

SL(5)723 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

Background and Purpose

The Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the International Travel Regulations) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the Restrictions Regulations).

Advice received from the Joint Biosecurity Centre (JBC) indicates that the risk to public health posed by the incidence and community spread of a new variant of coronavirus in Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Portugal, Republic of Cabo Verde, Republic of Panama, Suriname, Uruguay, and Venezuela has increased.

In respect of these countries and territories, the Regulations:

- amend Schedule 3A to the International Travel Regulations, which list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of the International Travel Regulations;
- amend the Restrictions Regulations to impose more stringent isolation requirements on people who have been in one of those countries and territories within the period of 10 days prior to 4.00 a.m. on 15 January 2021 and on anyone in the same household as such people.; and
- correct the Welsh language text of paragraph 48 of Schedule 4 to the Restrictions Regulations to clarify that show homes are permitted to stay open in Alert Level 4 areas – a point which was raised in a previous report of the Committee.

Advice has also been received from the JBC that the risk to public health posed by the incidence and spread of coronavirus in Aruba, the Azores, Bonaire, Sint Eustatius and Saba, Madeira and Qatar has increased.

In respect of these countries and territories, the Regulations:

- omit them from the list of exempt countries and territories contained under the International Travel Regulations; and
- make transitional provision in connection with their change of status.

Procedure

Made Affirmative



The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

Merits Scrutiny

The following three 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.

The Regulations came into force before they were laid before the Senedd. We note the notification provided by Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 14 January 2021, which states:

"I have today made these Regulations under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force in part at 4.00am on 15 January 2021, with the remaining provisions coming into force at 4.00am on 16 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

"In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force in part before they are laid before the Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected firstly in Brazil, which increases the risk posed by travellers into Wales, and also ensures that a four nations approach on international travel can be maintained."

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 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."



The Regulations amend the Restrictions Regulations as well as the International Travel Regulations. Although there is no express reference to the Restrictions Regulations within this paragraph, we acknowledge that, as with the International Travel Regulations, the Regulations may be unlikely to change the engagement of human rights issues under the Restrictions Regulations. It would assist the Committee if the position in relation to the Restrictions Regulations could be clarified.

Further, section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). As such, providing an explanation for the reference to the Charter in the Explanatory Memorandum would assist the Committee.

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 the Regulations. In particular, we note the following paragraphs 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 required in relation to the second merits point.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

