

SL(5)753 – The Health Protection (Coronavirus, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations amend 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”) by placing corresponding and complimentary duties on operators as a consequence of the additional restrictions placed on passengers by the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”).

In particular, 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; and
- amend the Operator Liability Regulations so that:
 - (a) 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; and
 - (b) 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 outside the common travel area if they have been in a red list country in the past 10 days.

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 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 Rebecca Evans MS, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 19 February 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. 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.”

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 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. 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.”



4. 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 regulatory impact assessment in relation to these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

24 February 2021

