

Regulations made by the Department of Health and laid before the Assembly under section 25Q (Emergency procedure) of the Public Health Act (Northern Ireland) 1967, for approval of the Assembly before the expiration of 28 days beginning with the day on which they are made.

STATUTORY RULES OF NORTHERN IRELAND

2020 No. 151

PUBLIC HEALTH

The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020

<i>Made</i>	- - - -	<i>at 5.45 p.m. on 23rd July 2020</i>
<i>Laid before the Assembly</i>		<i>at 9.00 a.m. on 24th July 2020</i>
<i>Coming into operation</i>		<i>at 11.00 p.m. on 23rd July 2020</i>

The Department of Health⁽¹⁾, makes the following Regulations in exercise of the powers conferred by sections 25C(1), (3)(c), (4)(d) and 25F(2) of the Public Health Act (Northern Ireland) 1967⁽²⁾.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Northern Ireland.

The Department of Health considers that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 25Q of that Act the Department of Health is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by a resolution of, the Assembly.

Citation and commencement

1. These Regulations may be cited as the Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020 and shall come into operation at 11.00 pm on 23rd July 2020.

Interpretation

2. In these Regulations—

(1) Formerly the Department of Health, Social Services and Public Safety; see 2016 c. 5 (N.I.), s. 1(5)
(2) 1967 c. 36 (N.I.). Part 1A was inserted by section 48 of, and Schedule 18 to, the Coronavirus Act 2020 (c. 7)

“face covering” means a covering of any type which covers a person’s nose and mouth;

“emergency responder” has the meaning given by section 153A(6) of the Inheritance Tax Act 1984(3);

“passenger transport service” means—

- (a) bus, coach and rail services delivered under a Public Service Agreement, Bus Service Permit or Cross-border Authorisation issued by the Department for Infrastructure(4) under section 1 of the Transport Act (Northern Ireland) 2011(5) or in accordance with Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on Common Rules for Access to the International Market for Coach and Bus Service(6);
- (b) ferry services operated in accordance with the Strangford Lough Ferry and Harbour Byelaws (Northern Ireland) 1988(7) or in pursuance of an agreement under Article 99 of the Roads (Northern Ireland) Order 1993(8);
- (c) services provided by community transport operators funded by the Department for Infrastructure under Part 5 of the Transport Act (Northern Ireland) 2011;

“passenger transport service premises” means off-road premises where a passenger transport service may stop or terminate, allowing passengers on and off;

“relevant person” has the meaning given by regulation 6(8)(b);

“school transport service” means any transport provided solely for the purpose of—

- (a) facilitating a person’s attendance at a school or other place at which they receive education or training; or
- (b) otherwise than for the reason in paragraph (a), carrying a person to and from the school or other place at which they receive education or training.

Savings

3.—(1) Notwithstanding the revocation of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020(9)—

- (a) a designation which refers to those Regulations shall continue to have effect and shall be treated as if it had been made in exercise of the power conferred by regulation 6(8)(b)(ii) of these Regulations; and
- (b) a fixed penalty notice which refers to those Regulations shall continue to have effect and shall be treated as if it was issued under regulation 8 of these Regulations, including for the purpose of calculating penalties or for dealing with any offence committed or reasonably believed to have been committed.

Requirement to wear a face covering

4.—(1) Subject to paragraph (2), a person shall not, without a reasonable excuse, use a passenger transport service or passenger transport service premises without wearing a face covering.

(2) Paragraph (1) does not require the wearing of a face covering—

- (a) on a school transport service;

(3) 1984 c. 51

(4) Formerly the Department for Regional Development; see 2016 c. 5 (N.I.), s. 1(6)

(5) 2011 c. 11 (N.I.)

(6) OJ L 300, 14.11.2009, p. 88

(7) S.R.1988 No.362

(8) S.I. 1993/3160 (N.I. 15)

(9) S.R. 2020 No. 55

- (b) by a child who is under the age of 13;
 - (c) by a constable acting in the course of their duty;
 - (d) by an emergency responder (other than a constable) acting in their capacity as an emergency responder;
 - (e) by a person providing a passenger transport service, or an employee of that person, where there is a partition between the person or employee and members of the public; or
 - (f) on a ferry where the area is outdoors and a distance of at least two metres can be maintained between any persons on the ferry or the part of the ferry which is open to members of the public.
- (3) For the purposes of paragraph (1)—
- (a) a person uses a passenger transport service when—
 - (i) they are—
 - (aa) boarding any mode of transport by means of which a passenger transport service is provided, or
 - (bb) on board any mode of transport, whether or not for the purposes of travel, by means of which a passenger transport service is provided, and
 - (ii) that service is available for use by the public;
 - (b) a person uses passenger transport service premises when—
 - (i) they are present at premises where a passenger transport service may provide, stop or terminate their service, and
 - (ii) those premises are available for use by the public.

Reasonable excuse

5. For the purposes of regulation 4(1), a reasonable excuse includes—
- (a) the need to seek medical assistance;
 - (b) the need to provide care or assistance to a vulnerable person, including to provide emergency assistance;
 - (c) the need to avoid injury, illness or to escape a risk of harm;
 - (d) where the person cannot put on, wear or remove a face covering—
 - (i) because of any disability (within the meaning of the Disability Discrimination Act 1995⁽¹⁰⁾); or
 - (ii) without severe distress;
 - (e) the need to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise);
 - (f) to eat or drink, where reasonably necessary;
 - (g) the need to take medication;
 - (h) the need to remove a face covering temporarily to comply with a request by a relevant person or another person acting in the course of their duties.

Enforcement of requirement

6.—(1) A relevant person may take such action as is necessary to enforce any requirement imposed by regulation 4.

(10) 1995 c. 50

(2) Where a relevant person considers that a person is not wearing a face covering in contravention of the requirement in regulation 4 the relevant person may, in particular—

- (a) direct that person to wear such a covering;
- (b) direct that person to disembark from the relevant vehicle or leave the relevant passenger transport service premises.

(3) Where a person does not comply with a direction given to them under paragraph (2), a constable may remove them from the relevant vehicle or passenger transport service premises.

(4) A constable exercising the power in paragraph (3) may use reasonable force, if necessary, in the exercise of the power.

(5) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the requirement in regulation 4, the relevant person may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with that requirement.

(6) For the purposes of this regulation, an individual has responsibility for a child if the individual—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995⁽¹¹⁾).

(7) A relevant person may only exercise the power in paragraph (2) or (3) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement.

(8) For the purposes of this regulation—

- (a) “child” means a person under the age of 18;
- (b) a “relevant person” means—
 - (i) a constable, or
 - (ii) a person designated by the Department of Health for the purposes of this regulation.

Offences and penalties

7.—(1) A person who, without reasonable excuse, contravenes a requirement in regulation 4 commits an offence.

(2) A person who, without reasonable excuse, obstructs any person carrying out a function under these Regulations commits an offence.

(3) A person who, without reasonable excuse, contravenes a direction given by a relevant person under regulation 6, commits an offence.

(4) An offence under this regulation is punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(5) Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹²⁾ applies in relation to an offence under this regulation as if the reasons in paragraph (5) of that Article included—

- (a) to maintain public health;
- (b) to maintain public order.

⁽¹¹⁾ S.I. 1995/755 (N.I. 2)

⁽¹²⁾ S.I. 1989/1341 (N.I. 12). Article 26 was substituted by Articles 1(2) and 15(1) (with Article 15(3)) of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007

Fixed Penalty Notices

8.—(1) An authorised person may issue a fixed penalty notice to anyone that the authorised person reasonably believes—

- (a) has committed an offence under these Regulations;
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the authority specified in the notice.

(3) The authority specified in the notice must, in the case of a notice issued by a constable, be the clerk of petty sessions.

