

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	<b>Gareth Williams</b>
Meeting date: 29 June 2020	Committee Clerk
Meeting time: 10.00	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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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](http://www.senedd.tv)

Informal pre-meeting (09:30–10:00)

## 1 Introduction, apologies, substitutions and declarations of interest

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

10:00–10:05

Negative Resolution Instruments

### 2.1 SL(5)557 – The National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020

(Pages 1 – 17)

CLA(5)–20–20 – Paper 1 – Report

CLA(5)–20–20 – Paper 2 – Regulations

CLA(5)–20–20 – Paper 3 – Explanatory Memorandum

### 2.2 SL(5)558 – The Single Use Carrier Bags Charge (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 18 – 33)

CLA(5)–20–20 – Paper 4 – Report

CLA(5)–20–20 – Paper 5 – Regulations



CLA(5)–20–20 – Paper 6 – Explanatory Memorandum

**2.3 SL(5)559 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020**

(Pages 34 – 55)

CLA(5)–20–20 – Paper 7 – Report

CLA(5)–20–20 – Paper 8 – Regulations

CLA(5)–20–20 – Paper 9 – Explanatory Memorandum

CLA(5)–20–20 – Paper 10 – Letter from the Minister for Finance and Trefnydd, 16 June 2020

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

10:05–10:10

**3.1 SL(5)552 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020**

(Pages 56 – 59)

CLA(5)–20–20 – Paper 11 – Report

CLA(5)–20–20 – Paper 12 – Welsh Government response

**3.2 SL(5)555 – The Census (Wales) Regulations 2020**

(Pages 60 – 71)

CLA(5)–20–20 – Paper 13 – Report

CLA(5)–20–20 – Paper 14 – Welsh Government response

**3.3 SL(5)556 – The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**

(Pages 72 – 76)

CLA(5)–20–20 – Paper 15 – Report

CLA(5)–20–20 – Paper 16 – Welsh Government response

**4 Paper(s) to note**

10:10–10:15

**4.1 Letter from the Minister for Finance and Trefnydd: Finance Ministers' Quadrilateral meeting**

(Page 77)

**CLA(5)-20-20 – Paper 17 – Letter from the Minister for Finance and Trefnydd, 19 June 2020**

**4.2 Letter from the First Minister: Senedd Cymru (Disqualification) Order 2020**

(Pages 78 – 80)

**CLA(5)-20-20 – Paper 18 – Letter from the First Minister, 22 June 2020**

**CLA(5)-20-20 – Paper 19 – Written statement**

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

10:15

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

10:15–10:30

(Pages 81 – 112)

**CLA(5)-20-20 – Paper 20 – Draft report**

**7 Legislative Consent Memorandum on the Trade Bill – consideration of draft report**

10:30–11:00

(Pages 113 – 137)

**CLA(5)-20-20 – Paper 21 – Draft report**

**8 Making Justice work in Wales – outcome of consultation**

11:00–11:15

(Pages 138 – 169)

**CLA(5)-20-20 – Paper 22 – Covering paper**

**CLA(5)-20-20 – Paper 23 – Summary of consultation responses**

**Date of the next meeting – 6 July 2020**

# SL(5)557 – The National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020

## Background and Purpose

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These Regulations are made by the Welsh Ministers pursuant to section 203(9) and (10) of, and paragraph 4(1)(a), (b) and (e) of Schedule 2, paragraph 4(1)(a) and (f) of Schedule 3, and paragraph 5(a) of Schedule 5 to, the National Health Service (Wales) Act 2006 and come into force on 5 July 2020. The Regulations will disapply certain maximum periods of tenure of office of board and committee members of particular National Health Service bodies in order to address disruption to appointments during the COVID-19 pandemic.

The bodies covered by the provisions of these Regulations are Local Health Boards, Public Health Wales NHS Trust, Welsh Health Specialised Services Committee, Velindre NHS Trust Shared Services Committee, Emergency Ambulance Services Committee and Health Education and Improvement Wales.

The Regulations will enable members of boards and committees who are nearing the end of their maximum tenure to remain in office if those members are appointed or reappointed during the 'relevant period' (being the period starting on 5 July 2020 and ending on 31 March 2021).

## Procedure

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Negative.

## Technical Scrutiny

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

## Merits Scrutiny

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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**

Annex A to the Explanatory Memorandum contains a copy of a statement by the Commissioner for Public Appointments dated 23 March 2020 concerning public appointment processes in Wales during social distancing public health provisions due to COVID-19.

The statement confirms that the Welsh Government has suspended all Ministerial Public Appointment campaigns. Suspended campaigns are to resume in September 2020, however, that resumption date is to be kept under review. For bodies whose campaigns have been suspended, and that cannot legally carry a vacancy or a vacancy would destabilise the board, ministers may extend existing members or make a direct appointment without competition, until a competition can be held.

## Implications arising from exiting the European Union

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.



## Government Response

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A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**23 June 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Welsh Parliament

**Pack Page 2**

**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

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**2020 No. 585 (W. 133)**

**NATIONAL HEALTH  
SERVICE, WALES**

The National Health Service  
(Temporary Disapplication of  
Tenure of Office) (Wales)  
(Coronavirus) Regulations 2020

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations temporarily disapply certain provisions relating to the tenure of office of board and committee members of particular National Health Service bodies to address the disruption to appointments during the COVID-19 pandemic, so as to enable members of boards and committees who are nearing the end of their tenure to remain in office.

Regulation 2 temporarily disapplies the maximum period of tenure of office of members and associate members of Local Health Boards as prescribed in the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009.

Regulation 3 temporarily disapplies the maximum period of tenure of office of the chair and non-executive directors of the Public Health Wales National Health Service Trust as prescribed in the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009.

Regulation 4 temporarily disapplies the maximum period of tenure of office of the chair, vice-chair and non-officer members of the Welsh Health Specialised Services Committee as prescribed in the Welsh Health Specialised Services Committee (Wales) Regulations 2009.

Regulation 5 temporarily disapplies the maximum period of the tenure of office of the chair and vice-chair of the Velindre National Health Service Trust Shared Services Committee as prescribed in the

Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012.

Regulation 6 temporarily disapplies the maximum period of the tenure of office of the chair and vice-chair of the Emergency Ambulance Services Committee as prescribed in the Emergency Ambulance Services Committee (Wales) Regulations 2014.

Regulation 7 temporarily disapplies the maximum period of the tenure of office of a non-officer member of Health Education and Improvement Wales as prescribed in the Health Education and Improvement Wales Regulations 2017.

Regulation 8 enables any person appointed or reappointed in accordance with the modifications made by these Regulations, to continue their term of office and to vacate office in accordance with the terms of their appointment or reappointment after the end of the relevant period, when the temporary disaplication of the maximum tenure of office cease to have effect.

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 Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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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

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**2020 No. 585 (W. 133)**

**NATIONAL HEALTH  
SERVICE, WALES**

**The National Health Service  
(Temporary Disapplication of  
Tenure of Office) (Wales)  
(Coronavirus) Regulations 2020**

*Made* 10 June 2020

*Laid before Senedd Cymru* 11 June 2020

*Coming into force* 5 July 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 203(9) and (10) of, and paragraph 4(1)(a), (b) and (e) of Schedule 2, paragraph 4(1)(a) and (f) of Schedule 3, and paragraph 5(a) of Schedule 5 to, the National Health Service (Wales) Act 2006(1).

**Title, commencement and interpretation**

1.—(1) The title of these Regulations is the National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 5 July 2020.

(3) In these Regulations, “the relevant period” means the period starting with the day these Regulations come into force and ending on 31 March 2021.

**Tenure of office of a member and an associate member of Local Health Boards**

2. Regulations 6(5) and 7(5) of the Local Health Boards (Constitution, Membership and Procedures)

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(1) 2006 c. 42. See section 206(1) for the definition of “regulations”.



(Wales) Regulations 2009(1) do not apply during the relevant period.

**Tenure of office of the chair and non-executive directors of Public Health Wales National Health Service Trust**

3. Regulation 14(3) of the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009(2) does not apply during the relevant period.

**Tenure of office of the chair, vice-chair and non-officer members of Welsh Health Specialised Services Committee**

4. Regulations 6(5) and 7(4) of the Welsh Health Specialised Services Committee (Wales) Regulations 2009(3) do not apply during the relevant period.

**Tenure of office of the chair or vice-chair of Velindre National Health Service Trust Shared Services Committee**

5. Regulation 8(5) of the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012(4) does not apply during the relevant period.

**Tenure of office of the chair and vice-chair of Emergency Ambulance Services Committee**

6. Regulations 6(5) and 7(4) of the Emergency Ambulance Services Committee (Wales) Regulations 2014(5) do not apply during the relevant period.

**Tenure of office of non-officer members of Health Education and Improvement Wales**

7. In regulation 4(3) of the Health Education and Improvement Wales Regulations 2017(6), the words “but a person must not be a non-officer member for a total period of more than 8 years” do not apply during the relevant period.

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- (1) S.I. 2009/779 (W. 67), to which there are amendments not relevant to these Regulations.
- (2) S.I. 2009/1385 (W. 141), to which there are amendments not relevant to these Regulations.
- (3) S.I. 2009/3097 (W. 270), to which there are amendments not relevant to these Regulations.
- (4) S.I. 2012/1261 (W. 156), to which there are amendments not relevant to these Regulations.
- (5) S.I. 2014/566 (W. 67), to which there are amendments not relevant to these Regulations.
- (6) S.I. 2017/909 (W. 221).

**End of the relevant period**

8. Any person appointed or reappointed pursuant to the Regulations referred to in regulations 2 to 7 of these Regulations, as modified, may at the end of the relevant period, continue to hold and vacate office in accordance with the terms of that person's appointment or reappointment.

*Vaughan Gething*

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

10 June 2020

## **Explanatory Memorandum to the National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020**

This Explanatory Memorandum has been prepared by 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 The National Health Service (Temporary Disapplication of Tenure of Office) (Wales) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

**Vaughan Gething AS**  
**Minister for Health and Social Services**  
11 June 2020

## **PART 1**

### **1. Description**

These Regulations temporarily dis-apply the maximum overall term of tenure of office to enable the re-appointment of board or committee members to Local Health Boards (LHBs), Public Health Wales NHS Trust (PHW), Velindre NHS Trust Shared Services Committee (NHSSSC), the Welsh Health Specialised Services Committee (WHSSC), the Emergency Ambulance Services Committee (EASC) and Health Education and Improvement Wales (HEIW).

The Regulations temporarily dis-apply the following regulations:

- Regulations 6(5) and 7(5) of the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009
- Regulation 14(3) of the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009
- Regulations 6(5) and 7(4) of the Welsh Health Specialised Services Committee (Wales) Regulations 2009
- Regulation 8(5) of the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012
- Regulations 6(5) and 7(4) of the Emergency Ambulance Services Committee (Wales) Regulations 2014
- Regulation 4(3) of the Health Education and Improvement Wales Regulations 2017

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

The SI is being laid under the 'Negative Procedure' and is in response to the disruption to public appointments during the COVID-19 situation.

The Welsh Government, in consultation with the Commissioner for Public Appointments, has suspended all Ministerial Public Appointment campaigns until September 2020 in response to the COVID-19 situation (this date will be kept under review by the Welsh Ministers).

### **3. Legislative background**

The Regulations will be made pursuant to powers conferred by section 203(9) and (10) of, and paragraph 4(1)(a), (b) and (e) of Schedule 2, paragraph 4(1)(a) and (f) of Schedule 3, and paragraph 5(a) of Schedule 5 to, the National Health Service (Wales) Act 2006 ('the 2006 Act').

Local Health Boards ('LHBs') in Wales are established under section 11 of the 2006 Act. Paragraph 4(1)(a) and (b) of Schedule 2 to the 2006 Act gives the Welsh Ministers the power to make regulations in relation to the appointment and tenure of office of the chair, vice-chair and other members of a LHB. Additionally, paragraph 4(1)(e) gives the Welsh Ministers the power to make regulations in relation to the appointment and tenure of office of the members of any committees of a LHB.

NHS Trusts in Wales are established under section 18 of the 2006 Act. Paragraph 4(1)(a) and (f) of Schedule 3 to the 2006 Act gives the Welsh Ministers the power to make regulations in respect of the tenure of office of the chair and directors of an NHS trust and the appointment, constitution and exercise of functions by committee and subcommittee of an NHS trust (whether or not consisting of or including members of the board).

Special Health Authorities ('SHA') are established under section 22 of the 2006 Act. Paragraph 5(a) of Schedule 5 to the 2006 Act gives the Welsh Ministers the power to make regulations as to the appointment and tenure of office of the chair, vice-chair and members of a SHA.

This instrument will be subject to the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

The purpose of these Regulations is to dis-apply the maximum tenure of office contained in the specified regulations for NHS board/committee members for a time limited period in response to the COVID-19 pandemic.

Although the Commissioner for Public Appointments' Governance Code provides some flexibility to ensure the continued operation of NHS boards/committees, any person who is nearing the end of their maximum tenure of office, as prescribed in legislation, will be required to leave office as they will no longer be eligible for re-appointment. The current regulations, in most cases, restrict a person from being appointed for a period of no longer than four years and holding office as a member or an associate member for a total period of more than eight years.

A number of key appointments on health boards/committees are due to end their tenure during the next 9 months. Due to the current temporary suspension of all public appointments in Wales and the time required to re-start the appointment process when the restrictions are lifted, board and committees will have to carry key vacant positions. This will include a vice-chair position in one health board.

During such a critical and challenging period for the health sector in responding and recovering from the impact of COVID-19 it will be essential for the boards and committees not to carry vacancies in order to function properly and support good and effective board governance.

The Regulations will dis-apply the statutory maximum tenure of office to ensure any board or committee member who is nearing the end of their statutory maximum tenure of office is eligible for re-appointment. Any re-appointments will be in accordance with the Commissioner for Public Appointments' Governance Code which includes allowing an appointee to hold office for a maximum of ten years.

