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WELSH STATUTORY INSTRUMENTS

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**2021 No. 48 (W. 11)**

**PUBLIC HEALTH, WALES  
TRANSPORT, WALES**

The Health Protection (Coronavirus, International  
Travel, Pre-Departure Testing and Operator  
Liability) (Wales) (Amendment) Regulations 2021

<i>Made</i>	- - - -	<i>at 3.00 p.m. on 15 January 2021</i>
<i>Laid before Senedd Cymru</i>		<i>at 5.30 p.m. on 15 January 2021</i>
<i>Coming into force</i>	- -	<i>at 4.00 a.m. on 18 January 2021</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

**PART 1**

**General**

**Title, commencement and application**

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 18 January 2021.

(3) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“common travel area” (“*ardal deithio gyffredin*”) has the meaning given in section 1(3) of the Immigration Act 1971(2);

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(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

(2) 1971 c. 77. Section 1(3) provides that the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland are collectively referred to in that Act as “the common travel area”.

“the International Travel Regulations” (“*y Rheoliadau Teithio Rhyngwladol*”) means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(3).

## PART 2

### Pre-Departure Testing

#### Amendment of the International Travel Regulations

- 3.—(1) The International Travel Regulations are amended as follows.
- (2) In regulation 2(1) (interpretation) at the appropriate place, insert—
- (a) ““device” (“*dyfais*”) means an in vitro diagnostic medical device within the meaning given in regulation 2(1) of the Medical Devices Regulations 2002(4);”;
  - (b) ““qualifying test” (“*prawf cymhwysol*”) means a test that is a qualifying test for the purposes of regulation 6A;”;
  - (c) ““sensitivity” (“*sensitifrwydd*”), in relation to a device, means how often the device correctly generates a positive result;”;
  - (d) ““specificity” (“*penodolrwydd*”), in relation to a device, means how often the device correctly generates a negative result;”.
- (3) After regulation 6 (passenger information not in a person’s possession or control), insert—

## “PART 2A

### Notification of a negative test result etc.

#### Requirement to possess notification of a negative test result

6A.—(1) A person (“P”) aged 11 or over who arrives in Wales from outside the common travel area must, possess on arrival —

- (a) valid notification of a negative result from a qualifying test taken by P, and
  - (b) where P is an adult who arrives in Wales accompanied by a child aged 11 or over for whom P has responsibility, valid notification of a negative result from a qualifying test taken by the child.
- (2) Where P—
- (a) possesses a notification referred to in paragraph (1), and
  - (b) is requested by an immigration officer to do so,

P must produce, physically or digitally, the notification, if requested to do so by an immigration officer.

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- (3) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332) and S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7) and S.I. 2021/24 (W. 8).
- (4) S.I. 2002/618, to which there are amendments not relevant to these Regulations.

- (3) Paragraphs (1) and (2) do not apply to P if P is a child aged under 11 who arrives in Wales accompanied by an adult who has responsibility for P.
- (4) In paragraphs (1) and (2), references to P do not include—
- (a) a person described in paragraph 2, 3, 4, 7, 8, 9, 10, 11, 12 or 28 of Schedule 2,
  - (b) a road haulage worker as described in paragraph 6 of Schedule 2,
  - (c) a person described in any sub-paragraph of paragraph 3(1) of Schedule 1A.
- (5) For the purposes of this regulation—
- (a) a test is a qualifying test if it complies with paragraph 1 of Schedule 1A,
  - (b) a notification of a negative result is valid if it includes the information specified in paragraph 2 of Schedule 1A.”
- (4) In regulation 14 (offences)—
- (a) after paragraph (1)(a), insert—
    - “(aa) 6A(1) or (2),”
  - (b) after paragraph (1), insert—
    - “(1A) But a person does not commit an offence where they contravene a requirement in regulation 6A(1), if they reasonably believed at the time of the contravention that a notification in their possession of a negative result relating to the person or to a child for whom the person has responsibility (as the case may be) was valid and from a qualifying test (for the purposes of that regulation).”
  - (c) after paragraph (5), insert—
    - “(5A) In relation to an offence of contravening regulation 6A(1), the circumstances under which a person has a reasonable excuse include where—
      - (a) a person was medically unfit to provide a sample for a qualifying test before travelling to Wales and possesses a document, signed by a medical practitioner entitled to practise in the country or territory in which that practitioner was based, to that effect,
      - (b) it was not reasonably practicable for a person to obtain a qualifying test before travelling to Wales due to—
        - (i) a disability,
        - (ii) the need to obtain urgent medical treatment
      - (c) a person was accompanying, in order to provide support (whether medical or otherwise), a person described in sub-paragraph (b) and where it was not reasonably practicable for the accompanying person to obtain a qualifying test before travelling to Wales,
      - (d) a person began their journey to Wales in a country or territory in which a qualifying test was not available to the public (with or without payment) or in which it was not reasonably practicable for a person to obtain a qualifying test due to a lack of reasonable access to a qualifying test or testing facility and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure if this was different to where they began their journey,
      - (e) the time it has taken a person to travel from the country or territory where they began their journey to the country or territory of their last point of departure prior to arriving in Wales meant that it was not reasonably practicable for them to meet the requirement in paragraph 1(c) of Schedule 1A, and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure.”

