep Wales open through the autumn and winter months.

I have written to social partners and Ministers are engaging with organisations and business representatives to reinforce the following points:

- Businesses, employers and other organisations must continue to undertake a specific coronavirus risk assessment and take reasonable measures to minimise exposure to, and the spread of, coronavirus.
- Adults and children aged 11 and over must wear face-coverings in indoor public places, with the exception of hospitality settings. Employers and businesses should make it clear this is a legal requirement.
- People should work from home wherever possible to help reduce the number of contacts between people. This is particularly important when cases rates in the community are high.

Every contact we have with other people can help spread the virus when rates of the virus are this high. This makes all the other measures we can all take very important, including staying at home if we are ill; getting a test if we have symptoms of Covid-19, meeting people outdoors or in well-ventilated places, social distancing, washing our hands regularly and avoiding crowds.

We will be providing further support to head teachers to help reduce the circulation of the virus in schools. A toolkit will be published next week, which will provide practical advice and support for schools to make the process of escalating and de-escalating measures quicker and easier. Greater emphasis will also be placed on the importance of staff and secondary school students to take lateral flow tests twice a week.

We need a concerted effort from everyone across Wales to help bring cases of coronavirus under control. Only with this collective effort can we continue to keep Wales safe and open.

# Agenda Item 3.4

## SL(6)070 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 20) Regulations 2021

### Background and Purpose

These [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 to provide that they will now expire on 25 February 2022.

The requirement on the Welsh Ministers to review the need for and proportionality of the restrictions and requirements in the principal Regulations every 21 days remains in place.

### Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

### 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.**

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 spread 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."*

## **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 ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."*

## **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 is no equality impact assessment for these Regulations. We note the following paragraph in the Explanatory Memorandum in relation to a summary impact assessment:

*"A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place 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 (which includes an Equality Impact Assessment and Human Rights Impact Assessment) 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**  
**2 November 2021**



# Agenda Item 4.1

**The Rt. Hon. The Lord Thomas of Cwmgiedd, P.C.**

24 Lincoln's Inn Fields

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1 November 2021

Huw Iranca-Davies, MS  
Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
CARDIFF CF99 1SN



## Evidence on 22 November

Thank you for your letter of 26 October inviting me to attend an evidence session of the Legislation, Justice and Constitution Committee on Monday 22 November at 1.30 – 2.30 pm over zoom. That is a time which will work for me and I am therefore happy to confirm I will be able to attend over zoom.

I would be grateful if I could be provided in due course with a list of the questions or areas of questioning you wish to cover.

I also look forward to receiving the zoom link in due course.

With kindest regards,



Lord Thomas of Cwmgiedd  
Former Chair of the Commission on Justice in Wales

26 October 2021

Dear Lord Thomas

### Invitation to give evidence

I would like to take the opportunity to introduce myself as Chair of the Sixth Senedd's Legislation, Justice and Constitution Committee.

As a Committee, we are mindful of the recommendation of The Commission on Justice in Wales that the Senedd should take a more proactive role in the scrutiny of the operation of the justice system in Wales. To that effect, in the short term, we will be hearing from the President of the Welsh Tribunals in early November, and we hope to begin a piece of work on access to justice in Wales in the New Year. We have also committed to undertake regular scrutiny of the Welsh Government's justice functions, and hope to schedule the first of these sessions in January 2022, as well as exploring opportunities to hear from the Lord Chancellor and Secretary of State for Justice.

In order to inform our scrutiny on these matters, we would like to invite you to attend our Committee meeting on Monday 22 November, from 1.30pm- 2.30pm, to discuss the implementation of the recommendations of the Commission on Justice in Wales report. Please note, it is anticipated the meeting will take place remotely via Zoom.

I would be grateful if you could confirm, at your earliest convenience, whether you will be able to accept our invitation.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales**

**DATE**            **01 November 2021**

**BY**                **Mick Antoniw, Counsel General and Minister for the Constitution**

I am writing to inform the Senedd of a recent consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales. Agreement was sought to the making of an Order under section 104 of the Scotland Act 1998 in consequence of the Social Security (Scotland) Act 2018.

Section 104 of the Scotland Act 1998 enables the Secretary of State to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

Article 7 of the proposed Order amends regulation 53 of the Representation of the People (England and Wales) Regulations 2001 to enable individuals to apply to vote by proxy in UK parliamentary elections and local government elections in England and Wales without the need for attestation of their application if they are in receipt of the mobility component of disability assistance for children and young people at the higher rate. The amendments to Regulation 53, insofar as they relate to proxy vote applications for local government elections in Wales are making provision in an area which is within the Senedd's legislative competence.

