

Message

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Subject: FW: Border Regs - Policy instructions on First Draft of the Welsh Regulations
Attachments: Policy instructions to OLC on first draft of Regulations.docx
Importance: High

Ministers have agreed that there is to be a 4 nations approach to this matter and it is the policy position that this is best facilitated by producing a version of the regulations which is more or less the same for Wales as for the other nations. They are however, prepared to accept minor variations where this is considered essential, but wish to see those variations made within the framework set by the UKG for England.

- The above is the key premise. Powers in the Public Health (Control of Disease) Act 1984 are being used to make the regulations, and arguably in lieu of powers in the Coronavirus Act 2020. While that means that there needs to be a clear public health justification to the SI, it does not mean that Public Health Division owns the regulations.
- As with the "Coronavirus Restriction" regulations which are made in exercise of powers under the 1984 Act, the co-ordination of the regulations should sit centrally as a number of policy inputs are sought and in the context of a 3 week review cycle. However, in the case of "Coronavirus Restrictions" there is clear divergence in the policy approach of Wales from the approach taken in England.
- The "Border Health" regulations are led by the UK Home Office as powers are being conferred upon Border Force officers, the central database will be "owned" by HO etc. As such, the political appearance of these regulations is that these relate to Immigration. The absence of equivalent policy leads for Home Office and FCO inputs has resulted in Tim Render being liaison, and on the premise that it is not possible for WG officials to provide instructions on these non-devolved aspects of the policy. While we can seek clarification from UKG, we have no basis to gainsay Home Office, FCO etc. policy which informs drafting.
- There are a very limited number of points on which the Counsel General (acting on behalf of WM) would seek policy divergence which are in common with the other 3 Nations. But our generic position as exemplified by the Northern Ireland approach is to stick to the English draft.
- Another reason for close alignment is to mitigate the risk of the Wales SI being challenged on a stand-alone basis. If a legal challenge is brought against the UKG SI then it's likely that WM

will seek to be joined as a party. They can only realistically do if there are not substantial differences between the respective instruments and underpinning policy.

- I also think that departments other than DHSC are leading on these, and DfT on Transport related regs (again using powers under the 1984 Act) so as to protect the ability of the UK CMO and his Office to provide advice. In the case of WG, this is very important as the CMO sits with HSSG.

Thank you,

Chrisan

Dirprwy Gyfarwyddwr Dros Do (Coronafeirws) / Acting Deputy Director (COVID-19)
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From: [NR] (OFM - Legal Services Department) <[NR]@gov.wales>

Sent: 28 May 2020 13:20

To: Render, Tim (ESNR - EPRA - Director) <Tim.Render@gov.wales>; Kamalan, Chrisan (HSS - DHP Public Health) <Chrisan.Kamalan@gov.wales>

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Subject: Border Regs - Policy instructions on First Draft of the Welsh Regulations

Importance: High

Tim/Chrisan,

Further to our meeting this morning I have prepared a note setting out your policy instructions on the draft regulations. You will see I have started the note by setting out the policy position in terms of the approach to drafting. I would be grateful if you could carefully consider these paragraphs and ensure it accurately reflects your position. Please feel free to add anything else to these paragraphs if you feel that there are points that I have missed. I have included one comment in relation to these paragraphs and I would be grateful if you could deal with that.

Also in paragraph 17 you will see some text in green which reflects the view expressed by the CG (in the me-mail this morning from [NR]) on travel to places for isolation. Can you confirm you are content to include this wording in the instructions?

Many thanks,

[NR]

LEGAL PROFESSIONAL PRIVILEGE

[NR]

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PWYSIG: Mae'n bosibl bod yr ohebiaeth neu'r neges hon ac unrhyw beth sydd wedi'i amgáu gyda hi yn cynnwys cyngor cyfreithiol sydd wedi'i roi yn gyfrinachol i Lywodraeth Cymru, a hwnnw'n gyngor a allai fod yn destun braint broffesiynol gyfreithiol. Os ydych wedi cael yr ohebiaeth neu'r neges hon drwy gamgymeriad, byddwchystal â rhoi gwybod i'r awdur ar unwaith drwy ei ffonio.

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