- (5) In regulation 16 (fixed penalty notices)—
- (a) In paragraph (1)(a)(i), after “5(2)”, insert “6A(1) or (2)”
  - (b) After paragraph (6)(a), insert—
    - “(aa) of contravening a requirement imposed by regulation 6A,”.
- (6) After Schedule 1, insert—

“SCHEDULE 1A

Regulation 6A

Testing before arrival in Wales

1. A test complies with this paragraph if—
  - (a) it is a test for the detection of coronavirus, which is—
    - (i) a polymerase chain reaction test, or
    - (ii) undertaken using a device which the manufacturer states has—
      - (aa) a sensitivity of at least 80%,
      - (bb) a specificity of at least 97%, and
      - (cc) a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,
  - (b) it is not a test provided or administered under the National Health Service Act 2006<sup>(5)</sup>, the National Health Service (Wales) Act 2006<sup>(6)</sup>, the National Health Service (Scotland) Act 1978<sup>(7)</sup>, or the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(8)</sup>, and
  - (c) the test sample is taken from the person no more than 72 hours before—
    - (i) in the case of that person travelling to Wales on a commercial transport service, the service’s scheduled time of departure, or
    - (ii) in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Wales.
2. Notification of a negative test result must include, in English, French, or Spanish, the following information—
  - (a) the name of the person from whom the sample was taken,
  - (b) that person’s date of birth,
  - (c) the (negative) result of the test,
  - (d) the date the test sample was collected or received by the test provider,
  - (e) a statement that the test was—
    - (i) a polymerase chain reaction test, or
    - (ii) undertaken using a device which has a sensitivity of at least 80%, a specificity of at least 97%, and a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,
  - (f) the name of the manufacturer of the test device that was used,
  - (g) the name of the test provider.

<sup>(5)</sup> 2006 c. 41.

<sup>(6)</sup> 2006 c. 42.

<sup>(7)</sup> 1978 c. 29.

<sup>(8)</sup> 1972 No. 1265 (N.I. 14).

3.—(1) The persons referred to in regulation 6A(4)(a) (as not being required to comply with that regulation) are—

- (a) a person described in paragraph 8 of Schedule 2, even if their travel to the United Kingdom in the course of their work or repatriation to the United Kingdom is not in accordance with either of the conventions referred to in that paragraph,
- (b) a person described in—
  - (i) paragraph 13(1)(b) of Schedule 2 where, prior to the person’s departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 6A, or
  - (ii) paragraph 13A of Schedule 2 where, prior to person’s departure to the United Kingdom, the relevant Department has also certified that they are not required to comply with regulation 6A,
- (c) a Crown servant or government contractor (“C”) who is required to undertake essential government work or essential policing in the United Kingdom or is returning from conducting such work outside the United Kingdom where, prior to C’s departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 6A,
- (d) a representative (“R”) of a foreign country or territory travelling to the United Kingdom to conduct official business with the United Kingdom where, prior to R’s departure to the United Kingdom—
  - (i) the relevant head of the mission, consular post, or office representing a foreign territory in the United Kingdom, or a Governor of a British overseas territory (as the case may be), or a person acting on their authority, confirms in writing to the Foreign Commonwealth and Development Office that R is required to undertake work which is essential to the foreign country represented by the mission or consular post, the foreign territory represented by the office or the British overseas territory, and
  - (ii) the Foreign Commonwealth and Development Office has then confirmed in writing to the person giving the notification in sub-paragraph (i) that—
    - (aa) it has received that confirmation, and
    - (bb) R is travelling to the United Kingdom to conduct official business with the United Kingdom and is not required to comply with regulation 6A,
- (e) a worker with specialist technical skills, where those specialist technical skills are required for emergency works or services (including commissioning, maintenance, and repairs and safety checks) to ensure the continued production, supply, movement, manufacture, storage or preservation of goods or services, where they have travelled to the United Kingdom in the course of their work or otherwise to commence or resume their work.