(4) Where a person is issued with a notice under this regulation 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 of the notice;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which (because of paragraph (4)(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 the fixed penalty may be paid;
- (e) specify permissible methods of payment;
- (f) inform the person to whom it is given of the right to ask to be tried for the offence.

(6) The amount specified under paragraph (5)(c) must, subject to paragraph (7), be £60.

- (a) (7) (a) Unless sub-paragraph (b) applies, a fixed penalty notice must specify that if £30 is paid before the end of the period of 14 days following the date of the notice, that is the amount of the fixed penalty;
- (b) if the person to whom a fixed penalty notice is given has already received a fixed penalty notice under these Regulations—

- (i) sub-paragraph (a) does not apply, and

- (ii) the amount specified as the fixed penalty is to be—

- (aa) in the case of the second fixed penalty notice received, £120;

- (bb) in the case of the third and subsequent fixed penalty notice received, double the amount specified in the last fixed penalty notice received by that person, to a maximum of £960.

(8) Whatever other method may be specified under paragraph (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(9) Where a letter is sent as mentioned in paragraph (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(10) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of the authority specified in the notice, 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.

- (11) In this regulation “authorised person” means—
- (a) a constable;
 - (b) a person designated by the Department of Health for the purposes of this regulation.

Effect of fixed penalty notice

- 9.**—(1) This regulation applies if a fixed penalty notice is given to any person under regulation 8.
- (2) If the person asks to be tried for the alleged offence, proceedings may be brought against the person.
- (3) If by the end of the period mentioned in regulation 8(4)(a)—
- (a) the penalty has not been paid, and
 - (b) the person has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty (“the enhanced sum”) may be registered under regulation 10 for enforcement against the person as a fine.

Registration certificates

- 10.**—(1) This regulation and regulation 11 apply where by virtue of regulation 8 the enhanced sum may be registered under regulation 11 for enforcement against any person as a fine.
- (2) In this regulation and regulation 11—
- (a) that sum is referred to as a “sum payable in default”, and
 - (b) the person against whom that sum may be so registered is referred to as the “defaulter”.
- (3) The Chief Constable or a person designated by the Department of Health—
- (a) may, in respect of any sum payable in default, issue a certificate (a “registration certificate”) stating that the sum is registrable under regulation 11 for enforcement against the defaulter as a fine; and
 - (b) must cause any certificate so issued to be sent to the clerk of petty sessions.
- (4) The Chief Constable may authorise a person to carry out the functions of the Chief Constable under paragraph (3).
- (5) A registration certificate must—
- (a) give particulars of the offence to which the penalty notice relates; and
 - (b) state the name and last known address of the defaulter and the amount of the sum payable in default.

Registration of penalty

- 11.**—(1) Where the clerk of petty sessions receives a registration certificate in respect of any sum payable in default, the clerk must register that sum for enforcement as a fine by entering it in the Order Book of a court of summary jurisdiction.
- (2) On registering any sum under this regulation for enforcement as a fine, the clerk of petty sessions must give to the defaulter notice of registration—
- (a) specifying the amount of that sum and requiring payment of it by such date, not less than 28 days from the date of registration, as may be specified in the notice; and
 - (b) giving the information with respect to the offence included in the registration certificate by virtue of regulation 10(5)(a).

(3) On the registration of any sum in the Order Book of a court of summary jurisdiction by virtue of this regulation, any statutory provision referring (in whatever terms) to a fine imposed or a sum adjudged to be paid by a conviction of such court shall have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.

(4) The clerk of petty sessions must refer the case to a district judge (magistrates' courts) for the judge to consider whether to make a collection order under section 3 of the Justice Act (Northern Ireland) 2016⁽¹³⁾, and the order may be made without a court hearing.

(5) Where a collection order is made in that case, the date specified in the order as the date by which the sum due must be paid must, unless the court directs otherwise, be the same as the date specified in the notice of registration under paragraph (2)(a).