#### **5. Consultation**

No public consultation was undertaken due to the urgency required to introduce this change of policy in direct response to COVID-19 restrictions. Engagement on the changes has taken place with the health bodies Board Secretaries

network and they are supportive as it was initially raised as a key concern in discussions on governance arrangements in responding to COVID-19.

The purpose of the instrument is to enable the provisions to come into effect in sufficient time to address imminent board and committee vacancies. Without the amendment regulations for NHS bodies, key non-executive positions would be left vacant thus compromising the balance of executives/non-executives on boards/committees and the capacity to effectively scrutinise decisions during these challenging times for health bodies.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

Two options have been considered:

Option 1: -Do nothing, retain the existing regulatory position as currently in force.

Option 2: - Temporarily dis-apply the following Regulations:

- Regulations 6(5) and 7(5) of the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009
- Regulation 14(3) of the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009
- Regulations 6(5) and 7(4) of the Welsh Health Specialised Services Committee (Wales) Regulations 2009
- Regulation 8(5) of the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012
- Regulations 6(5) and 7(4) of the Emergency Ambulance Services Committee (Wales) Regulations 2014
- Regulation 4(3) of the Health Education and Improvement Wales Regulations 2017

#### **Option 1: Do nothing, retain Regulations as currently in force**

Appointments made by the Welsh Ministers to NHS bodies come within the remit of the Commissioner for Public Appointments (apart from NHSSSC Vice-Chair, WHSSC Vice-Chair and non-executive members and EASC-Vice Chair). The appointments must be made in accordance with the Public Appointments Code and the legislation relating to the particular body.

In March 2020 the Welsh Government suspended all Ministerial Public Appointment campaigns until September 2020 in response to COVID-19 (this date will be kept under review by the Welsh Ministers). The priority is to protect staff, assessment advisory panel members and candidates involved in the campaigns. In doing so, the Welsh Government has committed to ensuring that public bodies are able to continue to function by taking steps provided in the Code for Public Appointments, keeping boards and committees quorate and stable. The Code and its principles will be adhered to as usual.

A key aspect of the Code is that appointments must be made following fair and open competition and that there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years. However, the Code recognises that there are circumstances where an appointment may be made without competition or for additional terms to be served.

The Commissioner for Public Appointments was consulted in respect of the Welsh Ministers' decision to suspend public appointment campaigns in Wales and issued a statement confirming that during the period of suspension, the Code allows the Welsh Ministers to extend existing members' appointments or to make an appointment without competition until the situation improves. See Annex A for the full statement published by the Commissioner on 23 March 2020.

The flexibility provided by the Public Appointments Commissioner addresses the issues that may arise following the suspension of public appointments as it allows:

- a person's term to be extended where their appointment was for a shorter period than the maximum allowed under the relevant regulations (maximum is generally 4 years);
- a person who is nearing the end of their first term to be reappointed by the Welsh Ministers without competition for a second term.

However, persons who are nearing the end of their tenure and have reached the maximum overall term as prescribed in legislation will be required to leave the role as they will no longer be eligible for re-appointment. These positions in NHS bodies will have to remain vacant until the temporary suspension on public appointments is lifted. There is currently no certainty of when these will be lifted and vacancies will also remain until a successful appointment process is completed and this can take up to six months. This may result in potentially a number of key vacant posts on boards and committees during this critical and challenging period for the health sector.

Without amendment regulations the risk is NHS bodies may not be able to comply with their statutory obligations relating to board/committee member tenure.

Should the suspension of public appointment campaigns continue beyond September 2020 the backlog could also result in a number of board/committee members departing at the same time causing potential instability and loss of rigour in governance.

### **Option 2: - Temporarily dis-apply the maximum term of office**

The objective of the Regulations is to dis-apply the maximum overall term of tenure until 31 March 2021 to enable the re-appointment of NHS board and committee members reaching the current limit during the COVID-19 pandemic and the initial recovery period.

The effect of this approach will be to enable existing board/committee members reaching their maximum tenure to be re-appointed for a new term. The re-appointments will still be in line with Public Appointments Code and in some cases, for example re-appointment for a third term, approval would also need to be sought from the Commissioner for Public Appointments.

The duration of the re-appointment will be assessed individually for each board/committee member having regard to the performance and attendance of the individual, the end dates of other appointments on the board/committee and the need to maintain effective governance/stability. The duration of any re-appointments made under the Regulations would also be set in line with the Code



which sets out a strong presumption that no individual should serve in any one post for more than ten years.

The Commissioner's recent statement in light of the COVID-19 pandemic reflects this provision. It states that all public appointments in Wales have been suspended temporarily and makes clear that the Code allows the Welsh Ministers to extend existing members' appointments or to make an appointment without competition until the situation improves.

The flexibility provided by the Public Appointments Commissioner addresses many of the issues that may arise following the suspension of public appointments as it allows:

- a person's term to be extended where their appointment was for a shorter period than the maximum allowed under the relevant regulations (maximum is generally 4 years);
- a person who is nearing the end of their first term to be reappointed in the usual way, but for a shorter period to cover the suspension period; and
- re-appointments beyond a second term are likely to be considered more favourably by the Commissioner given the exceptional circumstances that COVID-19 presents and that the suspension to public appointments by the Welsh Ministers during this time was agreed with the Commissioner.

However, this does not address the situation whereby a NHS board/committee member reaches their maximum tenure. Irrespective of the flexibility provided by the Commissioner, without dis-applying the maximum term of tenure specified in the relevant regulations, those board and committee members reaching their maximum tenure could not be re-appointed or have their appointments extended without being in breach of the regulations.

Using the ability in the Code for Ministers to appoint a candidate without a competition (mostly through re-appointments) in exceptional cases and dis-applying the maximum term in regulations ensures all appointments which are nearing the end of their tenure during the period of COVID-19 restrictions and initial recovery period can be covered, whilst at the same time making only the minimum change to existing regulations necessary to achieve this.

The period the Regulations will remain in effect will ensure all appointments which are nearing the end of their tenure during the period of COVID-19 restrictions and the initial recovery period are covered, allowing the NHS boards and committees to function properly, retain experience during the current crisis, support good and effective board governance, and meet their legal requirements.

Without this change there is a risk of potentially a key number of vacant posts on the boards and committees of these NHS bodies. Should the suspension of public appointment campaigns continue beyond September 2020, there is a serious risk of a backlog of appointments, with potentially a large number of NHS Board and Committees members departing at the same time causing potential instability and loss of rigour in governance.

## **7. Costs and benefits**

### **Option 1: Do nothing, retain the relevant Membership Regulations as currently in force**

There are no additional costs nor potential for costs savings associated with this option.

However, this option does not achieve any of the stated policy benefits associated with amending the relevant Regulations and poses significant risks in loss of key skills and expertise on boards/committees during these challenging times. This could result in Welsh Government in some cases needing to provide advisory support for board/committees with key vacancies that could result in additional costs compared to payments under public appointments arrangements.

### **Option 2: Temporarily dis-apply the maximum term of office**

Dis-applying the relevant regulations in the way proposed in Part 1 does have the potential to incur very minimal opportunity costs for the Public Appointments Commissioner's office as the Welsh Ministers will need to seek approval before appointing a member to a third term.

There may be some minimal short-term cost savings to the Welsh Ministers associated with this option, in not undertaking public appointments exercises during the period of the amendment regulations.

No additional costs are foreseen for NHS bodies.

It will allow the NHS boards and committees to function properly, retain experience during the current crisis, support good and effective board governance, and meet their legal requirements.

## **8. Consultation**

No public consultation was undertaken due to the urgency required to introduce this change of policy in direct response to COVID-19 restrictions.

## **9. Competition Assessment**

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

## **10. Post implementation review**

The effect of these Regulations is inherently time limited to less than three years so no review is necessary.

## ANNEX A



### **OCPA statement on public appointment processes in Wales during social distancing public health provisions due to COVID-19. 23 March 2020**

- The Welsh Government is suspending all Ministerial Public Appointment campaigns with immediate effect until further notice. The priority is to protect staff, assessment advisory panel members and candidates involved in campaigns.
- Welsh Government will ensure public bodies are able to function by taking steps mandated in the Code for Public Appointments, keeping boards quorate and stable. The Code and its Principles will be adhered to as per usual. The following steps have been agreed with the Commissioner for Public Appointments.
- Ministers will suspend public appointments competitions due to take place in the next 6 months, and will resume them in September 2020. This resumption date will be kept under review as the public health response to COVID-19 develops.
- For bodies whose campaigns have been suspended, and that cannot legally carry a vacancy or a vacancy would destabilise the board, ministers are able, in line with the Governance Code, to extend existing members or to make a direct appointment without competition, until a competition can be held.
- Extensions in these cases will be for up to 12 months (31 March 2021), allowing for Welsh Government to stagger the resumptions of campaigns if desired. The Code's provisions on extensions in Section 3.5 continue to apply.
- The Commissioner will continue to be notified of proposed extensions made to members in their second or subsequent terms, or to those who have served ten years, in line with Section 3.6 of the Code.
- Any proposed direct appointments will be brought to the Commissioner for consultation before announcement in line with Section 3.3 of the Code.
- When campaigns resume from September 2020 onwards (this date will be kept under review by Welsh ministers), any members/chairs who have been extended/appointed under Sections 3.3 and 3.6 due to campaign suspension, should vacate their positions as soon as a substantive appointee has been found and is able to take up the role.

*PJR Riddell*

*Version: 1*

*Date for review: 1 July 2020*

# Agenda Item 2.2

## SL(5)558 – The Single Use Carrier Bags Charge (Wales) (Amendment) (No. 2) Regulations 2020

### Background and Purpose

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The Single Use Carrier Bags Charge (Wales) Regulations 2010 (“the 2010 Regulations”) require sellers of goods, who supply single use carrier bags for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied.

Single use carrier bags used for delivery or collection of goods are currently subject to a temporary exemption from the charge. The purpose of the temporary exemption is to mitigate, as far as possible, the risk of transmission of the COVID-19 virus (coronavirus), through delivery and collection systems, and to increase the efficiency of delivery systems, by the use of single use carrier bags to carry goods.

The current period of the temporary exemption ends on 8 July 2020. These Regulations amend the 2010 Regulations by extending the exemption period to 31 December 2020.

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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

#### **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 the Welsh Government has not been able to consult widely on these Regulations “*due to the timescale available to bring in these Regulations and the continued pressures on stakeholders*”. However, the Committee notes that steps have been taken to contact bodies which represent Welsh retailers in order to ascertain their views on the extension of the exemption.

### Implications arising from exiting the European Union

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Government Response

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A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**22 June 2020**



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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

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**2020 No. 593 (W. 134)**

**ENVIRONMENTAL  
PROTECTION, WALES**

**The Single Use Carrier Bags  
Charge (Wales) (Amendment)  
(No. 2) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under powers in the Climate Change Act 2008 and make amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880 (W. 238)) (“the 2010 Regulations”).

The 2010 Regulations, subject to certain exceptions, require sellers of goods who supply single use carrier bags for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied.

Single use carrier bags used for delivery or collection of goods are currently subject to a temporary exemption from the charge. The period of the temporary exemption is set out in paragraph 1(1A) of Schedule 1 to the 2010 Regulations. The current period of exemption ends on 8 July 2020.

Regulation 2 of these Regulations amends Schedule 1 (exemptions) to the 2010 Regulations by extending the exemption period to 31 December 2020.

The purpose of the temporary exemption is to mitigate, as far as possible, the risk of transmission of the COVID-19 virus (coronavirus), through delivery and collection systems, and to increase the efficiency of delivery systems, by the use of single use carrier bags to carry goods.

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

Environment Quality Division, Department for  
Environment and Rural Affairs, Welsh Government,  
Cathays Park, Cardiff, CF10 3NQ.

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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

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**2020 No. 593 (W. 134)**

**ENVIRONMENTAL  
PROTECTION, WALES**

**The Single Use Carrier Bags  
Charge (Wales) (Amendment)  
(No. 2) Regulations 2020**

<i>Made</i>	<i>12 June 2020</i>
<i>Laid before Senedd Cymru</i>	<i>15 June 2020</i>
<i>Coming into force</i>	<i>9 July 2020</i>

The Welsh Ministers, in exercise of the powers conferred by sections 77(1) and (2) and 90(3) of, and paragraph 1 of Schedule 6 to, the Climate Change Act 2008(1), make the following Regulations.

**Title and commencement**

1.—(1) The title of these Regulations is the Single Use Carrier Bags Charge (Wales) (Amendment) (No. 2) Regulations 2020.

(2) They come into force on 9 July 2020.

**Amendment of the Single Use Carrier Bags Charge (Wales) Regulations 2010**

2.—(1) The Single Use Carrier Bags Charge (Wales) Regulations 2010(2) are amended in accordance with paragraph (2).

(2) In Schedule 1, in paragraph 1(1A), for “8 July 2020” substitute “31 December 2020”.

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(1) 2008 c. 27. By virtue of section 77(3)(b) of the Climate Change Act 2008, the Welsh Ministers are the relevant national authority for the purpose of making regulations under Schedule 6 to that Act. There are amendments to section 77 and Schedule 6 that are not relevant to these Regulations.

(2) S.I. 2010/2880 (W. 238), amended by S.I. 2020/414 (W. 89); there are other amendments not relevant to these Regulations.



*Hannah Blythyn*

Deputy Minister for Housing and Local Government  
under the authority of Minister for Housing and Local  
Government, one of the Welsh Ministers

12 June 2020

## **Explanatory Memorandum to the Single Use Carrier Bags Charge (Wales) (Amendment) (No.2) Regulations 2020**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department 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 Single Use Carrier Bags Charge (Wales) (Amendment) (No.2) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn  
Deputy Minister for Housing and Local Government  
15 June 2020

## **1. Description**

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 (the 2010 Regulations) so that the requirement to charge for single use carrier bags (SUCBs) does not apply to bags used solely to carry goods purchased as part of a grocery delivery service, or for collection as part of a service that provides for the collection of groceries.