Eligible individuals moving from Scotland to England or Wales would continue to receive disability assistance in accordance with the Scottish regime for a period of up to 13 weeks from the date of the move. The effect of the Order is that an individual who has recently moved to Wales and is temporarily still in receipt of the mobility component of disability assistance for children and young people at the higher rate payable in Scotland would still be entitled to apply to vote by proxy without attestation of their application in a Welsh local government election, subject to satisfying all relevant registration conditions.

The amendment would provide continuity for individuals and allow them to participate in the democratic process on the same basis that they would have been entitled to, had their new claim for benefits payable in Wales been processed at the relevant time. As this would be for a narrow time period and would be likely to have a limited impact I therefore agreed to the Order being taken forward by the UK Government.

The Order was laid in Parliament on 28 October 2021.

# Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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Ein cyf/Our ref: MA/RE/2313/21

Huw Irranca-Davies MS  
Chair of the Legislation, Justice and Constitution Committee  
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2 November 2021

Dear Huw,

Thank you for your letter about the Welsh Government's Legislative Consent Memorandum (the Memorandum) on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill).

I would like to address the matters you have raised in your consideration of the Memorandum.

The background to the Bill was not included within the Memorandum, which focuses on the relevant provisions of the Bill for which consent is required. The Bill was introduced on 12 May without prior discussion with the Welsh Government as to whether provisions for Wales should be included on introduction. The timing of the development of the Bill prior to its introduction, also fell within the Senedd's pre-election period.

Following the election, an approach to the Bill was formulated and I wrote to the then Secretary of State for Housing, Communities and Local Government on 27 July asking for relevant provisions for Wales to be included within the Bill. I received a response on 3 September from the then Minister for Regional Growth and Local Government confirming that relevant provisions for Wales would be tabled as an amendment at Report Stage in the House of Commons on 9 September.

I note your comments on the link provided in the memorandum, this link is to the webpage hosting information relevant to all stages of the Bill. The Bill as amended containing provisions relevant to Wales can be found at:

<https://bills.parliament.uk/publications/42504/documents/629>

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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 and any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

With regards to the making of relevant Regulations, yesterday afternoon I laid the *Valuation for Rating (Wales) (Coronavirus) Regulations 2021*. These Regulations came into force at 6pm yesterday evening and have the effect, going forward, of preventing Material Change of Circumstances appeals which seek to rely on Covid-19 related matters. The Welsh Government considered it necessary to consult on these Regulations, with a consultation on draft Regulations taking place between 16 August and 27 September: a summary of responses was published on 21 October.

As a result of timing constraints, it has not been possible to include a clause in the Bill revoking these Regulations. I intend to lay further regulations to revoke the Regulations, which will align with the timing of Royal Assent, should the Bill continue to progress.

I am copying this reply to Paul Davies MS, Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government

Rebecca Evans MS  
Minister for Finance and Local Government

19 October 2021

Dear Rebecca

**Welsh Government's Legislative Consent Memorandum on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill**

We considered the Legislative Consent Memorandum (the Memorandum) on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill) at our meeting on Monday of this week. There are two important matters, raising points of transparency and accessibility, that we wish to raise with you before we consider how we will report on the Memorandum.

First, the Memorandum refers to the Bill as introduced in the House of Commons on 12 May 2021 and provides a link to the Bill as introduced. However, clause 1 in that version of the Bill does not apply to Wales.

On 7 July 2021, you published a written statement confirming the Welsh Government's intention to legislate "by seeking to include provisions for Wales in the UK Government's Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill... which will operate to disregard Covid-19 appeals on the basis of a...[material change of circumstances]."

The UK Government subsequently amended the Bill at Report Stage in the House of Commons on 9 September 2021 to extend the application of clause 1 of the Bill to Wales. In the explanatory notes accompanying the Bill as introduced into the House of Lords on 10 September, the UK Government stated "The [UK] Government, at the request of the Welsh Government, tabled amendments to the Bill at Commons Report stage to extend application of Clause 1 to non-domestic rating lists compiled for the purposes of business rates in Wales (as well as lists for England)."

These matters are not referred to at all in the Memorandum, which was laid on 21 September 2021, and we would welcome your explanation for their omission.

Secondly, in your July written statement you said "We also intend to introduce regulations in Wales which will have a similar effect to the provisions to be included in the UK Bill, and those regulations would apply until such time as the UK Bill becomes law." As far as we are aware, these regulations have not been made. We have noted that UK Ministers made The Valuation for Rating (Coronavirus) (England) Regulations 2021 in March, and that clause 1(9) of the Bill will revoke the Regulations if and when the Bill is enacted. We would also welcome clarity on this matter, including the current situation regarding the regulations referred to in your written statement.

I am copying this letter to Paul Davies MS, Chair of the Economy, Trade and Rural Affairs Committee.

I would be grateful to receive your reply by 2 November 2021.

Yours sincerely,

A handwritten signature in dark ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies  
Chair

# Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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