

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

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, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

22 January 2021

1. Description

These Regulations make amendments to;

- the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”);
- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”); and
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Pre-Departure Testing Regulations”).

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid. This was necessary in view of the need to act swiftly and on a four nations basis in order to support the further safeguards that have been introduced in the effort to prevent danger to public health from persons travelling to Wales from outside the common travel area.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Public Health Information Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human 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.

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. The Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations and the Public Health Information Regulations both provide further information on these powers.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to amend:

- the International Travel Regulations, which were made on 5 June 2020 and came into force on 8 June 2020;

- the Public Health Information Regulations which were made on 15 June 2020 and came into force on 17 June 2020; and
- the Pre-Departure Testing Regulations which were made on the 15 January 2021 and came into force on 18 January 2021.

All three sets of Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus, and all are kept under regular review. As part of the ongoing effort to prevent danger to public health in connection with the spread of coronavirus in the context of international travel it has now necessary to make amendments to all three sets as below.

International Travel Regulations

The International Travel Regulations require all passengers arriving from Wales from outside 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) to provide their contact details and travel information, and to isolate for a period of 10 days. As of 18 January 2021, in order to further protect public health, the International Travel Regulations were amended to place an additional requirement on travellers arriving into Wales from outside the common travel area. All such travellers are also now required to possess a notification of a negative coronavirus test, subject to specified exemptions.

These Regulations amend the International Travel Regulations to:

- reduce the amount of passenger information that people travelling to Wales are required to provide in order to comply with the requirement in regulation 4 of the International Travel Regulations; and
- add an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters.

Public Health Information Regulations

The Public Health Information Regulations require operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers using those services with prescribed public health information, relating to measures being taken in the United Kingdom in response to the incidence and spread of coronavirus, including the measures required by the International Travel Regulations.

These Regulations amend the Public Health Information Regulations so that the information that must be provided to passengers includes:

- information about the requirement under regulation 6A of the International Travel Regulations to possess a notification of a negative coronavirus test result; and
- information about the availability of the test to release scheme for people who are isolating in England after arriving in Wales from outside the common travel area.

They also make consequential amendments to the Public Health Information Regulations required as a result of duties imposed on operators by the Pre-Departure Testing Regulations to ensure that relevant passengers possess a notification of a negative coronavirus test.

Pre-Departure Testing Regulations

The Pre-Departure Testing Regulations amended the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme (referred to above). The Pre-Departure Testing Regulations also introduced a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative coronavirus test result, which it will be a criminal offence to breach.

These Regulations amend the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test result is from a “qualifying test”, i.e. a test which meets the standards specified in paragraph 1 of Schedule 1A to the International Travel Regulations. This ensures that operators are only required to check that passengers possess a notification of a coronavirus test which includes specified information. The liability for ensuring the result was from a qualifying test falls on the passenger

Coming into force

The changes made by these Regulations will come into force at 4.00am on 23 January 2021.

None of the amendments made by the latest amending Regulations will affect the requirements under the Regulations being amended, for persons arriving into the Common Travel Area before the coming into force of those amendments.

The Welsh Ministers consider that these amendments 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.