

SL(6)095 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 14\) Regulations 2021](#) (“the Regulations”) revoke the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021 (“the No. 13 Regulations”).

The Public Health (Control of Disease) Act 1984, and regulations made under it, provide a legislative framework for health protection in England and Wales, and the Regulations are made in reliance on the powers in sections 45B, and 45P(2) of that Act.

The No. 13 Regulations originally amended the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) to add Mozambique and Malawi to the list of countries or territories in Schedule 3A (countries and territories subject to additional measures).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

We note however, that whilst the No. 13 Regulations were due to come into force at 8.00 p.m. on 26 November 2021, the Regulations revoked them at 19:59 hours on 26 November 2021. The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021 thereafter added Angola, Malawi, Mozambique and Zambia to Schedule 3A of the International Travel Regulations at 04:00 hours on 28 November 2021.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.



Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following 3 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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 26 November 2021. In particular, we note the following in the letter:

“Further to my letter earlier today regarding the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021, and in accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 19:59 hours on 26 November 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 29 November.”

We note also the following explanation in the Explanatory Memorandum:

“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. A highly concerning COVID-19 variant known as Omicron, has been identified in a number of countries. The World Health Organisation has designated it a variant of concern, due to the large number of mutations, some of which are concerning.

As a consequence of an assessment of the risk associated with this variant, the UK Government intended to add Angola, Malawi, Mozambique and Zambia to the ‘red list’ of countries but the need to obtain collective UK agreement resulted in a delay to the UK Regulations being laid. To ensure consistency in Wales with the position in England the Regulations were revoked.

Not adhering to the 21 day convention allowed these Regulations to revoke the earlier Regulations before they came into force, so as to continue the four nation approach to international travel.

Following further developments that evening and further UK-wide discussion Angola, Malawi, Mozambique and Zambia were added to the red list of countries on 27 November.”



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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments contained in these Regulations do not change the engagement under the International Travel 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. 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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"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."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021

