

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 2020¹ 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) 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

¹ 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, and
- (ii) a link to 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, and
- (ii) to visit 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 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 7th 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.