

Explanatory Memorandum to the Health Protection (Coronavirus, 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

19 February 2021

1. Description

These Regulations make amendments to 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 Operator Liability 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.

The amendments contained in these Regulations do not change the engagement under the Public Health Information Regulations or the Operator Liability Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human Rights. The Government considers that the amendments contained in these Regulations 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. These 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 Public Health Information Regulations provides further information on these powers.

The Regulations are required as a consequence of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 which were made on 13 February 2021 and came into force on 15 February 2021. Those regulations were made by the Minister for Health and Social Services and amended the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”) to, amongst other things:

- a) require passengers to book and pay for coronavirus tests to be taken on day 2 and day 8 after arriving in Wales, if they have travelled to Wales from non-exempt countries which are outside the common travel area; and
- b) prohibit persons from entering Wales from outside the common travel area via a port in Wales if they have been in a red list country (i.e. a country or territory

listed in Schedule 3A to the International Travel Regulations) in the past 10 days, unless they are exempt persons as prescribed in the International Travel Regulations

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to amend:

- the Public Health Information Regulations which were made on 15 June 2020 and came into force on 17 June 2020; and
- the Operator Liability Regulations which were made on the 15 January 2021 and came into force on 18 February 2021.

Amendments to the Public Health Information Regulations and the Operator Liability Regulations are required to place corresponding and complimentary duties on operators as a consequence of the additional restrictions placed on passengers in the International Travel Regulations (as amended).

Public Health Information Regulations

These regulations amend the Public Health Information Regulations to require operators to inform passengers of the new duty to arrange post arrival tests in accordance with the International Travel Regulations. They must do this at the pre-departure stages, namely at booking, check-in and 24 to 48 hours before travelling. In accordance with the amendments, operators will also provide information in relation to the Managed Quarantine requirements that apply elsewhere in the UK¹. Finally, the Regulations amend the on-board announcement that is made during journeys arriving into Wales from outside the common travel area so that passengers are provided with up to date information on the public health restrictions that apply in Wales.

The Operator Liability Regulations

The Operator Liability Regulations are amended so that:

1. Operators will be required to check that persons arriving into Wales from outside the common travel area on a commercial transport service via a seaport, heliport or airport in Wales have, before they arrive in Wales, made arrangements to take coronavirus tests on days 2 and 8 after their arrival in Wales.
2. Operators are required to take reasonable steps to ensure that persons, who are not exempt persons, do not arrive on a transport service to a port in Wales from

¹ The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 amended the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 so as to impose a managed quarantine requirement for travellers arriving in England from countries listed in Schedule B1 (known commonly as the red list countries). This requires such travellers to obtain a quarantine package comprising a booking for 10 days in accommodation designated by the Secretary of State, transportation to the accommodation and for tests for the coronavirus on day 2 and day 8 after the traveller's arrival in England. There is currently no managed quarantine in Wales as travellers who have been in red list countries in the previous 10 days are currently prohibited from entering Wales via a port in Wales.

outside the common travel area if they have been in a red list country in the past 10 days. For the purpose of this obligation transport services include not only commercial transport services but also private flights.

It will be an offence for an operator to be in breach of either of these new obligations unless they have a defence as set out in the Operator Liability Regulations. A fixed penalty notice can be offered in lieu of prosecution for these offences, and the amount of the fixed penalty notice is set at £1,000 for each separate offence.

Coming into force

The changes made by these Regulations will come into force at 4.00am on 20 February 2021.

None of the amendments made by these Regulations will affect the requirements under the Regulations being amended, for persons arriving into the common travel area before the coming into force of these 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.