

EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

S.R. 2020 No. 55

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before the Northern Ireland Assembly to accompany the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020.
- 1.2 The Statutory Rule is made under sections 25C(1), (3)(c), (4)(d) and 25F(2) of the Public Health Act (Northern Ireland) 1967 (“the 1967 Act”) and is subject to the emergency procedure under section 25Q of that Act.

2. Purpose of the Regulations

- 2.1 This Statutory Rule makes provision for the purpose of enabling a number of public health measures to be taken to reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Northern Ireland which causes the disease COVID-19 (“coronavirus”).

3. Matters of special interest to the Northern Ireland Assembly

- 3.1 The Statutory Rule is made under the emergency procedure set out in section 25Q of the 1967 Act. The Regulations are made without a draft having been laid before, and approved by a resolution of, the Assembly. The Department of Health is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus. The Regulations came into force at 11.00pm on 28 March 2020 and were published on the Department of Health website soon after. The Regulations cease to have effect at the end of the period of 28 days beginning with the day on which the Statutory Rule is made unless, during that period, the Statutory Rule is approved by a resolution of the Assembly. Further, the Regulations provide that the Department of Health must review the need for restrictions and requirements imposed by the Regulations at least once every 21 days, with the first review being carried out by 18 April 2020. Restrictions and requirements imposed by these Regulations end on the day and time specified by in a direction published by the Department of Health. The Regulations cease to have effect at the end of the period of six months beginning on the day on which they came into operation.

4. Legislative Context

- 4.1 The 1967 Act and regulations made under it provide a legislative framework for health protection in Northern Ireland.
- 4.2 Part 1A of the 1967 Act, as inserted by the Coronavirus Act 2020 (“the 2020 Act”), provides a legal basis to protect the public from threats arising from infectious disease or contamination with coronavirus, and includes powers to impose restrictions or

requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, Part 1A of the 1967 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

- 4.3 Section 25C of the 1967 Act provides a power for the Department of Health to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination with coronavirus in Northern Ireland. The threat can come from outside Northern Ireland.
- 4.4 These Regulations are made under section 25C to enable a number of public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of coronavirus.
- 4.5 The Statutory Rule requires the closure of some premises and businesses; and places restrictions on other businesses and services [from 11.00pm on 28 March 2020]. Regulation 3(1) requires the closure of bars and pubs, and food and drink venues for consumption on site (excluding hospitals, schools, care homes, homeless services and prison canteens, armed forces canteens and workplace canteens where no practical alternative is possible) but they may provide a service for collection or delivery of food for consumption off the premises. Regulation 3(4) requires closure of entertainment venues including cinemas, theatres, concert halls and bingo halls; museums and galleries; spas, hair salons; massage parlours; casinos and betting shops; all indoor leisure and sports facilities including gyms, playgrounds, funfairs, libraries, community centres and outdoor markets (non-food). These venues can however be used to host blood donation sessions; and cinemas, theatres, bingo halls, concert halls and museums and galleries can broadcast performances over the internet or on radio or television. Regulation 4(1) requires businesses offering goods for sale or for hire or providing library services to cease to do so except in response to orders received online, telephone or by mail order – the types of business specified in Part 3 of Schedule 2 are exempt from these restrictions, and regulation 4(2) excludes hot and cold food collection and delivery from the closures restrictions. Regulation 4(3) to (4) requires that hotels and similar establishments only remain open to cater for permanent residents, those requiring accommodation because they are moving home or attending a funeral and persons unable to return home (for example overseas visitors unable to return to their home country or key workers who are having to work away from home). These establishments can also remain open to provide accommodation or support for the homeless, to host blood donation sessions or for any purpose requested by listed public authorities. Regulation 4(5) to (8) places restrictions on places of worship, community centres, crematoriums and burial grounds.
- 4.6 The Statutory Rule includes provision that a person who contravenes a requirement in regulation 3 or 4 commits an offence, punishable by a fine. It also includes provision that a police officer or a person designated by the Department of Health may take such action as is necessary to enforce a closure or restriction imposed by these regulations including issuing a prohibition notice requiring a person not to continue to contravene a requirement of the regulations.
- 4.7 Police officers, and those designated by the Department of Health for the purposes of these regulations, will monitor compliance with them. Businesses that breach them will be subject to prohibition notices, and fines up to £5000.

