

## **Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before the Welsh Parliament in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

Vaughan Gething,  
Minister for Health and Social Services

**8 June 2020**

## **1. Description**

Subject to specified exemptions, these Regulations require all passengers (i) arriving in Wales 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); or (ii) arriving in Wales from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to provide their contact details and travel information.

2.2 Subject to specified exemptions, these Regulations also require all passengers (i) arriving in Wales from outside of the Common Travel Area; or (ii) arriving in Wales from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to isolate themselves for a period of 14 days.

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

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

In response to the COVID-19 pandemic, 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. This is particularly important as the rate of domestic infections slows. 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 as provided by these Regulations. 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.

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 to avoiding the spread of infection or contamination from Covid-19 via any imported infections via travellers.

## **3. Legislative background**

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales.

Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

Section 45F of the 1984 Act contains supplementary provision relating to regulations made under section 45B of that Act. Regulations made under section 45B may enable the delivery of the policy objective by: the creation of offences, for a court to order a convicted person to take or pay for remedial action, the execution and enforcement of restrictions and requirements imposed by the regulations, appeals, the levy of charges, compensation, incentive payments, and expenses.

In accordance with section 45T(6) of the 1984 Act, the “appropriate Minister” for the purposes of exercising functions under these sections, as respects Wales, is the Welsh Ministers.

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

In response to this threat in Wales, the Welsh Ministers have already made certain regulations to reduce levels of social contact within Wales. Specifically, on 26<sup>th</sup> March 2020 they made the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 to close businesses and premises; to restrict

movement; and to restrict gatherings for the length of the coronavirus emergency, in exercise of the powers conferred on them by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act . These regulations were amended on 21<sup>st</sup> March, 7<sup>th</sup> April, 25<sup>th</sup> April, 11<sup>th</sup> May, 22<sup>nd</sup> May and 1<sup>st</sup> June 2020.

In response to the same serious and imminent threat to public health, the UK Government introduced the Coronavirus Act 2020, which received Royal Assent on 25th March 2020. The Coronavirus Act provides powers for the Secretary of State for Health and Social Care to give a direction in writing to an operator of a port requiring the operator to suspend such relevant port operations. The Coronavirus Act also provides certain powers for public health officers in relation to potentially infectious persons. For the purposes of that Act, a person is “potentially infectious” if they are or may be infected or contaminated with coronavirus, and there is a risk they might infect or contaminate others; or the person has been in an infected area (as defined in the Act) within the past 14 days. Where a person is potentially infectious, a public health officer may require them to undergo screening and assessment. Where such a person has been screened and assessed for the virus (whether or not the screening is conclusive) or has been otherwise assessed by a public health officer and is suspected of being potentially infectious, the public health officer may impose further requirements and restrictions. These may include requiring the person to provide information and contact details, to undergo further screening, to remain in a certain place (including for self-isolation) or for the person’s movement to be otherwise restricted.

These Regulations are made under sections 45B, 45F(2) and 45P(2) of the 1984 Act to enable certain additional public health measures to be taken for the purpose of reducing the public health risks arising from the coronavirus.

Regulation 4 requires any person arriving in Wales from outside the Common Travel Area to provide the passenger information set out in Schedule 1 to the Regulations. The information that must be provided includes, (i) personal details, such as name, passport details and contact details; (ii) journey details, such as accommodation details or address (for the purposes of isolating), and date and time of arrival; and (iii) emergency contact details to aid contact tracing. The regulations also require any person arriving in Wales from within the Common Travel Area who has been outside the Common Travel Area in the preceding 14 days to provide the prescribed information. Where a person is travelling with a child for whom they have responsibility, they must ensure that the relevant information is provided in relation to the child. There are specified exemptions from the requirement to provide the prescribed information for certain people and certain categories of person, for example, diplomats and certain persons carrying out essential defence activities (as set out in Part 1 of Schedule 2 to the instrument). Regulation 5 requires any person to notify the Secretary of State of any changes to the passenger information already provided.

Regulations 7 to 10 require any person arriving in Wales from outside the Common Travel Area, and any person arriving in Wales from elsewhere in the Common Travel Area where they have been outside the Common Travel Area in the preceding 14 days, to isolate at suitable premises for a period of 14 days

from the date of their arrival in the Common Travel Area, or until their departure from Wales (whichever is earlier). The regulations provide specified exceptions from the requirement to isolate. These include, for example, leaving the place of isolation to obtain basic necessities once a day, to seek medical assistance whether urgently or advice from a registered medical practitioner, or to fulfil a legal obligation. Where the requirement to isolate falls upon a child, any person who has responsibility for the child during the period of isolation must take reasonable measures to ensure that the child isolates in accordance with the regulations. There are specified exemptions from the isolation requirement for certain people and categories of person, for example, people travelling to maintain essential supply chains, critical national infrastructure or to contribute to the crisis response (as set out in Parts 1 and 2 of Schedule 2 to the instrument).

The regulations provide that a failure to provide the prescribed information; providing false or misleading information or being reckless as to whether the information provided is false or misleading; and obstructing an immigration officer when exercising functions in relation to provision of passengers information, is an offence (regulation 14). Similarly, the regulations provide that a failure to comply with the requirements in relation to isolation are offences (regulation 14). Any such offences will be punishable on summary conviction by a fine.

As an alternative to prosecution, Regulation 16 provides that a fixed penalty notice may be issued by a police or immigration officer to persons over 18 whom they reasonably believe have committed an offence under the Regulations. For offences relating to the requirement to isolate, the amount of the fixed penalty will be £1,000 for the first and all subsequent fixed penalty notices. For offences relating to the provision of prescribed information, the amount of the fixed penalty will be £60 (£30 where payment is made within the period of 14 days from issue), doubling in amount with each subsequent fixed penalty notice, up until the sixth and subsequent notice, for which the penalty will be £1,920.

Regulation 17 sets out the parameters for the use and disclosure of information gathered in compliance with the requirements of these regulations. The purposes for which information can be used and shared is limited to:

- (i) preventing danger to public health in Wales as a result of the spread of infection or contamination with coronavirus,
- (ii) monitoring the spread of infection or contamination with coronavirus in Wales, or
- (iii) giving effect in Wales to any international agreement or arrangement relating to the spread of infection or contamination with coronavirus;

In order to facilitate the effective operation of the Regulations and meet the health protection objectives of the Regulations, information sharing is essential. The information provided will be used to protect the public's health and reduce transmission of COVID-19 in the UK. Once someone is confirmed as infected with COVID-19 who has travelled to Wales recently, the data will be rapidly interrogated to identify the people around them as they travelled i.e. their contacts. The information will then be used to inform those identified of their contact status, what it means, the actions that will follow, and what to do if they

develop symptoms. Contacts will also be provided with information about prevention of the disease i.e. social distancing, hand hygiene, etc. If symptomatic, the contact will be informed of the self-isolation requirements and testing process. The data will continue to be used to allow for follow-up by public health officials to monitor for symptoms. The details will also be used to enforce the 14 day isolation requirement for passengers.

The Welsh Ministers consider that requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

In accordance with regulation 19 the Welsh Ministers are required to keep the need for the requirements introduced by the Regulations under review every 21 days, and the Regulations expire at the end of the period of twelve months beginning with the day on which they come into force (regulation 20).

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

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

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.