The exemption is temporary and will come into force on 9 July 2020 and will expire on 31 December 2020.

A temporary exemption was initially introduced in April 2020 for an initial period of three months under the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020 (the 2020 Amendment Regulations). These Regulations are intended to come into force the day after the initial one expires on 8 July.

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

It is considered that in the current public health emergency, the measure given effect by these Regulations, will expire on 31 December 2020.

## **3. Legislative background**

These Regulations are made under powers in sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008 and make amendments to the 2010 Regulations. By virtue of the operation of section 77(4) and (5) of that Act, they are subject to negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

These Regulations amend Schedule 1 of the 2010 Regulations to enable a temporary exemption from the charge of bags used solely for services providing for the delivery or collection of groceries. The exemption is to be temporary, from 9 July until 31 December 2020.

Since the introduction of the SUCB charge, a number of supermarkets have imposed either a flat rate charge for the bags used with each home grocery delivery, or else have phased out bagged deliveries completely, favouring the use of a “bag free ” option. This is where individual items are delivered in

a crate and then unloaded by the customer in their property before being returned to the driver.

During the current Covid-19 outbreak, concerns have been raised over the risk posed by “bag free” deliveries over the potential for the virus to be transmitted between delivery drivers and householders. To help reduce this risk, retailers have now removed the “bag free” option from their service and instead are leaving deliveries in bags on the doorstep to avoid contact.

This poses a number of issues with respect to the charge. The charge was introduced in 2011 with the aim of changing the behaviour of shoppers, encouraging a switch from SUCBs to reusable ones. The rationale was that consumers could avoid the charge by reusing bags. However, due to the removal of ‘bag free’ deliveries underpinned by public health guidance intended to prevent the spread of the virus, the option to avoid the charge has been taken away. This undermines the behaviour change rationale behind the charge.

The charge was applied to SUCB to encourage the use of reusable ones. In terms of global warming potential, reusable bags are better for the environment. However, of the bag types suitable for home deliveries, reusables are typically made from thicker plastic. These are only more carbon efficient if they are reused many times. Otherwise in terms of carbon, reusables are worse for the environment than the SUCB bags that attract the charge. Officials believe the exemption for deliveries may encourage the use of lighter-weight options. Given the significant increase in deliveries in Wales since the start of the pandemic, officials feel this is the least damaging option when compared to thicker plastic bags until more environmentally beneficial options can be found.

Since the introduction of lockdown measures to reduce the transmission of COVID-19, many grocery retailers, including supermarkets, independent shops and food businesses, have either substantially increased their existing delivery services or introduced them for the first time. Specialist food retailers such as butchers, greengrocers, bakeries and delicatessens have used deliveries to survive or even thrive during lockdown. They have experienced a 40% increase in trade, despite the significantly reduced footfall on the high street resulting from the lockdown measures<sup>1</sup>. The Association of Convenience Stores (ACS) report their members have made some 600,000 deliveries across the UK since lockdown began.

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<sup>1</sup> <https://www.thegrocer.co.uk/consumer-trends/specialist-food-and-drink-stores-see-40-sales-hike-in-april/604786.article>

Supermarkets have increased their delivery capacity several fold. For example, Tesco have increased their weekly deliveries from around 600,000 per week across the UK before the pandemic to more than 1.2 million<sup>2</sup> (by end of first week in May). They focused on meeting requests from vulnerable people, particularly those instructed to shield. Meanwhile, Marks & Spencer and Sainsbury's have significantly extended or introduced 'same day' delivery services<sup>3</sup> covering food and essential household supplies.

## 5. Consultation

Due to the timescale available to bring in these Regulations and the continued pressures on stakeholders, our ability to consult widely on the legislation has been limited. However, views on the provision of the exemption and its continued need have been sought from Welsh retailers via their respective representative bodies. Feedback suggested with continued social distancing measures still needing to be in place, an extension of the exemption would be preferred.

## 6. Regulatory Impact Assessment

### Options

Two options have been considered in this RIA:

Option 1: Do nothing. Allow the initial exemption to expire on 8 July, requiring sellers to charge for SUCBs when providing a grocery delivery or collection service.

Option 2: Amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 to exempt from the charge SUCBs used for grocery delivery or collection services from 9 July until 31 December. **(Preferred option)**

### Cost-benefit analysis

Given the time and data available, it has not been possible to produce a quantified assessment of the likely costs and benefits of the proposals. The following section provides a narrative description of the likely impacts.

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<sup>2</sup> <https://www.bbc.co.uk/news/business-52441772>

<sup>3</sup> <https://www.bbc.co.uk/news/business-52545028>

## **Option 1 – No action taken**

This is the baseline option and as such there are no additional costs associated with this option.

The 2010 Regulations require retailers to charge for each SUCB provided for goods to be taken away from the shop or delivered. There are a number of exemptions on public health or safety grounds for bags used exclusively for taking away items such as raw fish, plants or seeds with soil attached, sharp objects such as knives, unwrapped or partially wrapped foods and prescription goods.

Under the 2010 Regulations, Third Sector organisations can be beneficiaries of the proceeds of the charge. Retailers are strongly encouraged, but not mandated, to donate their proceeds to good causes, preferably those benefitting the Welsh environment. Many retailers have now phased out the use of SUCB that attract the charge. However, we understand they often continue to donate the proceeds from the sale of all carrier bags to good causes.

Under the 2010 Regulations, Local Authorities (LA) are appointed administrators of the charge and undertake any enforcement action. This is usually intelligence led and in the first instance, takes the form of approaches to retailers to explain the requirements of the Regulations and seeks to bring them in line by consent. We understand complaints are relatively rare and enforcement action is undertaken infrequently. However, for persistent breaches, LAs have the option to apply civil sanctions in the form of either a fixed or variable monetary penalty.

## **Costs**

### **Option 2 – Continue to exempt the charge for SUCBs used to enable grocery delivery and collection services**

#### **Local Authorities**

Under this option, LAs will not be required to undertake any additional enforcement activities and will no longer be required to enforce the charge for grocery deliveries or collections. A small cost saving is, therefore, anticipated for LAs for the duration of the exemption for enforcement activities.

However, if LAs did choose to deal with breaches of these Regulations, they may incur some small set-up costs for staff training. We assume all 22 LAs in

Wales may incur a one-off administration familiarisation cost to familiarise themselves with the proposed changes. However, as this is a small and relatively straightforward regulatory change, retraining has not been costed here.

### Sellers

Sellers may face a small, one-off cost to retrain staff and amend billing processes or till systems to remove the charge for deliveries. Under the 2010 Regulations, these would be deductible against the proceeds of the charge sellers that are expected to be made to charitable causes, as this is considered a 'reasonable expense'. However, as any costs would likely have been incurred when the exemption was first introduced in April 2020, it is unlikely any further costs would be associated with this new extension and these Regulations.

This option is likely to result in an increase in the number of SUCBs sold (relative to Option 1), the cost of which would need to be borne by the seller. However, it should be noted the cost of buying carrier bags wholesale are not considered to be a 'reasonable expense' and should have always been borne by the seller. Any increase in expenses would likely pass onto the consumer indirectly.

Retailers are required to keep annual records of SUCB sales. However, data covering April and May isn't yet available, so it hasn't been possible to quantify the impact of the initial exemption given effect by the 2020 Amendment Regulation.

### Charitable purposes in Wales

For the purposes of this RIA we have been unable to ascertain the potential impact the temporary exemption has had on charities/ good causes in Wales. Most large supermarket chains no longer sell SUCBs in-store. This has reduced the amount of net proceeds being donated for charitable purpose. The increase in SUCB usage for online deliveries during the COVID-19 pandemic may have resulted in an increase in donations if the charge still applied. Whilst sellers are currently not legally obliged to pass on the net profits of the charge, previous research<sup>4</sup> suggests that most do, with health related charitable purposes and local community projects being the most popular recipient.

To address the potential loss in charitable donations during this exemption period, the Minister for Housing and Local Government has written to retailer organisations to ask consideration be given to donating to environmental

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<sup>4</sup> <https://gov.wales/research-sale-and-use-carrier-bags-wales>

charitable purposes, the equivalent to any net proceeds that would otherwise have been raised through levying the charge to customers.

### Exchequer

There will be a small cost per bag to the exchequer, as they will not receive VAT on sales of SUCB used for delivery and collection services. Due to the lack of carrier bags sales data for the initial phase of the pandemic referred to above, it has not been possible to quantify this at this stage.

### Environment

The rationale for introducing the SUCB charge in 2011 was to reduce the reliance on throwaway bags, to encourage a move to reusable options, thus cutting unnecessary resource use. This policy anticipated consumers would only buy enough reusable bags to meet their needs. Under normal circumstances, this would be possible. During the current COVID-19 pandemic, consumers are being asked to reduce their visits to shops and many have adapted by making use of weekly delivery or collection services.

### Benefits

#### **Option 2 – Continue to exempt the charge for SUCBs used to enable grocery delivery and collection services**

### Public Health

There is expected to be an ongoing public health benefit from extending the exemption because it is now clear the need for self-isolation, shielding and social distancing measures is likely to continue for some months, potentially until the threat from the virus is nullified. Essentially, the public health imperative underpinning the decision to implement an exemption in April has not changed. This suggests an ongoing need to minimise opportunities for transmission of the virus<sup>5</sup> from measures such as doorstep grocery drops, which limit close contact between individuals, particularly as studies have shown the virus can live on plastic surfaces for up to three days<sup>6</sup>. While the overall risks of transmission from handling food packaging has been judged as

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<sup>5</sup> <https://www.gov.uk/government/publications/wuhan-novel-coronavirus-infection-prevention-and-control/transmission-characteristics-and-principles-of-infection-prevention-and-control>

<sup>6</sup> <https://www.sciencedaily.com/releases/2020/03/200320192755.htm>



relatively low by the Food Standards Agency<sup>7</sup>, the main benefit is in reducing the need for close contact between the driver and customer.

### Sellers

The main benefits to retail businesses is expected to be in reductions to sickness absences of delivery drivers who are able to undertake contactless deliveries. Therefore, following social distancing measures effectively.

It also enables them to speed up their operation. Bagged deliveries are quicker for customers to load and unload. This is helpful during the pandemic, as supermarket retailers have sought to prioritise delivery requests from vulnerable or self-isolating groups.

### Consumers

Those consumers who often pay for SUCB deliveries will benefit from a reduction in costs due to the absence of the charge (approximately 40p to 50p per delivery).

### Environment

The rationale for introducing the SUCB charge in 2011 was to reduce the reliance on throwaway bags, to encourage a move to reusable options, thus cutting unnecessary resource use. This policy anticipated consumers would only buy enough reusable bags to meet their needs. Under normal circumstances, this would be possible. In current times, consumers are being asked to reduce their visits to shops and many have adapted by making use of weekly delivery or collection services.

In these circumstances, the use of heavier-weight, reusable bags are likely to lead to consumers accumulating large numbers of such bags at home. In practice, these are unlikely to be reused. Without reuse, lifecycle analyses have shown reusable bags have a greater environmental impact than lighter-weight alternatives. Officials believe the exemption for deliveries may encourage retailers to use lighter-weight options for this purpose. If not reused, these are less environmentally damaging than thicker, reusable bags used once.

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<sup>7</sup> <https://www.gov.uk/government/publications/guidance-for-consumers-on-coronavirus-covid-19-and-food/guidance-for-consumers-on-coronavirus-covid-19-and-food>

Before the pandemic officials had concerns about households not consistently reusing plastic bags, leading to accumulation. Officials have been considering which policy levers could be used to change behaviours. Policy development in this area needs to take account of changes to the wider retail landscape and consumer behaviours relating to COVID-19. Engagement with relevant stakeholders has been complicated by current circumstances and a full solution is likely to take longer than six-months. However, such a timeframe would be enough to make some headway in the conversation towards more environmentally friendly options which also sustain the protection of public health.

### **Summary of the preferred option**

The preferred option is **Option 2**.

A temporary exemption for SUCB used for delivery or collection services will help retailers apply social distancing rules during the collection and delivery services whilst discouraging the accumulation of excess thicker, reusable bags that are unlike to be reused in people's homes. This will, therefore, have an important contributory impact across the following well-being goals in the Well-being of Future Generations Act 2015:

- a prosperous Wales;
- a resilient Wales;
- a globally responsible Wales;
- a healthier Wales;
- a more equal Wales; and
- a Wales of cohesive communities.

This approach also demonstrates the application of the five ways of working set out under the sustainable development principle in the Well-being of Future Generations Act 2015.

### **Specific impact tests**

#### **Welsh Language**

There are no positive or adverse impact implications on the Welsh Language.

### **Children's Rights**

No conflict with UNCRC has been identified and there are no negative impacts on children and young people.

### **Privacy**

There are no impact implications on privacy matters.

### **Justice Impact Assessment (JIA)**

Whilst no formal JIA has been undertaken, no impacts have been identified when considering these Regulations.

## Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

# Agenda Item 2.3

## SL(5)559 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc) Regulations 2020

### Background and Purpose

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These Regulations are made in accordance with the powers conferred on the Welsh Ministers by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“Operators”) to provide passengers with certain public health information relating to the virus.

Operators are required to:

- Make available to passengers a link to the relevant pages of the gov.uk website and the gov.wales website at the point of booking or checking in online, or to direct passengers to these pages where booking or checking in is undertaken by telephone (Regulation 3);
- Provide the public health information statement in the Schedule to the Regulations, to passengers while on board (Regulation 4).

An exception to the requirements facing Operators is provided for in Regulation 5 in respect of recipients who are unlikely to be capable of understanding the information.

Part 3 of the Regulations make provisions in respect of offence, penalties and prosecutions. A fixed penalty notice of £4,000 may be issued to any person, suspected of committing an offence under the Regulations.

Part 4 of the Regulations imposes a requirement on the Welsh Ministers to review the requirements imposed by the Regulations by 29 June 2020, and at least once every 21 days subsequently. Regulation 11 provides that these Regulations will expire at the end of the 7<sup>th</sup> day of June 2021.