(2) In sub-paragraph (1)—

“consular post” (“*swyddfa gonsylaidd*”) has the meaning given in paragraph 1(3) of Schedule 2; “Crown servant” (“*gwas i’r Goron*”), “essential government work” (“*gwaith llywodraeth hanfodol*”), “essential policing” (“*plismona hanfodol*”) and “government contractor” (“*contractwr llywodraeth*”) have the meanings given in paragraph 13(2) of Schedule 2. ”.

## PART 3

### Operator liability in respect of arrivals

#### Interpretation

#### 4. In this Part—

“authorised person” (*“person awdurdodedig”*) means—

- (a) in relation to passengers arriving on a vessel, the Secretary of State;
- (b) in relation to passengers arriving on an aircraft, the Civil Aviation Authority<sup>(9)</sup>;

“child” (*“plentyn”*) means a person under the age of 18;

“immigration officer” (*“swyddog mewnfudo”*) means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971<sup>(10)</sup>;

“international passenger service” (*“gwasanaeth teithwyr rhyngwladol”*) means a commercial service by which passengers travel on a vessel or aircraft from outside the common travel area to a port in Wales;

“operator” (*“gweithredwr”*) means operator of an international passenger service;

“passenger” (*“teithiwr”*) means a person travelling on an international passenger service who is not a member of that service’s crew;

“port” (*“porthladd”*) includes an airport, heliport or seaport;

“qualifying test” (*“prawf cymhwysol”*) is a test that is a qualifying test for the purposes of regulation 6A of the International Travel Regulations;

“relevant passenger” (*“teithiwr perthnasol”*) means a passenger who fails, without reasonable excuse, to produce a required notification when requested to do so by an immigration officer pursuant to regulation 6A(2) of the International Travel Regulations;

“required notification” (*“hysbysiad gofynno”*) means a valid notification of a negative test result from a qualifying test for the purposes of regulation 6A of the International Travel Regulations—

- (a) taken by the person in possession of that notification, or
- (b) taken by a child and treated as being in their possession by virtue of that regulation;

“the requirement to possess notification of a negative test result” (*“y gofyniad i feddu ar hysbysiad o ganlyniad prawf negyddol”*) means the requirement in regulation 6A(1) of the International Travel Regulations;

“responsible individual” (*“unigolyn cyfrifol”*) means an individual who—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child within the meaning given in section 3 of the Children Act 1989<sup>(11)</sup>.

“vessel” (*“llestr”*) means every description of vessel used in navigation (including a hovercraft within the meaning of Hovercraft Act 1968) which is 24 metres or more in length.

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<sup>(9)</sup> The Civil Aviation Authority is a body corporate established by section 1 of the Civil Aviation Act 1971 (c. 75).

<sup>(10)</sup> 1971 c. 77. Paragraph 1 was amended by paragraph 3 of Schedule 3 to the Health Protection Agency Act 2004 (c. 17), and by S.I. 1993/1813.

<sup>(11)</sup> 1989 c. 41.

### **Requirement to ensure passengers possess notification of a negative test result**

5.—(1) An operator must ensure that a passenger who arrives in Wales on an international passenger service is in possession of a required notification.

(2) Paragraph (1) does not apply in relation to a passenger—

- (a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to possess notification of a negative test result or has a reasonable excuse for failing to comply with that requirement;
- (b) who is a child, travelling without a responsible individual; or
- (c) who is a transit passenger, who has a right to reside in the United Kingdom and does not have the right to enter the country or territory from which the international passenger service departs.

(3) In this regulation, “transit passenger” means a person who, has arrived in the country or territory from which the international passenger service departs with the intention of passing through to Wales without entering that country or territory.

### **Offences**

6.—(1) An operator who fails to comply with the requirement in regulation 5(1) commits an offence.

(2) An offence under paragraph (1) is punishable on summary conviction by a fine.

(3) In relation to the offence in paragraph (1), it is a defence for an operator to show that the relevant passenger presented a document purporting to be a required notification which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not a required notification.

### **Fixed penalty notices**

7.—(1) An authorised person may issue a fixed penalty notice to any operator who the authorised person reasonably believes has committed an offence under regulation 6(1).

(2) A fixed penalty notice is a notice offering the operator to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) the Welsh Ministers; or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation.

(3) Where an operator is issued with a notice under paragraph (1) in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) the operator may not be convicted of the offence if the operator pays the fixed penalty before the end of that period.

