

Update on border controls to protect public health (as at 29 January 2021)

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Issue

1. To provide an update on UKG proposals to strengthen border controls to protect public health and to seek initial views on the proposals as detailed four-nation or five-nation discussions are due to get underway.
2. Formal advice will be submitted as soon as officials get details of the proposals and are able to assess the operational implications in order to agree Welsh Government positions.

Background

3. Evidence relating to the continued spread of the Brazilian and South African variants of concern suggests that the current international travel restrictions cannot be relied upon to stop importation of new variants once identified. This increases the chances of a variant that is able to escape the current vaccine becoming established in the UK.
4. The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020/574 (“the International Travel Regulations”) impose information and isolation requirements on persons entering Wales from outside the common travel area (CTA) after having been abroad. Notably, people who have been in a non-exempt country or territory must isolate for a period of 10 days unless they can claim a sectoral exemption. In addition, there are also more stringent self-isolation requirements in place for a list of specified countries (the ‘red list’) linked with variant strains of coronavirus, which applies the isolation requirement to household members, disapplies any sectoral exemptions and narrows the list of reasons for which a person can temporarily leave isolation. In addition, there is a ban imposed on the arrival of aircrafts and vessels which have travelled directly to Wales from countries and territories subject to additional measures.
5. The red list currently (29 January) consists of 33 countries with new ones being added most weeks (last week saw United Arab Emirates, Burundi and Rwanda added). The UK Government has also announced (26 January) a New Variant Assessment Platform in conjunction with the WHO, to make the UK’s genomic sequencing capability available to other countries to help improve global surveillance of new variants. This could help identify the spread of existing, and entirely new, variants of concern; which could lead to a further expansion of the red list.

6. The approach to reactive travel bans that has been used up until now, following assessment by the Joint Biosecurity Centre and others, is unlikely to be preventing entry of new variants into the UK. Because of this, additional measures have been proposed by the UK Government, building on advice discussed at SAGE. For these to be effective they will need to operate on a four-nation basis across the UK, as well as including the CTA.
7. Initial four nations engagement is underway at both official and ministerial level but as yet details are scant and proposed timings for implementing these proposals are not yet known.

UKG engagement to date

8. A paper discussed at SAGE on 21 January reviewed evidence to consider the effectiveness of different border measures, including travel bans, on importations and seeding, and the potential reduction in risk from testing and isolation. This has been considered by technical and professional experts within Welsh Government to provide tailored advice to the CMO for Wales on international travel measures (attached).
9. Press coverage over the weekend of 23-24 January reported widely on UKG plans for quarantine hotels and an expected announcement early the following week. Officials were briefed on 27 January (10:45am) on the content of a planned announcement by the Prime Minister and Home Secretary that afternoon.
10. Also on 27 January (11:30am) the First Minister had a call with the Chancellor and Duchy of Lancaster (CDL), First Ministers of Northern Ireland and Scotland and Deputy First Minister of Scotland on the same announcement.
11. These proposed border measures were also discussed in the four-nation Health Ministers call on 28 January. At these discussions, MHSS called for stricter restrictions now, to be scaled back later, pressed for official level discussions to take place urgently and for relevant papers to be shared.
12. In all calls the UKG have maintained they are seeking a four nations approach. This is supported by all devolved governments, and has been the long-held position of the Welsh Government in relation to border measures. However, there has been very limited engagement to date, with no detailed information yet available other than what has been announced by the Prime Minister and Home Secretary.
13. Officials continue to press for detailed engagement to begin with UKG counterparts. This is promised early in the week commencing 1 February. The announcements by the Prime Minister and Home Secretary both suggested further detail would be made available to the House of Commons this coming week. That is likely to leave us very little time to consider and influence any detail before further UKG announcements are made. We understand the Department for Health and Social Services will be the lead department in UKG.

Devolved Administration engagement

14. All devolved governments are in the same position and are collating questions and putting together task-and-finish groups in order to be able to respond quickly this week (from 1 February onwards). We understand the Transport, Infrastructure and Connectivity Department is leading in the Scottish Government, and the Economy (on hotels) and Infrastructure (on transport) Departments are likely to jointly lead for the Northern Ireland Executive. A lead Department has not yet been designated in Welsh Government, with initial coordinating and convening work being taken forward by the COVID-19 Restart and Recovery Directorate.
15. Within the Welsh Government we have established a task-and-finish group of relevant policy leads to be able to respond once engagement begins with UKG counterparts. To date this has focussed on collecting questions to work through on a four or five nations basis over the next week as detailed engagement begins.
16. We expect there to be early agreement on the need for managed quarantine in hotels to take place close to the port of arrival, in order to limit the distance travelled by people returning from 'red list' countries. This would mean travellers to Wales arriving in London would need to quarantine in London before completing their journey to Wales. In practical terms this would mean hotel rooms in Wales would be limited to returnees via Cardiff airport and our ports. Northern Ireland are keen to explore if the UKG could lead on procurement for the UK and have emphasised the need for human rights to be properly considered throughout. Scotland are exploring options available for them to go further in strengthening health measures at the border should their Ministers wish to do more.

UKG proposals

17. Statements were made by the Prime Minister and Home Secretary to the House of Commons on 27 January. These set out the main details we currently have available, which are a mix of strengthening or reviewing current measures and some new proposals, the most significant of which is the proposal for managed quarantine in hotels. These can broadly be split into those entering the UK and those leaving the UK.
18. Entry into the UK:
 - INCREASE police checks on people required to self-isolate by carrying out physical checks at addresses.
 - CONTINUE to refuse entry to non-UK residents from 'red list' countries which are subject to a UK-wide travel ban.
 - INTRODUCE a 10-day managed isolation in hotels for those coming from 'red list' countries that cannot be refused entry. They will be met at the airport and

transported directly into quarantine. This will include testing (not clear if mandating) and sequencing of any positive tests.

19. Leaving the UK:

- INTRODUCE requirement for a 'reason to travel' declaration to be provided by passengers and checked by carriers before a person can leave the UK.
- INCREASE police presence at ports and airports to check reasons for travelling and for them to direct people home or issue fines.
- REVIEW exceptions in the regulations urgently to ensure those that remain are only the most 'important and exceptional'.

20. It was also suggested at the four-nations Health Ministers call that for those entering the UK the Chancellor and Duchy of Lancaster was leading on work to:

- INTRODUCE testing for all non-red list arrivals, and any samples coming back positive to be sequenced to identify any new variants or existing VOCs.

Public health and scientific advice

21. The technical and professional advice to the CMO on international travel measures referred to above (para 8, and attached) sets out the public health positions on different options. It highlights the following conclusions:

- Reactive travel bans and travel corridors do not prevent infection being spread in the UK (moderate confidence), and are not recommended as approaches by SAGE, TAG or public health.
- Wales alone would be unlikely to achieve a successful infection prevention policy (high confidence).
- The only way to completely prevent the importation of new infections is to close the borders or to quarantine all incoming visitors (moderate confidence).
- Testing travellers before they begin their journey to the UK will help to remove the risk of infection from some potential infectors (medium confidence)

22. This public health advice has most recently been complemented by a TAG paper (29 January) which considers surveillance approaches to determine the risk, frequency and origin of SARS-CoV-2 entry into UK airports. This includes findings that indicate:

- There is now overwhelming evidence that the COVID-19 global pandemic and transboundary movement of SARS-CoV-2 was fuelled by air travel. The importance of air travel in facilitating the long-distance spread of COVID-19 is undisputed.

- It is now well established that UK citizens returning from mainland Europe (e.g. Italy, Spain and France), rather than China, were primarily responsible for introducing SARS-CoV-2 into the UK. At least 1300 independently-introduced transmission lineages of the virus were introduced to the UK in early 2020, leading to the first wave of COVID-19.
- There are infection risks from being in an aeroplane, within terminals and travel to and from airports. In-flight transmission has been documented, despite the use of face coverings and implementation of social distancing.
- Closure of international flights has inevitably helped contain the spread of the disease, but it has come at a substantial economic cost in lost GDP and jobs.
- A lack of understanding of symptoms suggests many individuals could unknowingly return to the UK with COVID-19 (particularly men and younger age groups, 18-44).
- A significant proportion (21%) of the population would likely travel back to the UK even if they started to express COVID-19 symptoms and many individuals expressed the opinion that they would not fully comply with government self-isolation guidelines on return.
- Males and younger ages groups had a reduced perceived personal risk from contracting COVID-19 and results from the study suggest that they pose a higher risk of transporting SARS-CoV-2 back to the UK.

23. This TAG report indicates their research supports the imposition of stricter guidelines to ensure compliance with point-of-departure COVID-19 testing and stricter quarantining on arrival for UK citizens returning from overseas. Further, they recommend consideration is given to targeting at younger age groups where the risk of non-compliance is greatest.

Proposed positions to take in initial discussions with the UK Government

24. The following positions are proposed for officials to take in initial discussions expected with the UK Government. These reflect the positions taken in calls between the FM and MHSS and UK Government Ministers to date. Further advice will be provided as soon as more information is forthcoming.
- a. Want to see a five nations approach as much as possible – international travel restrictions will only work if there is agreement across the UK and CTA.
 - b. Supportive of the UK proposals as the minimum necessary. If it is not possible to go further now urge these be kept under regular review, in particular should the 'red list' expand quickly.
 - c. We will explore replicating the options set out by the UKG for strengthening border measures to provide a consistent approach.

- d. Support urgent review of the exemptions list and for this to focus on health risks – DAs have been calling for this for some time.
- e. In relation to quarantine hotels initial thinking is that we could suggest:
 - i. Managed accommodation to be close to point of entry to minimise health risks of extended travel.
 - ii. Willing to explore UKG procurement, but subject to legal advice, MOUs being put in place, assurances public procurement rules will be followed, and safeguards to avoid displacing homeless and vulnerable people.
 - iii. Aim for common set of protocols and conditions across the UK, with input from health professionals across all four/five nations.
 - iv. Press for human rights, equality and children's rights to be addressed from the outset, in particular given additional requirements in Wales.
 - v. Clarify whether HMT will meet new costs as part of managing the UK border and entry into the UK and to be clear what costs are being covered from the outset.