These Regulations also amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

### Procedure

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Negative.

### Technical Scrutiny

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The following two points are 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**

Regulation 3(1) says that certain information must be provided at the time of booking **and** at the time of check-in, and that the precise detail of that information can be found in regulation 3(2). However,



regulation 3(2) specifies only the information that must be provided at booking (this is because regulation 3(2) cross-refers only to regulation 3(1)(a)). It is our understanding that regulation 3(2) was intended to cover information to be provided at both the time of booking and at the time of check-in.

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

Regulation 10 makes a number of amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. Regulation 10(2)(h) provides that *"in Schedule 1, in sub-paragraph (d), for "ei ddogfen" substitute "dogfen"*. There are two paragraphs within Schedule 1 which contain a sub-paragraph (d). It would be helpful if the reference in regulation 10 was made specifically to "paragraph 1, sub-paragraph (d)" where the words *"ei ddogfen"* appear.

## Merits Scrutiny

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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 issue of public policy likely to be of interest to the Senedd.**

These Regulations were made at 5.38 pm on 15 June 2020 and were laid before the Senedd on 16 June 2020. The Regulations came into force in accordance with regulation 1(2) and (3). Regulations 2 to 9 come into force on 17 June 2020, whilst regulations 1, 10 and 11 came into force when the Regulations were made. This means that the Regulations were laid before the Senedd after the Regulations had come into force (in part), and also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

The Welsh Government explains in its Explanatory Memorandum to these Regulations that *"it is considered that in the current public health crisis the measures given effect by the Regulations should be put in place as a matter of urgency. Consequently, they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force."*

The Welsh Government explains in its letter to the Llywydd, dated 16 June 2020, that work on a joint policy for international travel has been led by the UK Government, in collaboration with the Devolved Authorities, to develop a unified UK approach. Equivalent Regulations came into force in England and Scotland on 8 June as did Northern Ireland's Statutory Rules.

The letter further provides that *"these Regulations make minor amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, which for reasons of legal clarity need to come into force immediately. The remaining provisions will come into force after the instrument has been laid. Not adhering to the 21 day convention in this respect allows the Regulations to come into force on 17 June 2020 and, in view of the potential resumption of flights and to ensure continuity of the unified approach and consistency with the rest of the UK, the reduced period 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**



No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently. The Explanatory Memorandum does provide that *“an initial assessment indicates that the impact of the Regulations on operators is low”*.

## Implications arising from exiting the European Union

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Government Response

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### Technical Scrutiny

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

- 1.1. Senedd legal advisers have pointed out a cross referencing error in regulation 3(2). The Welsh Government will amend the Regulations to correct this at the earliest available opportunity.
- 1.2. Senedd legal advisers have also noted some ambiguity in the amendment made by regulation 10(2)(h) to Schedule 1 to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. As the words being amended (*“ei ddogfen”*) appear in only one paragraph (d) in the Schedule it is clear where the amendment sits. Nevertheless the Welsh Government will amend the instruction in regulation 10(2)(h) at the earliest opportunity to eliminate any risk of ambiguity.

### Legal Advisers

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

**22 June 2020**



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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

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**2020 No. 595 (W. 136)**

**PUBLIC HEALTH, WALES**

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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in response to the danger to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Section 45B of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of (amongst other things) preventing danger to public health from “vessels, aircraft, trains or other conveyances arriving at any place”.

The regulations place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“operators”) to provide passengers with certain public health information relating to the virus.

Regulation 3 imposes requirements on operators at the point of both booking and check-in. Where booking or checking in is undertaken online the regulation requires the operator to make available to passengers a link to the relevant pages of the gov.uk website and the gov.wales website. Where booking or checking in is undertaken by telephone or in person operators are required to direct the passenger to these pages.

Regulation 4 requires operators to provide the public health information statement in the Schedule to passengers while on board.

Regulation 5 provides an exception to the requirement to provide the public health information in regulations 3 and 4; it does not apply where the recipient of the



information is unlikely to be capable of understanding it.

Regulation 6 creates a summary only offence of contravening the requirements to provide the public health information in regulations 3 and 4. The offence is punishable by a fine.

Regulation 6(2) provides a defence of “reasonable excuse” for an operator charged with an offence under regulation 4 (contravening a requirement to provide information to passengers whilst on board).

Regulation 7 provides that fixed penalties may be imposed on persons who are suspected of committing an offence under these Regulations as an alternative to prosecution. The penalty is £4000.

The necessity and proportionality of these Regulations must be reviewed every 21 days (regulation 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, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

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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

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**2020 No. 595 (W. 136)**

**PUBLIC HEALTH, WALES**

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

*Made at 5.38 p.m. on 15 June 2020*

*Laid before Senedd Cymru 16 June 2020*

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

The Welsh Ministers make the following Regulations 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).

**PART 1**

**General**

**Title and coming into force**

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020.

(2) Regulations 2 to 9 come into force on 17 June 2020.

(3) This regulation and regulations 10 and 11 come into force when these Regulations are made.

**Interpretation**

2. In these Regulations—

“authorised person” (“*person awdurdodedig*”) means—

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(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

- (a) in relation to passengers arriving on a vessel, the Secretary of State;
  - (b) in relation to passengers arriving on an aircraft, the Civil Aviation Authority<sup>(1)</sup>;
- “common travel area” (“*ardal deithio gyffredin*”) has the meaning given in section 1(3) of the Immigration Act 1971<sup>(2)</sup>;
- “coronavirus” (“*coronafeirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- “international passenger service” (“*gwasanaeth teithwyr rhyngwladol*”) means a commercial service by which passengers travel on a vessel or aircraft from outside the common travel area to a port in Wales;
- “port” (“*porthladd*”) includes any airport, heliport or seaport;
- “vessel” (“*llestr*”) means every description of vessel used in navigation (including a hovercraft within the meaning of Hovercraft Act 1968<sup>(3)</sup>) which is 24 metres or more in length.

## PART 2

### Requirements to provide information to passengers

#### Provision of information before booking and at check-in

3.—(1) The operator of any international passenger service must provide the information specified in paragraph (2) as part of any facility managed by the operator by which a person—

- (a) may make a booking for travel on the service, or
- (b) may check-in for travel on the service.

(2) The information mentioned in paragraph (1)(a) is—

- (a) in the case of a facility provided online—
  - (i) a link to [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control), and
  - (ii) a link to [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus) along with a statement that the information found at that link contains

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(1) The Civil Aviation Authority is a body corporate established by section 1 of the Civil Aviation Act 1971 (c. 75).

(2) 1971 c. 77. That section provides that the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland are collectively referred to as “the common travel area”.

(3) 1968 c. 59.

- the latest public health advice relating to coronavirus in Wales,
- embedded in a prominent place so that the links are visible prior to a booking being made or check-in being completed;
- (b) in the case of a facility provided by telephone or face to face, an instruction—
- (i) to read the information at [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control), and
  - (ii) to visit [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus) along with a statement that the information found at that link contains the latest public health advice relating to coronavirus in Wales;
- (c) in either case, a request to pass on the information mentioned in sub-paragraph (a) or (b) (as the case may be) to any person on whose behalf—
- (i) a booking is being made, or
  - (ii) check-in is being carried out.

(3) Where the operator does not directly manage the booking or check-in process, the operator must take all reasonable measures to ensure that the person managing the process complies with paragraph (1) on the operator's behalf.

#### **Provision of information during journey**

4.—(1) The operator of an international passenger service must ensure that every passenger on the vessel or aircraft is provided with the statement set out in the Schedule during the journey to the port in Wales.

(2) The statement must be provided orally in Welsh, English and an officially recognised language of the country of departure.

#### **Exception from requirements of regulations 3 and 4**

5. Nothing in regulation 3 or 4 requires information to be provided to a person who, by virtue of age or mental capacity, is unlikely to be capable of understanding it.

## **PART 3**

### **Offences, penalties and prosecutions**

#### **Offences**

6.—(1) A person who contravenes a requirement in regulation 3(1) or (3) or regulation 4 commits an offence.

(2) It is a defence to a charge of committing the offence of contravening the requirement in regulation 4 to show that the person had a reasonable excuse for the contravention.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine.

### **Fixed penalty notices**

7.—(1) An authorised person may issue a fixed penalty notice to any person (“P”) that the authorised person reasonably believes has committed an offence under regulation 6(1).

(2) A fixed penalty notice is a notice offering P the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) the Welsh Ministers, or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation.

(3) Where a notice is issued under paragraph (1) in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) P may not be convicted of the offence if P pays the fixed penalty before the end of that period.

(4) A fixed penalty notice must—

- (a) describe the circumstances alleged to constitute the offence,
- (b) state the period during which (because of paragraph (3)(a)) proceedings will not be taken for the offence,
- (c) specify the amount of the fixed penalty,
- (d) state the name and address of the person to whom the fixed penalty may be paid, and
- (e) specify permissible methods of payment.

(5) The amount of the fixed penalty specified under paragraph (4)(c) must be £4,000.

(6) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of—
  - (i) the Welsh Ministers, or
  - (ii) a person designated by the Welsh Ministers under paragraph (2)(b), and
- (b) states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

### Prosecutions

8. No proceedings for an offence under these Regulations may be brought other than by the Director of Public Prosecutions or an authorised person.

## PART 4

### Miscellaneous

#### Review of requirements

9.—(1) The Welsh Ministers must carry out a review of the requirements imposed by Part 2—

- (a) by 29 June 2020,
- (b) at least once in the period of 21 days beginning with the day after that date, and
- (c) at least once in every subsequent period of 21 days.

(2) A review carried out under paragraph (1) must consider whether the requirements are necessary and proportionate as a means of preventing danger to the public arising from the spread of coronavirus.

#### Amendment of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

10.—(1) The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020<sup>(1)</sup> are amended as follows.

(2) In the Welsh language text only—

- (a) in regulation 2(1), for the definition of “gwybodaeth am deithiwr” (“*passenger information*”) substitute—

“ystyr “gwybodaeth am deithiwr” (“*passenger information*”) yw’r wybodaeth a bennir yn Atodlen 1;”;
- (b) in regulation 5(3)(b), for “ddiweddarau ar ran P” substitute “diweddarau”;
- (c) in regulation 7—
  - (i) in paragraph (1)(b)(ii) omit the comma after “sydd”;
  - (ii) in paragraph (4)(a) omit “bai”;
  - (iii) in paragraph (5)(a) after “yng Nghymru” insert “sy’n addas i breswyllo ynddi”;
- (d) in regulation 8—
  - (i) in paragraph (2)(a)(i) for “7(3);” substitute “7(3); a”;

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(1) S.I. 2020/574 (W. 132)

- (ii) in paragraph (3)(b)(i) for “(bod y tu allan i fangre am gyhyd ag y bo’n angenrheidiol)” substitute “(gadael y fangre dros dro)”;
- (e) in regulation 14(4), for “rreoliadau yma” substitute “Rheoliadau hyn”;
- (f) in regulation 16(2) for “Reoliadau” substitute “Rheoliadau”;
- (g) in regulation 17(10)—
  - (i) after ““ddeddfwriaeth diogelu data” insert “a “data personol””;
  - (ii) for “ac mae i “data personol” yr ystyr a roddir i” substitute “a”;
- (h) in Schedule 1, in sub-paragraph (d), for “ei ddogfen” substitute “dogfen”;
- (i) in Schedule 2—
  - (i) in paragraph 1, sub-paragraphs (1)(h) and (2)(a)(i) for “swydd” substitute “swyddfa”;
  - (ii) in paragraph 1(2)(a)(i) for “i’r person” substitute “i P”;
  - (iii) in paragraph 2(1)(a) for “y tu allan i’r” substitute “yn y”;
  - (iv) for paragraph 3(1)(b) substitute—

“sydd wedi bod ar lestr a weithredir gan Wasanaeth Llyngesol ei Mawrhydi am gyfnod di-dor o 14 o ddiwrnodau o leiaf yn union cyn iddo gyrraedd ac nad yw’r llestr hwnnw wedi codi unrhyw bersonau nac wedi glanio mewn unrhyw borthladd môr y tu allan i’r ardal deithio gyffredin yn ystod y cyfnod hwnnw.”;
  - (v) in paragraph 7(2), in the opening words, for “y paragraff hwn” substitute “is-baragraff (1)”;
  - (vi) in paragraph 13(1)(b) insert “hanfodol” after “plismona” in both places where it occurs.
- (3) In Schedule 2—
  - (a) for the heading to the Schedule substitute—

**“Exempt persons”;**
  - (b) in the heading to Part 1 of the Schedule, for “3 or regulation 4” substitute “4, 5, 7 or 8”;
  - (c) in the heading to Part 2 of the Schedule, for “4” substitute “7 or 8”.

### **Expiry of these Regulations**

**11.**—(1) These Regulations expire at the end of the 7th day of June 2021.

(2) The expiry of these Regulations does not affect the validity of anything done pursuant to these Regulations before they expire.

*Mark Drakeford*

The First Minister, one of the Welsh Ministers

At 5.38 p.m. on 15 June 2020



## SCHEDULE Regulation 4

### On-board statement

The statement to be provided for the purposes of regulation 4 is—

(a) Welsh language version—

“Dyma neges iechyd y cyhoedd ar ran Llywodraeth Cymru a Iechyd Cyhoeddus Cymru.

Symptomau'r coronafeirws yw peswch cyson newydd, tymheredd uchel neu golli eich synnwyr blasu neu arogl arferol, neu newid yn eich synnwyr blasu neu arogl. Os ydych yn profi unrhyw un o'r symptomau hyn, waeth pa mor ysgafn ydynt, fe'ch cynghorir chi i wneud eich hunan yn hysbys i'r criw.

Camau syml y gallwch eu cymryd i helpu i'ch diogelu chi eich hun a'ch teulu yw:

1. Golchi eich dwylo.
2. Osgoi cyffwrdd â'ch wyneb â'ch dwylo.
3. Dal peswch a thisian mewn hances bapur a'i gwaredu ar unwaith.

