

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government 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, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020.

Vaughan Gething,
Minister for Health and Social Services

9 July 2020

1. Description

Subject to specified exemptions, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the Travel Regulations”) require all passengers 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 where they have been outside of the Common Travel Area in the past 14 days, to provide their contact details and travel information and to isolate themselves for a period of 14 days.

These regulations amend the Travel Regulations so as to introduce an exemption from the isolation requirement for passengers arriving from specified countries. The regulations also amend and extend categories of person who are exempt from requirements to provide passenger information and/or isolate upon arrival into Wales.

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Passenger Information Regulations”) introduced requirements for operators of air and sea international passenger services to provide their passengers with information about coronavirus and related requirements (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.

These regulations amend the content of the on-board statement set out in the Schedule to the Passenger Information Regulations, which must be made to passengers during their journey to Wales, and remove the requirement to provide that statement orally.

These regulations amend both the Travel Regulations and the Passenger Information Regulations so as to change the review period from a maximum of 21 days to a maximum of 28 days and set 27 July 2020 as the date by which the next review must be carried out.

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 Regulations will come into force less than 21 days from the date of laying, on 10 July 2020.

On 6 July 2020 the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020 were made, with some provisions coming into force on 7 July and some on 10 July. Amending regulations are also being introduced on similar timelines amending the equivalent requirements for 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.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Articles 5 (right to liberty and security), 8 (right to respect for private and family life) and A1P1 (right to peaceful enjoyment of possessions) are potentially engaged by the Travel Regulations. Article 14 (protection from discrimination) is also engaged in connection with the interference of the other rights identified.

These are all qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are necessary and proportionate.

Each of these Articles was considered to be engaged by the Regulations as originally made. The changes made by the amending Regulations do not alter that position.

The changes made by these amending Regulations are a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses. The amendments widen and expand the exemptions from the requirements to isolate and remove the blanket requirement to isolate thus imposing less restrictive measures on persons entering Wales. Those who benefit from these amendments are those who (i) fall into an exempted category; or (ii) arrive from an exempted countries. These amendments remain a justifiable and proportionate interference with Article 8.

It was considered that the Passenger Information Regulations as originally made did not interfere with any ECHR rights. The changes these amending Regulations will make do not alter that position.

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 and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) 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.

4. Purpose and intended effect of the legislation

The Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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”. The Passenger Information Regulations were made on 15 June 2020 and, save for the provisions which made minor amendments to the Travel Regulations which came into force on making, came into force on 17 June 2020.

The Welsh Ministers are under a duty to review the need for the requirements imposed by both the Travel and the Passenger Information Regulations at least once every 21 days, with the first review being carried out by 29 June 2020.

The Travel Regulations have been kept under review and, to ensure that the requirements are proportionate, these regulations amend the self-isolation requirement so that it applies only to individuals arriving in Wales from non-exempt countries. Exempt countries are those which are considered to present an acceptable level of risk from a public health perspective for passengers to enter the UK and which are listed in the Regulations. These regulations insert a new Schedule 3 into the International Travel Regulations, which provides a list of “exempt countries and territories” (from which persons travelling to Wales will

be exempt from the self-isolation requirements in regulations 7 and 8). The list in Schedule 3 will be kept under continual review in relation to the public health risks posed by persons travelling to England from outside the CTA.

These regulations also make a number of changes to the existing schedules to the Travel Regulations. It amends Schedule 1 to make certain changes to the passenger information that must be provided. They also amend regulation 3 and Parts 1 and 2 of Schedule 2, to make certain changes to the categories of persons who are exempt from the requirement in regulations 4 and 5 of the Travel Regulations to provide passenger information and/or from the requirement in regulations 7 and 8 of those regulations to self-isolate.

None of the amendments to the Travel Regulations will affect the requirements under the regulations for persons arriving into the common travel area before the coming into force of the amendments.

The Passenger Information Regulations are amended at Part 3 of these regulations so as to make minor changes to the content of the on-board statement made to passengers during their journey to Wales, so that the statement is consistent across the U.K. The requirement for operators to make the statement orally is also removed; instead, operators are simply required to deliver the statement, providing greater flexibility.

The Regulations amend both the Travel Regulations and the Passenger Information Regulations to provide that the statutory review period (at regulation 19 and [9] respectively) will be 28 days rather than 21 days, with the next reviews taking place no later than 27 July 2020. The same approach is being taken in England, Scotland and Northern Ireland and changing the Regulations for Wales will ensure that the review point remains consistent across all four nations of the UK for these Regulations

Finally, minor technical amendments are made to both sets of Regulations to correct previous drafting errors.

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.

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.