

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.