

SL(5)791 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”), the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Operator Liability Regulations”) and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 (“the No. 3 Regulations”).

They seek to address a number of inconsistencies that have been identified between the international travel regulatory regimes for England and for Wales. In summary, the Regulations:

- Make provision for a reasonable excuse defence in relation to the requirements to provide passenger information and the offence for providing false or misleading information in relation to those requirements;
- Amend the required content of the notification of a negative test result set out in paragraph 2 of Schedule 1A to the International Travel Regulations, and make consequential amendments to the Operator Liability Regulations in consequence of this;
- Replace the definition and widening the scope of the exemption for aircraft crew at paragraph 10 of Schedule 2 to the International Travel Regulations, to include crew that are otherwise required to travel to the United Kingdom for work purposes;
- Correcting various cross-references and to provide a constable with the power to request evidence from a person that they have booked and paid for day 2 and day 8 tests to be taken after their arrival in Wales;
- Providing immigration officers with the power to issue fixed penalty notices for breaches of the prohibition on entry for travellers from a ‘red list’ country;
- A technical amendment to regulation 2 of the No. 3 Regulations to correct an incorrect reference.

In addition, these Regulations amend the list of sporting events in the International Travel Regulations which are subject to certain exceptions to isolation requirements, to cover upcoming events expected to take place over the next four months and remove those that have already taken place.



Procedure

Negative.

These 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 four 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 Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 12 March 2021.

In particular, we note what the letter says regarding the fact that “*a number of inconsistencies*” have been identified between the international travel regulatory regimes for England and for Wales and that these Regulations seek to address those difference to ensure continuing alignment. The letter explains that:

“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.”

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 of [sic] Human Rights; the Government considerations 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 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 or public policy likely to be of interest to the Senedd

We note that 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 or public policy likely to be of interest to the Senedd

The Explanatory Memorandum explains that a regulatory impact assessment has not been carried out 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

16 March 2021

