

SL(6)112 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 5) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel and Public Health Information to Travellers\) \(Wales\) \(Miscellaneous Amendments\) \(No. 5\) Regulations 2021](#) (“the Regulations”) amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“Public Health Information 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 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 (countries and territories subject to additional measures) (“red list countries”) 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.

Regulation 2 of the Regulations amends Schedule 3A to remove all countries from the list of countries or territories to which regulation 12E applies. The removal of all red list countries is made in response to community transmission of Omicron now being widespread in both the UK and non-red list countries. However, although now empty, the red list is maintained in the International Travel Regulations to facilitate a fast response to emerging variants.

The Public Health Information Regulations impose requirements on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers with specified public health information.

Regulation 3 of the Regulations amends the Public Health Information Regulations to ensure that the information that operators are required to provide to passengers travelling to the UK from outside the common travel area is consistent across the UK.

The changes made by the Regulations came into effect from 04:00 hours on Wednesday 15 December 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 14 December 2021. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

We note also that the letter refers to the breach of section 4(1) of the Statutory Instruments Act 1946, which requires that an instrument is laid before it comes into force, but where it is not:

“... notification shall forthwith be sent ... drawing attention to the fact that copies of the instrument have yet to be laid ... and explaining why such copies were not so laid before the instrument came into operation.”

Whereas the letter identifies that section 4(1) has not been complied with, it does not go on to explicitly set out the reason for the breach as required. However, on this occasion, we read the penultimate paragraph of the letter, which sets out the reason for breach of the 21-day rule, to also explain the reason for the breach of section 4(1). The reason for future breaches of section 4(1) should, however, be set out in the appropriate letter accompanying the instrument in question.



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

20 December 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee