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WELSH STATUTORY INSTRUMENTS

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**2021 No. 454 (W. 144)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus, International  
Travel) (Wales) (Amendment) (No. 5) Regulations 2021**

<i>Made</i>	- - - -	<i>at 3.15 p.m. on 8 April 2021</i>
<i>Laid before Senedd Cymru</i>		<i>at 5.00 p.m. on 8 April 2021</i>
<i>Coming into force</i>	- -	<i>at 4.00 a.m. on 9 April 2021</i>

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

**PART 1**

**General**

**Title and coming into force**

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 9 April 2021.

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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). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

## PART 2

### Amendments

#### **Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**

2. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(2) are amended as follows.

#### **Amendment to regulation 3**

3. In regulation 3(3)(a) (persons arriving from outside the common travel area) for “paragraph 6” substitute “paragraph 6A”.

#### **Amendments to regulation 6B**

4.—(1) Regulation 6B (requirement to arrange tests before arriving in Wales) is amended as follows.

(2) In paragraph (1), at the start insert “Subject to paragraph (1A),”.

(3) After paragraph (1) insert—

“(1A) This regulation and regulation 6C do not apply where regulation 6K (workforce testing) applies.”

#### **Amendment to regulation 6D**

5. In regulation 6D(4)(b) (requirement to isolate on failure to take tests) for “before than” substitute “not before”.

#### **Amendment to regulation 6G**

6. After regulation 6G(2) (consequences of not receiving result of day 8 test before end of isolation period) insert—

“(3) Except where paragraph (2) applies, the last day of P’s isolation under regulation 7 or 8 is the last day of the period of 14 days beginning with the day after the day on which P was last in a non-exempt country or territory (and regulation 12 does not apply for the purposes of determining the last day of P’s isolation).”

#### **New regulation 6K**

7. After regulation 6J (charge for tests) insert—

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(2) 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), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26); S.I. 2021/154 (W. 38), S.I. 2021/305 (W. 78) and S.I. 2021/361 (W. 110).

### **“Workforce testing**

**6K.—**(1) This regulation applies to a person (“P”), specified in paragraph 6 of Schedule 2.

(2) P must undertake a workforce test for day 2, day 5 and day 8 in accordance with paragraph (6) in relation to each category of test.

(3) Where P does not undertake a workforce test as required by this regulation by reason of a reasonable excuse, P must, as soon as practicable after the matters giving rise to the reasonable excuse no longer pertain, undertake a replacement workforce test.

(4) Where a replacement workforce test is undertaken instead of—

- (a) a workforce test to be undertaken for day 2, P is to be treated as if they had undertaken a workforce test on day 2 in accordance with this regulation;
- (b) a workforce test to be undertaken for day 5, P is to be treated as if they had undertaken a workforce test on day 5 in accordance with this regulation;
- (c) a workforce test to be undertaken for day 8, P is to be treated as if they had undertaken a workforce test on day 8 in accordance with this regulation.

(5) Schedule 2D makes further provision about workforce tests (including the consequences of testing).

(6) In these Regulations—

- (a) “a replacement workforce test” means a workforce test complying with the requirements that apply to the workforce test that was missed;
- (b) “a workforce test” means a test which is provided or administered under the National Health Service (Wales) Act 2006(3);
- (c) “a workforce test undertaken for day 2” means a test which is undertaken no later than the end of the second day after the day on which P arrived in Wales;
- (d) “a workforce test undertaken for day 5” means a workforce test which—
  - (i) is undertaken after a workforce test for day 2,
  - (ii) is undertaken no earlier than the end of the second day after the day on which P arrived in Wales, and
  - (iii) is undertaken before the end of the fifth day after the day on which P arrived in Wales;
- (e) “a workforce test undertaken for day 8” means a workforce test which—
  - (i) is undertaken after a workforce test undertaken for day 5,
  - (ii) is undertaken no earlier than the end of the fourth day after the day on which P arrived in Wales, and
  - (iii) is undertaken before the end of the eighth day after the day on which P arrived in Wales.”

### **Amendments to regulation 9**

**8.—**(1) Regulation 9 (isolation requirements: exemptions) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (b) for “2 to 16” substitute “2 to 5, 6A to 16”;
- (b) after sub-paragraph (b) insert—

- “(ba) subject to paragraph (3), paragraph 6 of Schedule 2;”
- (c) in sub-paragraph (c) for “regulation 12E(2)” substitute “subject to paragraph (3), regulation 12E(2)(a) to (d)”.
- (3) After paragraph (2), insert—
- “(3) Regulations 7 and 8 apply to a person (“P”) described in paragraph 6 of Schedule 2 in accordance with paragraphs (4) to (6).
- (4) Where P is a person described in paragraph 6(d)(i) (driver of a goods vehicle) the premises at which the person must isolate for the purposes of an isolation requirement (within the meaning in regulation 10(2)) is—
- (a) in the goods vehicle while undertaking the work described in that paragraph,
  - (b) in the goods vehicle while not undertaking the work described in that paragraph if P is travelling alone in a goods vehicle with a compartment behind the driver’s seat intended to be used for sleeping (“a sleeper cab”), subject to paragraph (c)(ii),
  - (c) in a hotel, hostel or bed and breakfast accommodation while not undertaking the work described in that paragraph—
    - (i) if P is travelling in a goods vehicle without a sleeper cab, or
    - (ii) if isolating in a goods vehicle would contravene Article 8 of Regulation [\(EC\) No 561/2006](#) of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport(4),
  - (d) in the goods vehicle or a hotel, hostel or bed and breakfast accommodation while not undertaking the work described in that paragraph if P is travelling with another person in a goods vehicle with a sleeper cab.
- (5) Where P is a person who is ordinarily resident in the United Kingdom, paragraph (4) only applies while they are undertaking the work described in paragraph 6(2)(d)(i) of Schedule 2.
- (6) Where P is a person described in paragraph 6(2)(d)(ii) (holder of a Community licence) and is not ordinarily resident in the United Kingdom, P is not required to comply with an isolation requirement while undertaking the work referred to in that paragraph.”

### **Amendments to regulation 10**

- 9.—(1) Regulation 10 (isolation requirements: exceptions) is amended as follows.
- (2) After paragraph (4)(n) insert—
- “(o) if isolating in a goods vehicle by virtue of regulation 9(4)—
- (i) for sanitary reasons,
  - (ii) to take exercise outside,
  - (iii) where required or permitted by that paragraph, to move to a different place for isolation,
  - (iv) to inspect the vehicle or its load or to carry out any other task required for the safe and continued operation of the vehicle, including refuelling, and
  - (v) for any other reason or purpose specified in this paragraph;
- (p) to undertake a workforce test required by regulation 6K.”

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(4) EUR 2006/561, amended by [S.I. 2019/453](#) and [2021/135](#) and [1658](#).

### **Amendments to regulation 12E**

**10.**—(1) Regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) is amended as follows.

(2) After paragraph (2)(d)(i) insert—

“(iaa) paragraph 6;”.

(3) After paragraph (2)(d), insert—

“(e) a person—

(i) who is, or was on 1 September 2020, a child,

(ii) who has travelled to the United Kingdom for the purposes of receiving education at a boarding school in Wales at which education and accommodation is due to be provided for P, and

(iii) who is not accompanied into the United Kingdom by an individual who has responsibility for P, or if P is aged 18, would have had such responsibility if P were a child.”

(4) After paragraph (4), insert—

“(5) In this regulation—

(a) “boarding school” means a school or college, which—

(i) provides accommodation for its pupils or, as the case may be, students on its own premises, or

(ii) arranges accommodation for its pupils or students to be provided elsewhere (other than in connection with a residential trip away from the school);

(b) “school” means—

(i) a community, foundation or voluntary school or a community or foundation special school within the meaning of section 20 of the School Standards and Framework Act 1998<sup>(5)</sup>,

(ii) an independent school included in the register of independent schools in Wales (kept under section 158 of the Education Act 2002<sup>(6)</sup>),

(iii) a non-maintained special school (as defined in section 337A of the Education Act 1996<sup>(7)</sup>), or

(iv) a pupil referral unit within the meaning of section 19(2) of the Education Act 1996;

(c) “college” means an institution within the further education sector within the meaning of section 91 of the Further and Higher Education Act 1992<sup>(8)</sup>.”

(5) In paragraph (3E), in the modification to regulation 9, for “regulation 12E(2)” substitute “regulation 12E(2)(a) to (d)”.

### **Amendments to regulation 14**

**11.**—(1) Regulation 14 (offences) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (h) omit “or”;

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<sup>(5)</sup> 1998 c. 31.

<sup>(6)</sup> 2002 c. 32.

<sup>(7)</sup> 1996 c. 56.

<sup>(8)</sup> 1992 c. 13.

- (b) in sub-paragraph (i), at the end insert “or”;
- (c) after sub-paragraph (i) insert—
  - “(j) 6K”.
- (3) In paragraph (1B) for “or 6C” substitute “, 6C or 6K”.
- (4) After paragraph (1D) insert—
  - “(1E) For the purposes of regulation 6K, a reasonable excuse includes, in particular, where—
    - (a) it is not reasonably practicable for P to undertake a test due to a disability,
    - (b) P requires medical treatment with such urgency that undertaking a test is not reasonably practicable,
    - (c) a test is cancelled for reasons beyond P’s control,
    - (d) P has left Wales.”

### **Amendments to regulation 16**

- 12.—(1) Regulation 16 (fixed penalty notices) is amended as follows.
- (2) In paragraph (6), after sub-paragraph (ab) insert—
  - “(ac) of contravening a requirement in Schedule 1D.”.
- (3) After paragraph (6AB) insert—
  - “(6AC) Where the fixed penalty notice is issued to a person in respect of an offence described in regulation 14(1)(j) for contravening a requirement in regulation 6K, then the amount specified under paragraph (5)(c) must be—
    - (a) in the case of a first fixed penalty notice, £1,000;
    - (b) in the case of a second fixed penalty notice, £2,000;
    - (c) in the case of a third and subsequent fixed penalty notice, £3,000.”

### **New Schedule 1D**

- 13. After Schedule 1C (mandatory testing after arriving in Wales) insert—

“SCHEDULE 1D

Regulation 6K

Workforce tests

#### **Interpretation of Schedule 1D**

- 1. In this Schedule—
  - “P” means a person required to undertake workforce tests under regulation 6K (workforce testing);
  - “workforce test” means any of the categories of workforce test described in regulation 6K(6).

#### **Requirement after failure to undertake test**

- 2.—(1) Sub-paragraph (2) applies where P fails to undertake a workforce test that P is required by regulation 6K to undertake.
- (2) Where this sub-paragraph applies, P must isolate at a suitable premises until the earlier of—

- (a) the end of the 14th day after the day on which they arrived in Wales; or
  - (b) the time P obtains a negative result from a workforce test.
- (3) P must comply with any applicable obligations in regulation 6K(2) during any period that P is required to isolate in accordance with sub-paragraph (2).
- (4) Where P is required to isolate in accordance with sub-paragraph (2), regulation 10(4) applies.

### **Consequences of test results**

- 3.—**(1) Where a workforce test undertaken by P in accordance with regulation 6K generates a positive result—
- (a) P must as soon as reasonably practicable undertake a further test which complies with the requirements for a day 2 test specified in paragraph 1 of Schedule 1C;
  - (b) P must isolate at a suitable premises until the end of the 10th day after the day P undertook the test.
- (2) Where P is required to isolate in accordance with sub-paragraph (1)(b), regulation 10(4) applies.
- (3) Where a workforce test undertaken by P in accordance with regulation 6K generates a positive result—
- (a) if that test was a workforce test undertaken for day 2, P is not required to undertake a workforce test for day 5 or day 8;
  - (b) if that test was a workforce test undertaken for day 5, P is not required to undertake a workforce test for day 8.
- (4) Where a further test undertaken in accordance with sub-paragraph (1)(a) generates a negative result, this paragraph applies to P from the time P is notified of that negative result as if the workforce test undertaken by P in accordance with regulation 6K had generated a negative result (and accordingly, from that time, P is no longer required to isolate).
- (5) Where a workforce test undertaken by P in accordance with regulation 6K generates an inconclusive result, P must as soon as reasonably practicable undertake a further workforce test and that further workforce test is to be treated as a replacement workforce test within the meaning of regulation 6K(4) (requirement to undertake workforce tests).