Cyn cael mynediad i'r Deyrnas Unedig, rhaid i chi lenwi ffurflen lleoli cyswllt ar lein ar [www.gov.uk](http://www.gov.uk). Rhaid i chi hefyd hunanynysu am y 14 o ddiwrnodau ar ôl i chi gyrraedd. Wedi cyrraedd, rhaid ichi gadw'r arfer o gadw pellter cymdeithasol os yn bosibl a theithio'n uniongyrchol i'r man lle rydych yn bwriadu ynysu. Dylech osgoi defnyddio trafndiaeth gyhoeddus oni bai nad oes dewis arall gennych.

Mae rhestr o'r bobl sy'n esempt rhag y gofynion ar gael ar lein ar [www.llyw.cymru/coronafeirws](http://www.llyw.cymru/coronafeirws)”

(b) English language version—

“The following is a public health message on behalf of the Welsh Government and Public Health Wales.

The symptoms of coronavirus are a new continuous cough, a high temperature or a loss of, or change in, normal sense of taste or smell. If you experience any of these symptoms, however mild, you are advised to make yourself known to the crew.

Simple measures you can take to help protect yourself and family are:

1. Wash your hands.
2. Avoid touching your face with your hands.
3. Catch coughs and sneezes in a tissue and dispose of it immediately.

Before entering the UK, you must complete a contact locator form online at [www.gov.uk](http://www.gov.uk). You must also self-isolate for the first 14 days after you arrive. When you arrive you must practice social distancing where possible and travel directly to the place where you

intend to isolate. Please avoid using public transport unless you have no alternative.

A list of the people who are exempt from the requirements can be found online at [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus)”

- (c) the statement in paragraph (a) or (b) translated into an officially recognised language of the country of departure.

## **Explanatory Memorandum to the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources 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, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020.

**Vaughan Gething MS**  
**Minister for Health and Social Services**

**16 June 2020**

## **PART 1**

### **1. Description**

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Regulations”) impose requirements on operators of international passenger services (commercial services by which passengers travel on a vessel or aircraft from outside the common travel area to a port in Wales) for passengers travelling to Wales by sea or air, where those passengers are travelling from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland).

Operators are required to ensure all passengers are provided with information about coronavirus and the related requirements that apply to them (such as the duty to self-isolate when coming to Wales from outside the Common Travel Area), as well as information on public health guidance. The information must be provided to passengers before they book their travel, when they check in and during their journey on board the vessel or aircraft.

The aim is to allow those wishing to travel to Wales to make an informed choice about whether to complete their journey and increase public awareness of, and thereby compliance with, public health measures to be taken to reduce the spread of severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”) which causes the disease Covid-19.

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

These Regulations are subject to annulment by Senedd Cymru (the ‘negative procedure’).

It is considered that in the current public health crisis the measures given effect by the Regulations should be put in place as a matter of urgency. Consequently, they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

The Regulations must be reviewed by the Welsh Ministers at least once every 21 days by the Welsh Ministers, with the first review carried out by 29 June. In addition, the Regulations include a sunset provision so that they will expire at the end of the period of 12 months beginning with the day on which they come into force.

Work on a joint policy for international travel has been led by the UK Government, in collaboration with the Devolved Governments, to develop a unified UK approach.

This approach has involved the governments of all 4 nations agreeing to introduce an equivalent to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020<sup>1</sup> that require travellers entering Wales to provide prescribed information and to self-isolate for a period of 14 days, as well as an equivalent to these Regulations.

### **3. Legislative background**

These Regulations are made using powers found in sections 45B(1) and (2)(g), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”).

The 1984 Act and regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45B of the 1984 Act provides for the making of health protection regulations concerning international travel etc. Under section 45B(1)(a), the appropriate Minister may by regulations make provision for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place. Section 45B(2)(e) provides that regulations under section 45B(1) may include provision prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things. Section 45B(2)(g) provides that regulations under section 45B(1) may include provision requiring persons to provide information or answer questions (including information or questions relating to their health).

Section 45F of the 1984 Act provides that regulations made under section 45B may create offences and provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations. An operator commits an offence under the Regulations if it fails to comply with the requirement to ensure the provision of information. Section 45F(2)(a) contains supplementary provision relating to regulations made under section 45B; it provides that regulations made under section 45B may confer functions on persons. Functions relevant to monitoring compliance and enforcing the requirements are conferred on authorised persons.

The powers under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

### **4. Purpose and intended effect of the legislation**

The Welsh Government has already taken a number of steps to reduce the transmission rate of SARS-CoV-2, including creation of public health guidance (published at [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus)) on measures such as social distancing, hand-washing and self-isolation. This guidance has been informed by Public Health Wales and the latest scientific advice provided to the Welsh Government. In line with the World Health Organization general recommendations, which call for enhancing

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<sup>1</sup> SI 2020/574 (W. 132)

awareness through effective risk communication to the general public, the guidance has been widely publicised within Wales, with the aim of informing as many people as possible, and thereby securing the highest possible levels of compliance.

It is important to ensure that those wishing to travel to Wales are fully informed, so that only those who are willing and able to comply with the relevant requirements and public health guidance complete their travel.

These Regulations aim to ensure that, by the time they reach the point of entry, travellers have up-to-date information so that they know what is required of them immediately upon entry. Ensuring that people entering Wales have, and can comply with, up-to-date public health information will help to reduce the transmission of SARS-CoV-2 and thereby prevent danger to public health from aircraft and vessels arriving in Wales from outside the Common Travel Area.

The Regulations require operators of an international passenger services to provide passengers with information to ensure they are aware of the latest public health guidance about coronavirus, and the related requirements that apply to them (such as the requirement to self-isolate when coming to Wales from outside the Common Travel Area). This information must be provided to passengers before they book their travel, when they check in and during their journey on board the vessel or aircraft (“the required information”).

This required information before booking and at check-in, where those facilities are provided online, will comprise:

- (i) a link to [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control), and
- (ii) a link to [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus) along with a statement that the information found at that link contains the latest public health advice relating to coronavirus in Wales,

These links must be embedded in a prominent place so that they are visible prior to a booking being made

The required information before booking and at check-in, where those facilities are provided by telephone or face-to-face, will comprise an instruction:

- (i) to read the information at [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control), and
- (ii) to visit [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus) along with a statement that the information found at that link contains the latest public health advice relating to coronavirus in Wales.

Whether booking and check is conducted online, over the telephone or face-to-face, the required information must include a request to pass on the relevant information to any other passenger on whose behalf—

- (i) a booking is being made, or
- (ii) check-in is being carried out.

Where an operator does not directly manage the booking or check-in process, the operator must take all reasonable measures to ensure that the person managing the process complies with these requirements on the operator's behalf.

An operator must ensure that every passenger on the vessel or aircraft is provided with the statement set out in the Schedule. It takes the form of a public health message, and includes information on the symptoms of SARS-CoV-2, as well as the requirements to complete a passenger locator form and self-isolate. The latest public health advice relating to coronavirus in Wales, found at [www.gov.wales/coronavirus](http://www.gov.wales/coronavirus) must also be signposted. This statement must be provided orally in Welsh, English and an officially recognised language of the country of departure.

The operator is not required to provide any information before booking, at check-in or during the journey to a passenger who, due to their age or mental capacity, is unlikely to be capable of understanding it. Coach and mini-bus operators are not within the scope of these Regulations. It is not anticipated that any coaches or mini-buses would enter Wales from outside the Common Travel Area. However, should they do so they would arrive on vessels, so passengers will be covered by virtue of being passengers on a vessel under equivalent regulations in England, Northern Ireland and Scotland. Operators of commercial transport services by sea are required to provide the information to such passengers, and will comply with this requirement if they provide the relevant information. Where the operator does not directly manage the booking or check-in process, the operator must take all reasonable measures to ensure that the person managing the process provides the required information on the operator's behalf.

It is an offence, punishable by a fine on summary conviction, for operators not to provide the required information to passengers before booking, at check-in or during the journey. However, there is a defence of "reasonable excuse".

Fixed penalties may be imposed on persons who are suspected of committing an offence under these Regulations as an alternative to prosecution. Fixed penalty may be issued by authorised persons (the Secretary of State in the case of travel by sea, and the Civil Aviation authority in the case of air travel). The penalty is £4,000.

These Regulations also amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to correct minor drafting errors (predominantly in the Welsh language text of those Regulations). An 'as amended' version of the Welsh language text of those Regulations 2020 has been prepared and published on the GOV.wales website with a copy of those Regulations.

The Regulations must be reviewed at least once every 21 days by the Welsh Ministers, with the first review carried out by 29 June 2020. They also include a "sunset provision" and expire at the end of the 7<sup>th</sup> day of June 2021.

## **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 the Regulations.

## **6. Regulatory Impact Assessment (RIA)**

Further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation, these Regulations form part of the response to the ongoing COVID-19 pandemic and need to be put in place urgently. As such, an RIA has not been prepared.

However, an initial assessment indicates that the impact of the Regulations on operators is low. The costs and benefits of this policy cannot be fully quantified due to the nature of the pandemic. This policy forms one part of a larger package of measures that seek to minimise the health impacts of COVID-19 – the degree to which each policy has an impact can be difficult, if not impossible, to disaggregate.

Operators will incur familiarisation costs when the Regulations are put in place. This is the cost of employees reading the regulations and disseminating across the organisation. The Regulations are straightforward; therefore, the time taken, and familiarisation cost, will be minimal. There is no requirement on operators to produce their own guidance or to update that guidance.

It is not possible to directly attribute any specific benefit of the policy to a public health outcome, as these measures act as a vehicle to communicate and enable other health measures through ensuring passengers are aware of the latest advice such as social distancing guidelines. Without the requirement to provide information set out in these Regulations, the full benefits of these guidelines and advice may not be realised. As such, the Regulations are expected to help reduce the transmission of COVID-19.

Before the coming into force of the Regulations, operators were asked to provide information to passengers on a voluntary basis so transition and familiarisation costs are expected to be low. As operators already have systems in place to provide information to passengers at the booking, check-in and on-board stages of the passenger journey, the requirement to provide the information specified in these Regulations is expected to have minimal additional impact.





Eich cyf/Your ref  
Ein cyf/Our ref

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

16 June 2020

Dear Llywydd,

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

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument comes into force (in part) on making and (in full) less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations impose requirements on operators of commercial transport services for passengers travelling to Wales by sea or air, where those passengers are travelling from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland).

Operators are required to ensure all passengers are provided with information about coronavirus and the related requirements that apply to them (such as the requirement to self-isolate when coming to Wales from outside the Common Travel Area), as well as information on public health guidance. This information must be provided to passengers before they book their travel, when they check in and during their journey on board the vessel or aircraft.

The aim is to allow those wishing to travel to Wales to make an informed choice about whether to complete their journey and increase public awareness of, and thereby compliance with, the public health measures in Wales to be taken to reduce the spread of Covid-19.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Ken.Skates@llyw.cymru](mailto:Gohebiaeth.Ken.Skates@llyw.cymru)  
[Correspondence.Ken.Skates@gov.wales](mailto:Correspondence.Ken.Skates@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.

It is important that Cardiff Airport is ready to accept flights from outside the Common Travel Area alongside the rest of the aviation industry in the UK, to help maintain its market position. Work on a joint policy for international travel has been led by the UK Government, in collaboration with the Devolved Governments, to develop a unified UK approach. This approach has involved the governments of all 4 nations agreeing to introduce an equivalent to these Regulations. England and Scotland's Regulations came into force on the 8 June, as did Northern Ireland's Statutory Rules.

These Regulations make minor amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, which for reasons of legal clarity need to come into force immediately. The remaining provisions will come into force after the instrument has been laid. Not adhering to the 21 day convention in this respect allows the Regulations to come into force on 17 June 2020 and, in view of the potential resumption of flights and to ensure continuity of the unified approach and consistency with the rest of the UK, the reduced period is considered necessary and justifiable in this case.

Due to the urgency of these Regulations, they have not been subject to consultation, although the Welsh Government has been in regular contact with the UK Government and the other Devolved Administrations, as well as with Cardiff Airport.

An Explanatory Memorandum has been prepared and has been laid, together with the Regulations, in Table Office.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, 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 that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

# Agenda Item 3.1

## SL(5)552 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020

### Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the Principal Regulations”) to increase the amount of the fixed penalty for repeated breaches of the Principal Regulations up to a maximum of £1,920.

The previous and new fine structure is set out in the table below:

	Previous fine structure	New fine structure
First offence	£60	£60
Second offence	£120	£120
Third offence	£120	£240
Fourth offence	£120	£480
Fifth offence	£120	£960
Sixth offence	£120	£1,920

### Procedure

Made affirmative.

These 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

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

#### **1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

There appears to be a number of errors in the Welsh text of these Regulations:

1. In the preamble to the Welsh text “iechyd a cyhoedd” should read “iechyd y cyhoedd”
2. The reference to “Deddf Iechyd a Gofal Cymdeithasol” in the footnote on page 3 does not include the year of the Act
3. Regulation 2(2) – the amendment results in “y” appearing twice in the Welsh text, so the amended text now reads “ar y **y** cynharaf o’r canlynol” (emphasis added)
4. Regulation 2(3)(iii) – the “yn” is missing before “achos y pedwerydd...”



## Merits Scrutiny

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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 or public policy likely to be of interest to the Senedd.**

The Welsh Government is asked to clarify why these Regulations follow the urgent procedure under section 45R of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), given there had been widespread public discussion around the level of Welsh fixed penalty notices in the weeks leading up to the making of these Regulations. In other words, we ask what happened that resulted in an urgent need to increase the level of fixed penalty notices in Wales.

We note that the urgent “made affirmative” procedure does not have to be used under the 1984 Act, and that the more usual “draft affirmative” procedure (where the Senedd approves regulations **before** they are made) is the default procedure under the 1984 Act.

