

# **SL(6)071 - The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021**

## **Background and Purpose**

The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021 ("the Regulations") are made in reliance on the powers in sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. They amend the:

- Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations");
- Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the Restriction Regulations");
- Health Protection (Notification) (Wales) Regulations 2020 ("the Notification Regulations", and
- Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Public Health Information Regulations").

Part 2 of the Regulations amends the International Travel Regulations. The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include requirements for booking and undertaking coronavirus tests in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. The International Travel Regulations also make specific provisions for "regulation 2A travellers"; including individuals who have been fully vaccinated in prescribed countries and territories.

Regulation 3 of the Regulations amends regulation 2A (exemptions for vaccinated travellers and others) of the International Travel Regulations, extending the recognition of vaccinations to further countries and territories.

Regulation 4 amends regulation 6AB (requirement to book and undertake tests) of the International Travel Regulations so as to enable regulation 2A travellers to use lateral flow device ("LFD") tests for the purposes of the Regulations.

Regulation 6 contains provision requiring a person to undertake a confirmatory polymerase chain reaction ("PCR") test where they receive a positive test result on a LFD test, as well as containing provision on isolation requirements following positive results.



Regulation 8 introduces an offence for failing to undertake a confirmatory PCR test.

Regulations 5, 7 to 9, and 11 make further provision in relation to the introduction of LFD testing.

Regulation 10 amends Schedule 1 to the International Travel Regulations to remove the requirement for passengers to list their seat numbers on Passenger Locator Forms ("PLF").

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) 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 12 of the Regulations amends Schedule 3A to remove various countries from the list of countries or territories to which regulation 12E applies.

Part 3 of the Regulations amends the Notification Regulations, in consequence of the introduction of LFD testing in the International Travel Regulations to ensure Public Health Wales is notified of test results.

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. Part 4 of the Regulations amends the Public Health Information Regulations, in consequence of the PLF amendments made to the International Travel Regulations at regulation 10.

Part 5 of the Regulations amends regulation 16A(12) of the Restrictions Regulations, further extending the list of countries and territories in that paragraph so that evidence of vaccination in those countries with vaccines authorised in the United Kingdom is also acceptable for the purposes of what is commonly known as the COVID-pass. The amendment is required to maintain consistency with regulation 2A of the International Travel Regulations.

## 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

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.



## **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

The first line of regulation 3 incorrectly refers to “Regulation 12” when, in fact, the correct reference should be ‘Regulation 2A’.

## **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 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 29 October 2021.

In particular, we note what the letter says regarding why these regulations breach the 21 day rule:

*“There 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 the following in the Explanatory Memorandum:

*“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK.”*

### **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.*

*The Government considers that ... the Public Health Information Regulations do not engage any of the individual rights under the Human Rights Act 1998 and the European Convention on Human Rights. And, to the extent that any such rights may*



*be engaged, the Government considers that the interference is minimal and can be justified as being necessary and proportionate to achieve a legitimate aim. The amendments to the ... the Public Health Information Regulations made by these Regulations do not change the engagement of individual rights."*

**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 section in the Explanatory Memorandum dealing with the European Convention on Human Rights refers to the "Operator Liability Regulations". The Regulations do not amend the Operator Liability Regulations, and reference to them in this way has the potential to cause confusion about the purpose and effect of the Regulations.

## **Welsh Government response**

A Welsh Government response is required in relation to the Technical reporting point and the fourth Merits reporting point.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**4 November 2021**