### **Duties on employers**

- 4.—**(1) An employer with more than 50 employees who is the employer of any person who is required to undertake workforce tests or has responsibility for any agency worker who is required to undertake workforce tests, must take reasonable steps to facilitate the taking of those tests by that person or agency worker in accordance with these Regulations.
- (2) In the discharge of the duty under sub-paragraph (1), an employer must have regard to any guidance issued by the Welsh Ministers for the purposes of this paragraph.
- (3) In paragraph (1) an employer has responsibility for an agency worker if—
- (a) the agency worker is supplied or to be supplied by a person (an “agent”) to the employer under a contract or other arrangements made between the agent and the employer; and
  - (b) the agency worker is not—
    - (i) a worker because of the absence of a worker’s contract between the agency worker and the agent or the employer, or

- (ii) a party to a contract under which the agency worker undertakes to do the work for another party to a contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the agency worker.”

## **Amendments to Schedule 2**

**14.**—(1) Schedule 2 (exempt persons) is amended as follows.

(2) In paragraph 6—

- (a) in sub-paragraph (1) omit the words “or a road passenger transport worker”;
- (b) sub-paragraph (2)(c) is omitted;
- (c) sub-paragraph (2)(e) is omitted.

(3) After paragraph 6, insert—

“**6A.**—(1) A road passenger transport worker.

(2) For the purposes of this paragraph—

- (a) “road passenger transport worker” means—
  - (i) the driver of a public service vehicle, or
  - (ii) a person who is employed by the holder of a Community licence issued under Article 4 of Regulation (EC) No 1073/2009 of the European Parliament and of the Council<sup>(9)</sup>, and who is acting in the course of their employment;
- (b) “driver” includes a person who is travelling in a vehicle as a relief driver;
- (c) “public service vehicle” has the meaning given in section 1 of the Public Passenger Vehicles Act 1981<sup>(10)</sup>.”

## **Amendments to Schedule 3A**

**15.** In Schedule 3A (countries and territories subject to additional measures), at the appropriate places insert—

- “Bangladesh”
- “Kenya”
- “Pakistan”
- “Philippines”.

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

At 3.15 p.m. on 8 April 2021

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<sup>(9)</sup> OJ No. L 300, 14.11.2009, p. 88.

<sup>(10)</sup> 1981 c. 14. Section 1 was amended by section 139(3) of the Transport Act 1985 (c. 67).



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## EXPLANATORY NOTE

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

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

Regulations 3 and 14 amend the existing category of exempt persons for the International Travel Regulations, relating to road haulage or road passenger transport workers, creating two distinct categories in the process. Road haulage workers are subject to new workforce testing provisions introduced in regulations 7 and 13 and specific isolation rules introduced in regulation 8. Regulation 9 amends the list of reasonable excuses to leave isolation in regulation 10 of the International Travel Regulations, in light of these changes.

Regulation 6 amends regulation 6G of the International Travel Regulations to provide for the end of an isolation period where a person has not received a result to a day 8 test. The period of isolation ends on the last day of the period of 14 days beginning with the day after the day on which the person was last in a non-exempt country or territory.

Regulation 10 amends regulation 12E of the International Travel Regulations so as to allow entry into Wales for a road haulage worker or a student attending a boarding school in Wales, where such a person has previously been in a country subject to additional measures. Such persons are subject to specific isolation requirements.

Regulations 11 and 12 amend the provisions relating to offences and fixed penalty notices in regulations 14 and 16 respectively of the International Travel Regulations, in light of the above amendments.

Regulation 15 amends Schedule 3A to the International Travel Regulations, which contains the list of countries and territories subject to additional measures in Wales. Regulation 15 adds Bangladesh, Kenya, Pakistan and Philippines to the list.

Regulation 4 contains consequential amendments to the changes described above. Regulations 8 and 10 also contain further consequential amendments. Regulation 5 contains an amendment to address a drafting error in regulation 6D of the International Travel Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.