## Implications arising from exiting the European Union

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Government Response

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A Welsh Government response is required.

## Committee Consideration

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The Committee considered the instrument at its meeting on 8 June 2020 and reports to the Senedd in line with the reporting points above.



# **Government response to the Legislation, Justice and Constitution Committee Report on The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020**

## **Technical Scrutiny**

### **1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

These are minor typographical errors in the Welsh text which we will correct.

## **Merits Scrutiny**

### **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 Committee has asked the Welsh Government to clarify why these Regulations follow the urgent procedure under section 45R of the Public Health (Control of Disease) Act 1984.

The urgency derived from repeated calls from Police Chief Constables and Police and Crime Commissioners in Wales to make changes to the amounts of fixed penalty. A decision was made to change this for repeat offenders and it became urgent to implement ahead of the Whitsun Bank Holiday. This was done in order to deter people from leaving their homes and from travelling into and across Wales.

This came as a result of the UK Government increasing the fixed penalty applicable in England for comparable offences, resulting in a greater difference between Wales and England. The increase in England took effect on 13 May.

Following their calls for changes to be made, Police and Crime Commissioners and Chief Constables in Wales were asked to provide evidence based on their experience of policing since the change to the English penalties. This information was given due consideration alongside other factors and Welsh Government decided the appropriate approach for Wales was to retain the level of fine for first and second offences but add multipliers for subsequent offences.

# **Ymateb y Llywodraeth i Adroddiad y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad ar Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Diwygio) (Rhif 4) 2020**

## **Craffu Technegol**

### **1. Rheol Sefydlog 21.2(vii) - ei bod yn ymddangos bod anghysondebau rhwng ystyr y testun Cymraeg a'r testun Saesneg**

Mân wallau teipograffyddol yn y testun Cymraeg yw'r rhain a byddwn yn eu cywiro.

## **Craffu ar Rinweddau**

### **1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd**

Mae'r Pwyllgor wedi gofyn i Lywodraeth Cymru egluro pam y mae'r Rheoliadau hyn yn dilyn y weithdrefn frys o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984.

Daeth yn fater o frys oherwydd sawl galwad gan Brif Gwnstabiliaid yr Heddlu a Chomisïynwyr Heddlu a Throseddau yng Nghymru i newid symiau'r gosb benodedig. Gwnaed penderfyniad i newid y symiau hyn ar gyfer ad-droseddwy'r daeth yn fater o frys i'w weithredu cyn Gŵyl Banc y Sulgwyn. Gwnaed hyn er mwyn atal pobl rhag gadael eu cartrefi a rhag teithio i mewn i Gymru ac ar draws Cymru.

Cododd hyn oherwydd i Lywodraeth y DU gynyddu'r gosb benodedig a oedd yn gymwys yn Lloegr ar gyfer troseddau cymaradwy, gan arwain at wahaniaeth mwy rhwng Cymru a Lloegr. Cymerodd y cosbau uwch effaith yn Lloegr ar 13 Mai.

Yn dilyn eu galwadau i newidiadau gael eu gwneud, gofynnwyd i Gomisiynwyr Heddlu a Throseddau a Phrif Gwnstabiliaid yng Nghymru ddarparu tystiolaeth ar sail eu profiadau o blismona ers i'r cosbau yn Lloegr gael eu newid. Rhoddwyd ystyriaeth ddyladwy i'r wybodaeth hon ar y cyd â ffactorau eraill a phenderfynodd Llywodraeth Cymru mai'r dull priodol i Gymru oedd cadw lefel y ddirwy ar gyfer y drosedd gyntaf a'r ail drosedd ond ychwanegu lluosyddion ar gyfer troseddau wedi hynny.

# Agenda Item 3.2

## SL(5)555 – The Census (Wales) Regulations 2020

### Background and Purpose

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These Regulations make provision of the operational arrangements and procedures necessary for the conduct of the 2021 census (“the Census”) and prescribe the questionnaires that will be used. Specimens of the paper questionnaires and descriptions of the questions and response options for the online questionnaires are contained in the Regulations.

The Census is a survey conducted every 10 years of all people and households in the United Kingdom. It provides essential information from national to neighbourhood level for government, business, and the community.

These Regulations are made under section 3 of the Census Act 1920 (“the 1920 Act”) and enable the Census (England and Wales) Order 2020 to be carried into effect. The Welsh Ministers were consulted on the draft Census (England and Wales) Order 2020 via a letter sent to the Minister for Finance and Trefnydd. The Census (England and Wales) Order 2020 (“the Census Order”) was approved by Parliament on 14 May 2020 and made by Her Majesty in Council on 20 May 2020.

### Procedure

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Negative.

### Technical Scrutiny

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

#### **Standing Order 21.2(viii) – that it uses gender specific language**

##### **1. Gender-specific nouns**

The questionnaires use both gender-specific nouns (for example son or daughter and mother or father in the English version, or ‘mab neu ferch’ or ‘mam neu dad’ in the Welsh version) as possible answers when seeking details of how people within a household are related. These appear in Part 1 (pages 26 and 27 of the English version and 29 and 30 of the Welsh version), Part 4 (question H6 on pages 43 and 44 in the English version and 46 and 47 in the Welsh version) and Part 5 (question C1 on pages 75 and 76 in the English version and 78 and 79 in the Welsh version) of Schedule 2. The same questions also use possible answers that are not gender-specific nouns (for example grandchild or grandparent; ; ‘ŵyr neu wyres’ or ‘taid/tad-cu neu nain/mam-gu’ are stated in the Welsh version). Legislative Drafting Guidelines produced by the Welsh Government states that “Generally, gender-specific language should only be used for references to persons of one gender or the other”.

It is not clear why non-gender-specific nouns were not chosen for all of the possible answers in the English version. An explanation is requested from the Government.

### Merits Scrutiny

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The following five points are identified for reporting under Standing Order 21.3 in respect of this instrument.



## **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**

### **1. Human Rights**

In requiring the mandatory provision of personal information in response to the Census, the Regulations engage the right to respect for private and family life under Article 8 of the European Convention on Human Rights. Article 8 is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the right if necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The conduct of the census is well-established in the United Kingdom, and is common practice in many countries. Undertaking a census is often justified as being necessary in a democratic society and as a source of information which allows governments to understand social needs.

It is acknowledged that there are safeguards that provide some protection of a person's privacy, including references to how information is protected by law, offences for disclosure of census information and permitting individuals in a household to complete an individual questionnaire. It is also noted that the 1920 Act in effect makes questions concerning religion, sexual orientation and gender identity voluntary by removing any penalty for a prescribed person not responding to those census questions. Finally, the Data Protection Act 2018 will apply to the processing of personal data included in a census return and will therefore provide further safeguards.

Although the requirement to respond to the Census is a justified interference with the right to private and family life under Article 8, the Explanatory Memorandum does not contain a justification for the interference.

### **2. Use of Welsh terms for household**

Regulation 3(3) provides that in the body of the Regulations, the term "aelwyd" is used in Welsh to correspond to "household" in English. However, regulation 3(4) provides that in the questionnaires, the term "cartref" is used to correspond to "household". "Aelwyd" is more generally used to correspond to "hearth", whilst "cartref" would be used to correspond to "home".

It is unclear why a distinction has been made and why one term could not be used in both the body of the Regulations and the questionnaires. An explanation is requested from the Government to explain the choice of language.

### **3. Difference between the English and Welsh texts**

The English guidance text included in individual question 28 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110), reads 'Record any qualifications you have ever achieved in Wales, England or worldwide...' whereas the Welsh text states '...Cymru neu o unrhyw le arall yn y byd...', not including England. Although the question would be answered in the same way irrespective of whether a person used the English or Welsh version of the questionnaires, it is not clear why this distinction has been made, or whether there is meant to be a significance to the difference.

An explanation is requested from the Government to explain the reason for the difference.





#### **4. Prescribed persons and version of questionnaires**

Although it is possible to ascertain which prescribed persons are required to complete which questionnaires by reading the Regulations, the layout and formatting of the table contained in the published version of Schedule 1 to the Regulations creates ambiguity.

It could be inferred that the gaps between the questionnaires listed in columns (2) and (3) are intentional and are intended to distinguish their relevance to the prescribed persons in column (1). By way of example, one interpretation is that the Household Continuation Questionnaire (paper) is only relevant where article 5(11) of the Census Order applies and that the Individual Questionnaire (paper) is only relevant to every person specified in column (2) of Group G in Schedule 1 to the Census Order.

As such, the published version of the Regulations would benefit from being more clearly delineated or formatted between each of the three groups of questionnaires that need to be completed, perhaps by numbering or including borders between the rows.

A Government response is requested.

#### **Standing Order 21.3(v) - that it imperfectly achieves its policy objectives**

#### **5. Differences between the online and paper questionnaires**

There are some differences between the questions asked, and answers offered, in the online questionnaire when compared with the paper questionnaire. These differences are:

(a) The online questionnaire identify the Advanced Welsh Baccalaureate, Intermediate Welsh Baccalaureate and Foundation Welsh Baccalaureate as separate options for information on qualifications but group these with "2 or more A levels, 4 or more AS levels", "5 or more GCSEs (A\*-C, 9-4), O levels (passes), CSEs (grade 1)" and "Any other GCSEs, O levels or CSEs (any grades), Basic Skills course" respectively. These differences appear in Part 1 of Schedule 2 (on page 33) for the online questionnaire and individual question 31 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110) for the paper questionnaires.

(b) If a person has not achieved identified qualifications or equivalents, they are asked "Have you achieved any other qualifications?" in the online questionnaire (Part 2 of Schedule 2 on page 34). The three possible answers for that question allow for a person to state that they have (i) other qualifications in Wales or England, (ii) other qualifications outside England and Wales or (ii) no qualifications. A person completing a paper questionnaire is not asked to distinguish between qualifications achieved inside Wales and England and those achieved outside Wales and England.

(c) The routing instructions in the online questionnaire (Part 2 of Schedule 2 on page 35) specify that certain questions are only asked for certain responses. The equivalent questions (individual questions 36 and 37) in the paper questionnaires are asked irrespective of the response to earlier question 35 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110).

(d) The online questionnaire includes a question "Where do you mainly work?" with options including "At a workplace" and "Report to a depot". A follow up question "Do you mainly work in the UK?" includes responses that distinguish between addresses in the UK, which requires an address to be



provided, and those outside the UK, which requires only a country to be provided. The paper questionnaires combine the options of workplace and depot in question 49 (Part 4 of Schedule 2 on pages 50, 55, 60, 65 and 70, Part 5 of Schedule 2 on pages 81, 86, 91, 96 and 101 and Part 6 of Schedule 2 on page 111). The paper questionnaires also do not distinguish between workplaces inside and outside the UK, requiring a full address to be provided irrespective of the location of the workplace for question 50 (Part 4 of Schedule 2 on pages 50, 55, 60, 65 and 70, Part 5 of Schedule 2 on pages 81, 86, 91, 96 and 101 and Part 6 of Schedule 2 on page 111).

It is not clear whether these differences are intentional, and if so, why those differences are necessary. The collection of different answers between the online and paper questionnaires as part of the Census may impact on the quality of the data collected and the statistics that can be ascertained from that data. Those differences affect the policy objective of undertaking a data collection exercise which provides a detailed picture of the entire population.

An explanation is requested from the Government to explain the reason for the differences.

## Implications arising from exiting the European Union

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None.

## Government Response

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A Welsh Government response is required to the technical point and the second, third, fourth and fifth merits points.

## Committee Consideration

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The Committee considered the instrument at its meeting on 15 June 2020 and reports to the Senedd in line with the reporting points above.



# The Census (Wales) Regulations 2020

## Technical scrutiny

### Standing Order 21.2(viii) – that it uses gender specific language

#### 1. Gender- specific nouns

The Regulations are made under section 3 of the Census Act 1920. Section 3 of the Census Act 1920 makes provision for census Regulations to be made for the procedural and practical arrangements needed to conduct a census pursuant to a census order.

The power to make census regulations for Wales was transferred to the National Assembly pursuant to the National Assembly for Wales (Transfer of Functions) (No. 2) Order 2006 (S.I. 2006/3334). These functions are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. The Welsh Ministers' functions extend to the procedural and practical arrangements only.

Pursuant to section 2 of the Census Act 1920, it is the duty of the Statistics Board in relation to England and Wales to make such arrangements that are necessary for the taking of the census and this includes the preparation and the issue of the necessary questionnaires. In this regard, the Office of National Statistics (ONS) has prepared both the online and paper questionnaires in readiness for the Census due to take place on Sunday 21 March 2021. The questionnaires were provided by the ONS to the Welsh Government for inclusion in the Regulations.

While the Welsh Government Legislative Drafting Guidelines have been adopted for the body of the Regulations, which are the responsibility of the Welsh Ministers, those drafting principles do not extend to the ONS who drafted the questionnaires.

As part of their gender identity research, the ONS investigated whether the response categories in the household relationships question should change to (or include) gender neutral terminology, to allow those who do not ascribe to a binary gender (male/female) to answer with ease. Their analysis indicated that within the focus groups, non-gendered terminology was reported as a positive move, although there was a lack of understanding of non-gendered terms (for example, "spouse" and "sibling"), indicating potential problems with their inclusion. Tied in with these considerations are presentational and readability issues to do with how much text appears both online and on paper, as well as the number of lines of text (i.e. space) available, which only applies to paper.

## **Merits Scrutiny**

### **Standing Order 21.3(ii)**

#### **2. Use of the Welsh terms for household**

The interpretation provision adopted in regulations 3(3) and 3(4) for “aelwyd” and “cartref” were adopted in order to assist the reader with the interpretation of the Regulations and the questionnaires, and to ensure that there was no ambiguity between the Welsh and English language text.

Household and Householder have the meaning given by article 2(1) of the Census (England and Wales) Order 2020, the 2020 Order does not include a translation of those definitions being a UK Government instrument. As noted in the response to the technical scrutiny issue noted at [1] above, the body of the Regulations were drafted by lawyers for the Welsh Government, while the questionnaires were drafted and translated by the ONS, each of which adopt varying translation styles. The two definitions provided correctly describe a household and it was decided that the interpretation provision would be adopted to assist the interpretation of the Regulations as a whole.