Challenge to notice

12.—(1) This regulation applies where—

- (a) a person who has received notice of the registration of a sum under regulation 11 for enforcement against that person as a fine makes a statutory declaration to the effect mentioned in paragraph (2), and
- (b) that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the clerk of petty sessions.

(2) The statutory declaration must state—

- (a) that the person making the declaration was not the person to whom the relevant fixed penalty notice was given, or
- (b) that the person gave notice requesting to be tried in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period.

(3) In any case within paragraph (2)(a), the relevant fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) In any case within paragraph (2)(b)—

- (a) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void, and
- (b) the case shall be treated after the declaration is served as if the person making the declaration had given notice requesting to be tried in respect of the alleged offence as stated in the declaration.

(5) References in this regulation to the relevant fixed penalty notice are to the fixed penalty notice relating to the penalty concerned.

(6) In any case within paragraph (2)(b), Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁴⁾ (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the statutory declaration made for the purposes of paragraph (1).

(7) Paragraph (8) applies where, on the application of a person who has received notice of the registration of a sum under regulation 11 for enforcement against that person as a fine, it appears to a court of summary jurisdiction that it was not reasonable to expect that person to serve, within 21 days of the date on which that person received the notice, a statutory declaration to the effect mentioned in paragraph (2).

⁽¹³⁾ 2016 c. 21 (N.I.)

⁽¹⁴⁾ S.I. 1981/1675 (N.I. 26)

(8) The court may accept service of such a declaration by that person after that period has expired; and a statutory declaration so accepted shall be taken to have been served as required by paragraph (1).

(9) In this regulation references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum (including the making of a collection order).

(10) For the purposes of this regulation, a person shall be taken to receive notice of the registration of a sum under regulation 11 for enforcement against that person as a fine when that person receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.

(11) Nothing in this regulation is to be read as prejudicing any rights a person may otherwise have by virtue of the invalidity of any action purportedly taken under these Regulations which is not in fact authorised by these Regulations in the circumstances of the case.

(12) Accordingly, references in this regulation to the registration of any sum or to any other action taken under these Regulations are not to be read as implying that the registration or action was validly made or taken.

Setting aside of sum enforceable under regulation 11

13.—(1) A court of summary jurisdiction may, in the interests of justice, set aside a sum enforceable as a fine as a result of regulation 11.

(2) Where a court sets aside such a sum, it must give a direction that either—

- (a) no further action is to be taken in respect of the alleged offence that gave rise to the fixed penalty notice concerned; or
- (b) that the case is to be treated as if the person concerned had given notice requesting to be tried in respect of the offence.

(3) Where a court gives a direction under paragraph (2)(a), the fixed penalty notice concerned, the registration and any proceedings taken for enforcing payment of the sum registered shall be void.

(4) Where a court gives a direction under paragraph (2)(b)—

- (a) the registration and any proceedings taken for enforcing payment of the sum registered shall be void; and
- (b) Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the setting aside.

(5) In this regulation references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum (including the making of a collection order).

Review

14. The Department of Health must review the need for the requirements imposed by these Regulations before the end of the period of six months beginning with the day on which they come into operation.

Expiry

15.—(1) These Regulations expire at the end of the period of twelve months beginning with the day on which they come into operation.

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

Sealed with the Official Seal of the Department of Health at 5.45 pm on 23rd July 2020

(L.S.)

Elizabeth Redmond
A senior officer of the Department of Health

Status: This is the original version (as it was originally made).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The requirement to wear face coverings on public transport was set out in the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended). Those Regulations have been revoked by the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 and the relevant provisions are now set out in these Regulations.

Members of the public are, subject to limited exceptions, required to wear face coverings to protect against the risks to public health arising from coronavirus.

The need for the requirements in these Regulations must be reviewed within the period of 6 months of their coming into force.

No impact assessment has been prepared for these Regulations.