(4) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence, including the name of the relevant passenger;
- (b) state the period during which (because of paragraph (3)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) state the name and address of the person to whom payment of the fixed penalty may be paid or evidence of the defence is to be provided; and

- (e) specify permissible methods of payment.
- (5) The amount of the fixed penalty for the purposes of paragraph (4)(c) is £1,000.
- (6) In any proceedings, a certificate that—
  - (a) purports to be signed on behalf of—
    - (i) the Welsh Ministers, or
    - (ii) any person designated by the Welsh Ministers under paragraph (2)(b), and
  - (b) states that the payment of a fixed penalty, was, or was not, received by the date specified in the certificate,is evidence of the facts stated.

### **Prosecutions**

8. Proceedings for an offence under regulation 6(1) may only be brought by an authorised person.

### **Power to use and disclose information**

9.—(1) This regulation applies to any person (“P”) who holds information described in paragraph (2) relating to a relevant passenger (“relevant information”).

- (2) The information referred to in paragraph (1) is—
- (a) information provided by, or on behalf of, the relevant passenger by way of explanation for failing to comply with regulation 6A of the International Travel Regulations,
  - (b) information about the steps taken, pursuant to the International Travel Regulations, in relation to the relevant passenger, including details of any fixed penalty notice issued under those Regulations,
  - (c) personal details of the relevant passenger, including their—
    - (i) full name,
    - (ii) date of birth,
    - (iii) passport number, or travel document reference number (as appropriate), issue and expiry dates and issuing authority,
    - (iv) home address,
    - (v) telephone number,
    - (vi) email address,
  - (d) journey details of the relevant passenger, including—
    - (i) their time and date of arrival in Wales,
    - (ii) the name of the operator of the international passenger service on which they arrived or through which their booking was made,
    - (iii) the flight number or vessel name,
    - (iv) the departure and arrival locations of the international passenger service.

(3) P may only use relevant information where it is necessary for the purpose of carrying out a function under these Regulations.

(4) P may only disclose relevant information to another person (“the recipient”) where it is necessary for the recipient to have the relevant information for the purpose of carrying out a function under these Regulations.

(5) This regulation does not limit the circumstances in which information may otherwise lawfully be disclosed under any other enactment or rule of law.



(6) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(7) For the purposes of this regulation “data protection legislation” and “personal data” have the same meanings as in section 3 of the Data Protection Act 2018<sup>(12)</sup>.

#### **Review**

**10.** The Welsh Ministers must review the need for the requirement imposed by regulation 5 of these Regulations by 8 February 2021 and at least once every 28 days after that date.

#### **Expiry**

**11.—**(1) These Regulations expire at the end of 7 June 2021.

(2) The expiry of these Regulations does not affect the validity of anything done pursuant to these Regulations before they expire.

*Vaughan Gething*  
Minister for Health and Social Services, one of  
the Welsh Ministers

At 3.00 p.m. on 15 January 2021

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in response to the danger to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. Section 45B of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of (amongst other things) preventing danger to public health from “vessels, aircraft, trains or other conveyances arriving at any place”.

Part 2 of these Regulations amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (“the International Travel Regulations”) to introduce a requirement for persons travelling to Wales from outside the common travel area to possess a notification of a negative coronavirus test upon arrival in Wales.

Regulation 3(2) of these Regulations inserts a new regulation 6A into the International Travel Regulations, which sets out the notification requirements and provides details of persons who are exempt from these requirements. Regulation 6A also references a new Schedule 1A into the International Travel Regulations, which is inserted by regulation 3(6) and provides further details as to what constitutes a valid test and notification for the purposes of regulation 6A and gives further details in relation to categories of exempt persons.

Regulation 3(3) amends regulation 14 of the International Travel Regulations so that a breach of the requirements in regulation 6A is a criminal offence and a non-exhaustive list of reasonable excuses that can be raised in defence are listed.

Regulation 3(4) amends regulation 16 of the International Travel Regulations so that a fixed penalty notice can be issued in relation to an offence committed under regulation 6A.

Part 3 of these Regulations introduces a requirement for persons operating international passenger services (“operators”) arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result (regulation 5(1)). A breach of this requirement is an offence (regulation 6(1)).

Regulation 7 allows an authorised person to deal with an offence under regulation 6(1) by way of fixed penalty notice. A fixed penalty notice must give details of the particulars of the offence, including the name of the passenger who has failed to provide notification of a negative test result.

A full impact assessment has not been completed due to the urgent nature of this instrument. An Explanatory Memorandum has been published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).