The Welsh language questionnaires were quality assured and signed-off by the Welsh Language Census Questions Assurance Group. This group consists of translators from the Welsh Government’s Translation Service, statisticians from the Welsh Government’s Knowledge and Analytical Services, and representatives from the Welsh Language Commissioner.

These interpretations were also used as a precedent in the Census (Wales) Regulations 2010, at regulation 3(3) and 3(4).

#### **3. Difference between the English terms and the Welsh texts**

The difference between the English guidance text and the Welsh guidance text is due to the space constraints of the Welsh language paper questionnaire. A word-for-word translation of the English guidance text would mean that an additional line of text would be needed in the Welsh language questionnaire, which was not possible. Even with this shortening, there has been a compromise in line spacing and readability to make it fit due to the inclusion of the Welsh Baccalaureates in both the English language and Welsh language questionnaires for Wales.

The Welsh Language Census Questions Assurance Group therefore approved the Welsh guidance text included in the Regulations on the premise that the question would be answered in the same way, irrespective of whether a person uses the English or Welsh version of the questionnaires.

#### **4. Prescribed persons and version of questionnaires**

We are grateful for your comment in respect for the layout and formatting of the table in Schedule 1 of the published version of the Regulations. When drafting the table, there were borders between the rows, which do not appear in the published version. We have made enquires and we propose reinstating the borders in Schedule 1, which will afford clear delineation between each of the three groups of

questionnaires. It is proposed that this will be achieved by way of a correction slip; we are and will continue to liaise with the Registrar team at the National Archives to seek to achieve the necessary formatting changes.

## **Standing Order 21.3(v) – that it imperfectly achieves its policy objectives**

### **5. Differences between the online and paper questionnaire**

In general, the points raised are mainly driven by the space constraints in the paper questionnaire. The online questionnaire allows the ONS to gather information in a more granular way by breaking down these answers further, making it easier for people to answer. However, the paper questionnaire does not allow space for this, therefore some routing and response options differ, but they aim to provide the closest match that is achievable on paper to the online version, to ensure that the quality of data collected is as good as possible in both modes of response.

In response to the individual points raised:

- (a) The aim of this question is to collect the highest level of qualification. Due to space constraints, on paper the Welsh Baccalaureate is grouped into an option with other qualifications of the same level (in various places due to the different Baccalaureates available). Online, the ONS was able to increase readability of the response option by separating it into two distinct options. This is purely to reduce respondent burden in reading long response options, and not operationally required.
- (b) Again, ideally the paper questionnaire would also have split these out, in the same way as online. Doing this provides useful information to understand why the person was unable to map any qualifications to the ones listed.
- (c) In this case the online routing was not easily replicable on paper; adding the routing risked additional confusion and respondent burden without significant benefit.

The answers to the three questions are combined to identify if a person is economically active. The routing looks across multiple questions, which cannot be replicated on paper.

Online, the automatic routing can take into account answers to multiple questions, so was implemented to reduce respondent burden.

The routing on Q35 could have been implemented on the paper form; however, that would leave less information from which to work out economic status if left blank (online, if left blank they have to complete all three questions). Hence, it was decided to leave out due to this benefit. There was a relatively low burden of asking the respondent an additional 'Yes'/'No' question that still makes sense whether their previous response was 'Yes' or

'No', especially when offset by the additional burden that routing adds (people struggle with routing, so less is better when asking the respondent to navigate the form themselves).

- (d) As with previous items, this is due to space constraints on the paper form. Ideally the ONS would have included an "or abroad, state country" type option as per other address write-in questions. On paper, there was not space to do this. Online the ONS has implemented the design that they use across the address questions by ascertaining if it's in the UK or not first, then collecting the detail needed (full address, or just country). The answer given to the paper questionnaire will allow the same output, as workplaces outside the UK will still be recorded.

# Rheoliadau'r Cyfrifiad (Cymru) 2020

## Craffu technegol

**Rheol Sefydlog 21.2(viii) – bod yr offeryn neu'r drafft yn defnyddio iaith ryw-benodol**

### **1. Enwau rhyw-benodol**

Mae'r Rheoliadau wedi eu gwneud o dan adran 3 o Ddeddf y Cyfrifiad 1920. Mae adran 3 o Ddeddf y Cyfrifiad 1920 yn gwneud darpariaeth i Reoliadau cyfrifiad gael eu gwneud ar gyfer y trefniadau gweithdrefnol ac ymarferol y mae eu hangen i gynnal cyfrifiad yn unol â gorchymyn cyfrifiad.

Trosoglwyddwyd y pŵer i wneud rheoliadau cyfrifiad ar gyfer Cymru i'r Cynulliad Cenedlaethol yn unol â Gorchymyn Cynulliad Cenedlaethol Cymru (Trosoglwyddo Swyddogaethau) (Rhif 2) 2006 (O.S. 2006/3334). Mae'r swyddogaethau hyn wedi eu breinio bellach yng Ngweinidogion Cymru yn rhinwedd paragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006. Mae swyddogaethau Gweinidogion Cymru yn rhychwantu'r trefniadau gweithdrefnol ac ymarferol yn unig.

Yn unol ag adran 2 o Ddeddf y Cyfrifiad 1920, dyletswydd y Bwrdd Ystadegau o ran Cymru a Lloegr yw gwneud y trefniadau hynny sy'n angenrheidiol ar gyfer cynnal y cyfrifiad ac mae hyn yn cynnwys llunio a dyroddi'r holiaduron angenrheidiol. Yn hyn o beth, mae'r Swyddfa Ystadegau Gwladol (SYG) wedi llunio'r holiaduron ar-lein a'r holiaduron papur yn barod ar gyfer y Cyfrifiad sydd i fod i ddigwydd ddydd Sul 21 Mawrth 2021. Darparwyd yr holiaduron gan y SYG i Lywodraeth Cymru er mwyn eu cynnwys yn y Rheoliadau.

Er bod Canllawiau Drafftio Deddfwriaethol Llywodraeth Cymru wedi eu mabwysiadu ar gyfer corff y Rheoliadau, sydd o dan gyfrifoldeb Gweinidogion Cymru, nid yw'r egwyddorion drafftio hynny yn ymestyn i'r SYG a ddrafftiodd yr holiaduron.

Fel rhan o'i hymchwil i hunaniaeth o ran rhywedd, ymchwiliodd y SYG a ddylai'r categorïau ymateb yn y cwestiwn ynghylch perthnasoedd yr aelwyd newid i derminoleg niwtral o ran rhywedd (neu gynnwys terminoleg o'r fath), er mwyn caniatáu i'r rheini nad ydynt yn priodoli rhywedd deuaidd (gwryw/benyw) iddynt eu hunain ymateb yn hawdd. Dangosodd dadansoddiad y SYG i'r grwpiau ffocws nodi bod terminoleg niwtral o ran rhywedd yn gam cadarnhaol, er bod diffyg dealltwriaeth o dermau niwtral o ran rhywedd (er enghraifft, "spouse" a "sibling"), sy'n dangos problemau posibl o ran eu cynnwys. Yn gysylltiedig â'r ystyriaethau hyn mae materion cyflwyno a materion darllenadwyedd sy'n ymwneud â faint o destun sy'n ymddangos ar lein ac ar bapur, yn ogystal â nifer y llinellau o destun (h.y. faint o le) sydd ar gael, sy'n gymwys i bapur yn unig.

## **Craffu ar Rinweddau**

### **Rheol Sefydlog 21.3(ii)**

#### **2. Y defnydd o'r termau Cymraeg am "household" - for legal**

Mabwysiadwyd y ddarpariaeth ddehongli yn rheoliad 3(3) a 3(4) ar gyfer "aelwyd" a "cartref" er mwyn cynorthwyo'r darlennydd i ddehongli'r Rheoliadau a'r holiaduron, ac i sicrhau nad oedd unrhyw amwysedd rhwng y testunau Cymraeg a Saesneg.

Mae i "household" a "householder" yr ystyr a roddir gan erthygl 2(1) o Orchymyn y Cyfrifiad (Cymru a Lloegr) 2020. Nid yw Gorchymyn 2020 yn cynnwys cyfieithiad o'r diffiniadau hynny gan mai offeryn gan Lywodraeth y DU ydyw. Fel y'i nodwyd yn yr ymateb i'r pwynt craffu technegol yn [1] uchod, cafodd corff y Rheoliadau ei ddrafftio gan gyfreithwyr Llywodraeth Cymru, ond cafodd yr holiaduron eu drafftio a'u cyfieithu gan y SYG, sy'n dilyn arddulliau cyfieithu gwahanol. Mae'r ddau ddiffiniad a ddarperir yn disgrifio "household" yn gywir a phenderfynwyd mabwysiadu'r ddarpariaeth ddehongli er mwyn cynorthwyo i ddehongli'r Rheoliadau fel cyfanwaith.

Sicrhawyd ansawdd yr holiaduron Cymraeg gan Grŵp Sicrhau Ansawdd Cwestiynau Cymraeg y Cyfrifiad. Mae'r grŵp yn cynnwys cyfieithwyr o Wasanaeth Cyfieithu Llywodraeth Cymru, ystadegwyr o Wasanaethau Gwybodaeth a Dadansoddi Llywodraeth Cymru, a chynrychiolwyr Comisiynydd y Gymraeg.

Hefyd, defnyddiwyd y dehongliadau hyn fel cysail yn Rheoliadau'r Cyfrifiad (Cymru) 2010, yn rheoliad 3(3) a 3(4).

#### **3. Gwahaniaeth rhwng y termau Saesneg a'r testunau Cymraeg**

Oherwydd cyfyngiadau lle yn yr holiadur papur Cymraeg y mae'r gwahaniaeth rhwng testun y canllawiau Saesneg a thestun y canllawiau Cymraeg. Byddai cyfieithiad gair am air o destun y canllawiau Saesneg yn golygu y byddai angen llinell ychwanegol o destun yn yr holiadur Cymraeg, nad oedd yn bosibl. Hyd yn oed gyda'r cwtogi hwn, bu cyfaddawd o ran y bylchau rhwng y llinellau a darllenadwyedd er mwyn i'r testun ffitio oherwydd ei fod yn cynnwys Bagloriaeth Cymru yn yr holiaduron Cymraeg a Saesneg i Gymru.

Felly, cymeradwyodd Grŵp Sicrhau Ansawdd Cwestiynau Cymraeg y Cyfrifiad destun y canllawiau Cymraeg a gynhwysir yn y Rheoliadau gan ragdybio y byddai'r cwestiwn yn cael ei ateb yn yr un ffordd, ni waeth a yw person yn defnyddio fersiwn Gymraeg neu Saesneg yr holiaduron.

#### **4. Personau rhagnodedig a fersiwn yr holiaduron**

Rydym yn ddiolchgar am eich sylw mewn cysylltiad â chynllun a fformat y tabl yn Atodlen 1 i fersiwn gyhoeddedig y Rheoliadau. Wrth ddrafftio'r tabl, roedd borderi rhwng y rhesi, nad ydynt yn ymddangos yn y fersiwn gyhoeddedig. Rydym wedi gwneud ymholiadau ac yn bwriadu adfer y borderi yn Atodlen 1, a fydd yn rhoi amlinelliad clir rhwng pob un o'r tri grŵp o holiaduron. Bwriedir cyflawni hyn drwy slip cywiro; rydym yn cydweithio â thîm y Cofrestrydd yn yr Archifau Cenedlaethol, a byddwn yn parhau i wneud hynny, i geisio sicrhau'r newidiadau fformatio angenrheidiol.



## Rheol Sefydlog 21.3(v) – nad yw'n gwireddu ei amcanion polisi yn berffaith

### 5. Gwahaniaethau rhwng yr holiadur ar-lein a'r holiadur papur

Yn gyffredinol, cyfyngiadau lle yn yr holiadur papur sydd y tu ôl i'r pwyntiau a godwyd. Mae'r holiadur ar-lein yn caniatáu i'r SYG gasglu gwybodaeth mewn ffordd fwy gronynnol drwy rannu'r atebion hyn ymhellach, gan ei gwneud yn haws i bobl ateb. Fodd bynnag, nid oes lle i wneud hyn yn yr holiadur papur ac felly mae rhai opsiynau sy'n pennu'r llwybr ac opsiynau ymateb yn wahanol. Fodd bynnag, eu nod yw rhoi'r gyfatebiaeth agosaf y gellir ei chyflawni ar bapur â'r fersiwn ar-lein, er mwyn sicrhau bod ansawdd y data a gesglir cystal â phosibl yn y ddau ddull o ymateb.

Mewn ymateb i'r pwyntiau unigol a godwyd:

- (a) Nod y cwestiwn hwn yw casglu'r lefel uchaf o gymhwyster. Oherwydd cyfyngiadau lle, ar bapur mae Bagloriaeth Cymru wedi ei grwpio mewn opsiwn gyda chymwysterau eraill ar yr un lefel (mewn sawl lle oherwydd y Bagloriaethau gwahanol sydd ar gael). Ar lein, roedd y SYG yn gallu gwella darllenadwyedd yr opsiwn ymateb drwy ei rannu'n ddau opsiwn ar wahân. Dim ond i leihau'r baich ar yr ymatebydd wrth ddarllen opsiynau ymateb hir y gwneir hyn, ac nid yw'n ofynnol yn weithredol.
- (b) Eto, yn ddelfrydol, byddai'r holiadur papur hefyd wedi gwahanu'r rhain, yn yr un ffordd ag a geir ar lein. Mae gwneud hyn yn darparu gwybodaeth ddefnyddiol i ddeall pam na allai'r person fapio unrhyw gymwysterau i'r rhai a restrir.
- (c) Yn yr achos hwn, nid oedd yn hawdd atgynhyrchu'r broses pennu llwybr ar-lein ar ffurf papur; roedd perygl y gallai ychwanegu'r broses pennu llwybr achosi dryswch ychwanegol a baich ychwanegol ar yr ymatebydd heb fanteision sylweddol.