25. At this initial stage we do not have many details so we will be seeking answers to the many questions raised by policy leads and legal and health advisors. All discussions will be subject to officials needing to consult experts and seek formal Ministerial advice on proposals before any firm Welsh Government positions can be taken.

Legal powers

26. The International Travel Regulations are made in reliance on the health protection powers at Part 2A of the Public Health (Control of Disease) Act 1984 ("the 1984 Act"). These powers are exercisable by the Welsh Ministers in relation to Wales by virtue of section 45T of the 1984 Act.

27. The International Travel Regulations are made in reliance on section 45B of the 1984 Act, which provides that the appropriate Minister may make regulations which make provision for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place and which may include provision for the detention, medical examination, quarantine, prohibition of entry or exit and for requiring persons to provide information or answer questions (including information about their health).

28. The proposals from UKG would also seem to fit within the scope of this power and LS have sought confirmation from UKG counterparts as to whether this is the intended approach. It is in particular noted that the International Travel Regulations (Reg 13(1)) already empower Welsh Ministers to secure suitable premises for a person's isolation in specified circumstances.

29. Section 45F provides supplementary powers in respect of regulations made under section 45B which includes powers *to permit or prohibit the levy of charges and permit or require the payment of incentive payments, compensation and expenses.*

Economy and Transport Procurement Issues

30. The work programme on implementation is expected to include procurement of rooms for quarantine. It also seems possible that transportation from ports of entry to such accommodation would need to be procured and provided, although no details have been seen on this point to date.

31. Once further details are known, advice on the procurement of accommodation for Wales will need to be provided by Corporate Procurement Services and LS Economy Team (who are on notice) in order to inform the drafting and implementation of the regime. Transport officials and LS Transport are also on notice of potential implications for their areas and policy officials have been inputting into emerging thinking.

32. Advice will be needed from LS Economy on procurement issues and/or Commercial Legal Services if we consider relying on UKG to procure. This is because such an arrangement will necessitate appropriate agreements and MOUs being put in place rapidly to enable UKG to undertake this function for Wales and provide the necessary legal assurances that public procurement rules will be followed.

ECHR considerations

33. Initial advice from LS Health and Constitution Team has concluded that a decision to enforce managed quarantine at designated facilities is likely to engage the following articles:

- Article 8 – right to private and family life
- Article 9 – freedom of religion
- Article 11 – freedom of assembly
- A1P1 – right to peaceful enjoyment of possessions
- A2P1 – right not to be denied education
- Article 14 – protection from discrimination

34. Based on current information, the articles likely to create the greatest level of risk for justification are Articles 8, A1P1 and Art 14. The likelihood of people bringing challenges is higher on this occasion because the interferences with their article rights are more significant.

35. Robust evidence and justifications will be vital, for example in terms of why arrivals from particular countries are being selected and why particular types of accommodation are designated as suitable for isolation. The rights of individuals under these convention rights, must of course be balanced with the positive obligation on the state imposed by Article 2 right to life.

Children's rights

36. There are potential interferences with a number of articles under the United Nations Convention on Rights of the Child, particularly Article 6 (ensuring children develop to their full potential), Article 8 (dignity for disabled children), Article 18 (support services for children) and Article 27 (adequate standard of living).
37. Any accommodation arranged by or designated by the Welsh Ministers would need to make adequate provision for children, including access to technology and equipment to enable home-learning if children are held under these additional infection control measures during term time.

Next steps and timings

38. Once four nations discussions begin this week, we expect things to move quickly. The comparative resource available to UKG will mean that if we need to carry out our own procurement or diverge in any significant way from the approach being taken in England there may be delays in implementation in Wales. It is possible the pace the UKG want to work at means that legal issues around any potential shared procurement cannot be resolved in time, necessitating our own process.
39. In terms of people leaving the UK, the current lockdowns prevent outgoing travel for non-essential reasons. The clear UKG messages about international travel not being allowed will be helpful.
40. Inbound travellers from non-red list countries will also be limited given the lockdowns in place across the UK. Any strengthened measures for inbound travellers from non-red list countries (e.g. additional testing and sequencing) would need to be put in place before any relaxations are introduced to be effective. Relaxations to stay at home provisions seem unlikely until at least the end of February.
41. We are seeking data on the numbers of travellers likely to be caught by the hotel quarantine policy in Wales, but with a travel ban in place for all 'red list' countries the lockdown restrictions should not materially affect the number of travellers. These arrangements will therefore need to be put in place as soon as operationally possible.
42. Further advice will be provided later this week (week commencing 1 February) once we have further details about the proposals and likely timetables.