- 4.8 These Regulations also prohibit anyone from leaving the place where they are living without reasonable excuse. Examples of reasonable excuse are specified in the Regulations, such as the need to provide care or assistance to a vulnerable person, to travel for the purposes of work and to access critical public services. The Regulations also ban public gatherings of more than two people, subject to exceptions which are specified.
- 4.9 As with business closures, the instrument includes provision that a person who contravenes these stay at home and non-participation in public gatherings requirements commits an offence, punishable by a fine. A relevant person, being a police officer or person designated by the Department of Health, may direct a prohibited gathering to disperse, direct or remove persons so gathering to the place they live or take such other action as is necessary to enforce the prohibition. Where a person is outside of the place where they live without reasonable excuse, a relevant person may similarly direct or remove that person to the place they live.
- 4.10 The Regulations also provide that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons (a police officer or person designated by the Department of Health) to persons over 18 whom they reasonably believe has committed an offence under the Regulations. The amount of the fixed penalty is £60, reduced to £30 if paid within 14 days. If a person has already received a fixed penalty notice, the amount of the fixed penalty is £120 doubling on each further repeat offence up to a maximum of £960, and there will be no discount for repeat offenders paying within 14 days.

5. Policy background

- 5.1 The temporary modifications to the 1967 Act made by the Coronavirus Act 2020 provide regulation making powers that were previously not available in Northern Ireland.
- 5.2 On Monday 16 March, the UK Government advised citizens across the country to begin working from home where possible, and to minimise social interactions, including by not visiting pubs, restaurants, clubs and theatres, with the aim of achieving 75% reduction in non-household contact. This decision reflected clinical advice that the spread of infection is likely where people are in close contact for more than 15 minutes.
- 5.3 Early information on compliance has been mixed. It has been considered necessary to increase compliance with public health advice in order to limit the further spread of the disease.
- 5.4 The Prime Minister addressed the nation on 23 March 2020 to announce the need for further restrictions. These Regulations provide for a range of restrictions and closures, as well as requiring persons to stay home by prohibiting people from leaving the place where they live except for limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people.
- 5.5 There are two main reasons to introduce these Regulations. Firstly, it is critical for the Executive to take all reasonable steps to prevent the community transmission of coronavirus where possible. Severe acute respiratory coronavirus 2 (SARS-CoV-2) was recently declared by World Health Organisation a Public Health Emergency of International Concern. Secondly, it is also essential that the Executive retains public trust in its public health protection measures. This level of trust will be critical to

ensuring that the public continues to engage and comply with interventions designed to protect individuals and communities if transmission of the virus within Northern Ireland increases in the coming weeks.

- 5.6 It should be noted that there are other international precedents for these types of powers and actions. France, Italy, Spain and Ireland have each recently mandated the closure of non-essential businesses and other venues, as well as placed limitations on movements and gatherings, to limit community spread of coronavirus.

6. Consultation

- 6.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no public consultation in relation to this Statutory Rule.

7. Equality impact

- 7.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no assessment of equality impacts in relation to this Statutory Rule.
- 7.2 The public health restrictions and requirements introduced by these Regulations will be part of a range of measures designed to assist and support efforts to protect the population of Northern Ireland by seeking to limit the spread of coronavirus.

8. Regulatory impact

- 8.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no assessment of regulatory impacts in relation to this Statutory Rule.

9. Financial implications

- 9.1 Given the rapidly evolving global situation regarding the spread of coronavirus there has been no assessment of the financial impacts in relation to this Statutory Rule.
- 9.2 The Regulations apply to the activities undertaken by certain businesses. Office of National Statistics data indicates that these closures will affect 13.1% of the UK's business units.

10. Section 24 of the Northern Ireland Act 1998

- 10.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations are not incompatible with any of the Convention rights; are not incompatible with Community law; do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

11. EU implications

- 11.1 There are unlikely to be any EU implications.
- 11.2 This Statutory Rule does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

12. Parity or Replicatory Measure

- 12.1 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force at 12.00pm on 26 March 2020. The Health Protection (Coronavirus,

Restrictions) (Wales) Regulations 2020 came into force at 4.00pm on 26 March 2020. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into force at 7.15pm on 26 March 2020.

13. Additional information

13.1 Not applicable