Mae'r atebion i'r tri chwestiwn yn cael eu cyfuno i nodi a yw person yn economaidd weithgar. Mae'r broses pennu llwybr yn edrych ar draws sawl cwestiwn, ac ni ellir atgynhyrchu hyn ar bapur.

Ar lein, gall y broses awtomatig i bennu'r llwybr ystyried atebion i sawl cwestiwn, ac fe'i gweithredwyd felly er mwyn lleihau'r baich ar yr ymatebydd.

Gallai'r broses pennu llwybr ar gwestiwn 35 fod wedi cael ei gweithredu ar y ffurflen papur; fodd bynnag, byddai hynny'n arwain at lai o wybodaeth i'w defnyddio er mwyn penderfynu statws economaidd pe bai'n cael ei adael yn wag (ar lein, os yw'n cael ei adael yn wag rhaid iddynt gwblhau'r tri chwestiwn i gyd). Felly, penderfynwyd ei hepgor oherwydd y fantais hon. Roedd baich cymharol isel drwy ofyn cwestiwn 'le'/'Nage' ychwanegol i'r ymatebydd sy'n gwneud synnwyr o hyd pa un a oedd ei ymateb blaenorol yn gadarnhaol neu'n negyddol, yn enwedig wrth wrthbwysu hynny gan y baich ychwanegol y mae'r broses pennu llwybr yn ei ychwanegu (mae pobl yn cael trafferth gyda'r

broses pennu llwybr, felly mae llai yn well wrth ofyn i'r ymatebydd lywio ei ffordd ei hunan drwy'r ffurflen).

- (d) Fel yn achos yr eitemau blaenorol, mae hyn oherwydd cyfyngiadau lle ar y ffurflen bapur. Yn ddelfrydol, byddai'r SYG wedi cynnwys opsiwn o'r math "neu dramor, nodwch y wlad", fel yn achos cwestiynau eraill lle y mae angen ysgrifennu'r cyfeiriad. Ar bapur, nid oedd lle ar gael i wneud hyn. Ar lein, mae'r SYG wedi gweithredu'r dyluniad y maent yn ei ddefnyddio ar draws y cwestiynau cyfeiriad drwy gael gwybod pa un a yw yn y DU ai peidio yn gyntaf, wedyn casglu'r manylion sy'n angenrheidiol (cyfeiriad llawn, neu'r wlad yn unig). Bydd yr ateb a roddir i'r holiadur papur yn caniatáu'r un allbwn, gan y bydd gweithleoedd y tu allan i'r DU yn cael eu cofnodi o hyd.

# Agenda Item 3.3

## SL(5)556 – The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

### Background and Purpose

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These Regulations place a requirement on certain categories of people arriving in Wales:

- To provide information about where they will reside in Wales and other related matters;
- To isolate for a period of 14 days.

Subject to certain exceptions, regulation 4 requires persons arriving in Wales by ship or aircraft to provide information electronically to the Secretary of State. Where a person is accompanied by a child for whom they are responsible, they must also provide the child's information.

Regulations 7 and 8 require, subject to certain exceptions, the following categories of persons to isolate for a period of 14 days upon their arrival in Wales:

- A person arriving in Wales by ship or aircraft from outside the common travel area;
- A person arriving in Wales from the Republic of Ireland, the Channel Islands or the Isle of Man who has, within a period of 14 days ending with the person's arrival in Wales, arrived in the common travel area from a place outside that area;
- A person who arrives in Wales from elsewhere in the United Kingdom who has in the previous 14 days arrived from a place outside the common travel area.

Regulation 19 provides that the necessity and proportionality of these Regulations must be reviewed by the Welsh Ministers every 21 days. The first review must therefore take place by 29 June 2020, as the Regulations came into force on 8 June 2020.

Regulation 20 provides that these Regulations will expire at the end of the period of 12 months beginning with the day on which they come into force.

### Procedure

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Negative.

### Technical Scrutiny

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The following two points are 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**

Regulation 9 states that regulations 7 and 8 do not apply to a person described in paragraph 1(1)(a) to (k) of Schedule 2, so long as the conditions in paragraph 2 of that Schedule are satisfied. The reference to paragraph 2 of Schedule 2 in relation 9(a) should instead refer to paragraph 1(2) of Schedule 2.



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

Regulation 17(10) states that “personal data” and “data protection legislation”, as used in regulation 17(8), have the same meanings as in section 3 of the Data Protection Act 2018. However, this appears to be a cross-referencing error, as these terms are actually used in regulation 17(9) of the Regulations, rather than 17(8). For the sake of completeness, it should be noted that the reference to section 3 of the Data Protection Act 2018 is correct.

## **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**

These Regulations were made on 5 June 2020 and came into force at 12:01am on 8 June 2020. They were laid before the Senedd at 11:00am on 8 June 2020. This means that the Regulations were laid before the Senedd after they had come into force, and also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

These Regulations are being introduced on the same timeline imposing the equivalent requirements in relation to England, Scotland and Northern Ireland as part of a UK-wide approach.

The Welsh Government explains in the Explanatory Memorandum to these Regulations that, in response to the COVID-19 pandemic, it considers that *“urgent action is needed to limit the number of cases of COVID-19 imported into the UK and ensure these will not have a material impact on the domestic incidence of the virus.”* The Welsh Government states that this is particularly important as the rate of domestic infections slows.

Furthermore, the Welsh Government explains that, *“If legislation is delayed, people arriving in Wales in the short-term will not be required to isolate for 14 days and will not, therefore, be required to significantly reduce their social contact [...]. Accordingly, the risk of them transmitting the virus onward to the domestic population is increased, if they have contracted it or are infectious. Any delay will also mean that people arriving in Wales are not required to provide their contact details which are needed to support contact tracing and thereby reduce transmission of the virus. Both measures are designed to reduce the incidence of COVID-19 in the UK. Delaying their implementation could materially increase the incidence of the disease in the UK just as the number of domestic cases is falling.”*

### **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**

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently.

### **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**



Paragraph 17(2)(b) of Schedule 2 to the Regulations defines “sewerage licensee” as the meaning given in section 17BA(6) and 219(1) of the Water Industry Act 1991. However, it is noted that the definition cannot be found in section 17BA of the 1991 Act, as section 4(1) of the Water Act 2014, which inserts section 17BA into the 1991 Act, is only partially in force. As such, section 17BA(6) has not yet been inserted into the 1991 Act. This leaves the reader heavily reliant on the footnote in the Regulations, which points them to the Water Act 2014.

The Welsh Government are asked to provide a response as to whether it knows when section 17BA(6) will be inserted into the Water Industry Act 1991 by the Water Act 2014 and whether, in the absence of this, consideration was given to including the full definition on the face of the Regulations.

#### **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**

By requiring certain categories of persons arriving in Wales to isolate at a specified address for 14 days, and to provide information about where they will reside in Wales and other related matters, the Regulations engage the right to private and family life under Article 8 of the Convention.

Article 8 is a qualified right and interference with this right is permitted where necessary in a democratic society in the interest of public safety or for the protection of health.

The necessity of the situation that has given rise to these Regulations is the likely basis relied upon to justify the interference with these rights as a proportionate means of achieving the legitimate aim of protecting the citizens of Wales. However, the Explanatory Memorandum does not contain an acknowledgement of or justification for the interference with human rights. The Committee would like to see the Welsh Government set out their justifications on how these Regulations engage but do not breach human rights.

Until the end of the transition period, the European Union Charter of Fundamental Rights will continue to apply in the United Kingdom. There are corresponding protections to those above contained in the Charter. Subject to the principle of proportionality, limitations which affect the rights under the Charter may be made if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

### **Implications arising from exiting the European Union**

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **Government Response**

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A Welsh Government response is required to the technical points, and the third and fourth merits point.

### **Committee Consideration**

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The Committee considered the instrument at its meeting on 22 June 2020 and reports to the Senedd in line with the reporting points above.



## **Government Response: *The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020***

### Technical Scrutiny

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

- 1.1. Senedd legal advisers have pointed out cross referencing errors in regulations 9 and 17(10). The Welsh Government will amend the Regulations to correct the cross references at the earliest available opportunity.

### Merits Scrutiny

#### **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 Assembly.**

- 2.1. Senedd legal advisers have queried the definition of “sewerage licensee” in paragraph 17(2)(b) of Schedule 2 to the Regulations. The definition refers to sections 17BA(6) and 219(1) of the Water Industry Act 1991. However, section 4(1) of the Water Act 2014, which inserts section 17BA into the 1991 Act, is only partially in force. As such, section 17BA(6) has not yet been inserted into the 1991 Act. However, the definition of “sewerage licensee” inserted into section 219(1) of the 1991 Act (also inserted by the 2014 Act) is in force and defines the term in question by reference to section 17BA(6).
- 2.2. The non-commencement of section 17BA(6) appears to be an error, and the drafting of the Regulations was prepared on the understanding that section 17BA(6) was in force. But as the Senedd legal advisers have suggested, the definition of “sewerage licensee” must carry the meaning specified by the uncommenced provision, as interpreted by reference to section 219(1) of the 1991 Act and the footnote provided in the Regulations. But this is a situation that makes the law less accessible than it ought to be.
- 2.3. The Government does not think that replicating the full definition in the Regulations is the solution to the issue, because the expression “sewerage licensee” needs to carry the meaning given to it in the context of the 1991 Act. The power to commence section 4 of the 2014 Act sits with the Secretary of State, not the Welsh Ministers (section 94 of the 2014 Act). And Welsh Government officials propose to contact their counterparts in the United Kingdom Government to bring the issue of the commencement of section 17BA(6) to their attention.

#### **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 Assembly.**

- 3.1. Senedd legal advisers have noted that the Regulations engage the right to private and family life under Article 8 of the Convention and that the Committee would like to see the Welsh Government set out their justifications on how these Regulations engage but do not breach human rights.
- 3.2. The Government accepts that there is little doubt that the strict requirements of self-isolation imposed by the Regulations will amount to an interference with the Article 8 right. It is however a qualified right and the justification for interference with this right is relatively broad and includes measures that are necessary for public safety and for the protection of health. These provide a legitimate aim for the provisions of the Regulations.
- 3.3. The Government considers that the current Covid-19 emergency presents a risk to public health. The measures in the Regulations are necessary and proportionate to achieve the legitimate aim of protection of public health. As such any interference with the Article 8 right is justified.

Rebecca Evans AS/MS  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

Agenda Item 4.1

Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair, Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
CF99 1NA

19 June 2020

Dear Mick,

I am writing to highlight the constructive discussions that are taking place as part of the regular meetings of the Finance Ministers' Quadrilateral.

Since the outbreak, we have met on four occasions (27 March, 9 April, 30 April and 19 May) to discuss the fiscal response to the crisis. The meetings have focused on a range of issues, ranging from certainty on the funding and flexibilities available to the devolved Governments to respond to, and mitigate the impact of the crisis, to specific interventions such as the Job Retention Scheme. In the coming weeks, I would expect our discussions to focus on the fiscal implications of moving out of lockdown and into recovery, as well as the continued discussions in relation to additional budgetary flexibilities.

Yours sincerely,



**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

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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

Mick Antoniw MS  
Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

22 June 2020

Dear Mick

I am pleased to inform you that a consultation document seeking views on the draft Senedd Cymru (Disqualification) Order 2020 has been published on the Welsh Government website today.

Prior to each Senedd general election a new Disqualification Order is made which revokes the previous Order and sets out an updated list of disqualifying offices.

The draft Senedd Cymru (Disqualification) Order 2020 would designate offices the holders of which would be disqualified from being a Member of the Senedd (but not from being a candidate to be a Member of the Senedd). The proposed offices are described in the Schedule to the draft Order.

Additional disqualifying offices, together with categories of person disqualified from being a Member of the Senedd, are prescribed by the Government of Wales Act 2006. The draft Order should be read with the relevant provisions.

This consultation seeks views on which offices should be included in the draft Senedd Cymru (Disqualification) Order 2020. The consultation on these proposals will run until 1 September 2020. Details of how to respond are set out in the consultation document.

Following consideration of the responses to this consultation the draft Order will be brought forward for the Senedd's approval before formal submission to Her Majesty in Council later this year.

Best wishes

**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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<b>TITLE</b>	<b>Consultation on the draft Senedd Cymru (Disqualification) Order 2020</b>
<b>DATE</b>	<b>22 June 2020</b>
<b>BY</b>	<b>Rt Hon Mark Drakeford MS, First Minister of Wales</b>

A consultation document seeking views on the draft Senedd Cymru (Disqualification) Order 2020 has been published today on the Welsh Government website.

<https://gov.wales/the-draft-senedd-cymru-disqualification-order-2020>

Section 16 of the Government of Wales Act 2006 allows an Order in Council to designate particular offices so that, if a person holds one of those offices, they are disqualified from being a Member of the Senedd.

The draft Order would designate offices the holders of which would be disqualified from being a Member of the Senedd (but not from being a candidate to be a Member of the Senedd). The proposed offices are described in the Schedule to the draft Order.

Additional disqualifying offices, together with categories of person disqualified from being a Member of the Senedd, are prescribed by section 16 of, and Schedule 1A to, the Government of Wales Act 2006. The draft Order should be read with those provisions.

This draft Order would revoke and replace the National Assembly for Wales (Disqualification) Order 2015 with effect from an election at which the poll is held on or after 5 April 2021.

This consultation seeks views on which offices should be included in the draft Senedd Cymru (Disqualification) Order 2020. I am keen to hear the views of stakeholders and will consider these carefully before the final draft of the Order is prepared. The consultation on these proposals will run until 1 September 2020. Details of how to respond are set out in the consultation document.

Following consideration of the responses, the draft Order will be brought forward for the Senedd's approval before formal submission to Her Majesty in Council.

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# Agenda Item 8

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

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