

SL(5)729 – The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations make amendments to:

- the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”);
- 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 Pre-Departure Testing Regulations”).

Specifically, these Regulations:

- amend the International Travel Regulations to:
 - reduce the amount of passenger information that people travelling to Wales are required to provide in order to comply with the requirement in regulation 4 of the International Travel Regulations; and
 - add an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft;
- amend the Public Health Information Regulations so that the information that must be provided to passengers includes information about:
 - the requirement to possess a notification of a negative coronavirus test; and
 - the availability of the test to release scheme for people isolating in England;
- make consequential amendments to the Pre-Departure Testing Regulations to ensure that relevant passengers possess a notification of a negative coronavirus test; and
- amend the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test is from a “qualifying test”.

These Regulations are made 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.



Procedure

Negative.

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

The Senedd can annul these 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 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.

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 22 January 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 International Travel Regulations or the Public Health Information 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.”



These Regulations amend the Pre-Departure Testing Regulations as well as the International Travel Regulations and the Public Health Information Regulations. There is no express reference to the Pre-Departure Testing Regulations within this paragraph of the Explanatory Memorandum. We acknowledge that, as with the International Travel Regulations and the Public Health Information Regulations, these Regulations may be unlikely to change the engagement of human rights issues under the Pre-Departure Testing Regulations. It would assist the Committee if the position in relation to the Pre-Departure Testing Regulations could be clarified.

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 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.”

It is noted that these Regulations amend the requirements to provide information to passengers arriving into Wales. In the absence of consultation prior to making these Regulations, the Government is asked to explain what, if any, action was taken to make operators aware of these changes ahead of them coming into force to ensure that operators could comply with the law, as amended.

Welsh Government response

A Welsh Government response is required in relation to points 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

28 January 2021

