

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

Background and Purpose

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

Negative.

Technical Scrutiny

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

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

Government Response

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

Committee Consideration

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

