

## **EXPLANATORY MEMORANDUM TO**

### **The Health Protection (Coronavirus, Restrictions) (Amendment No.2) Regulations (Northern Ireland) 2020**

**S.R. 2020 No. 82**

#### **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) (Amendment No. 2) 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 amends the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (“the principal Regulations”). Regulation 1 is amended to clarify the reference to a person designated and regulation 2 is amended to apply section 28(2) of the Interpretation Act (Northern Ireland) 1954 to the termination of a restriction or requirement by a direction. Regulation 4 is further amended, to include the opening of a place of worship for the purpose of solemnising a marriage ceremony where a party is terminally ill (with a consequential amendment to regulation 6). Regulation 5 is further amended, to include the need to access services provided by a district council or other public body, including household waste or recycling centres. Regulation 7 is amended to clarify the application of enforcement provisions, insofar as children are concerned. Regulation 9 is amended to allow for the procedure to be used in cases where a district council issued a fixed penalty notice. There are further amendments to Parts 2 and 3 of Schedule 2, including the application to garden centres and ornamental plant nurseries.

#### **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Regulations without a draft being so laid and approved so that public health measures can be introduced, amended or withdrawn in response to the latest risk assessment associated with the incidence and spread of coronavirus disease. The Regulations came into force at 11.00pm on 15 May 2020 and are available on the Department of Health website. 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.

#### **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 public health measures to be introduced, amended or withdrawn in respect of the public health risks posed by the incidence and spread of coronavirus disease.

#### **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 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.
- 5.3 The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended) are critical for the Executive to take all reasonable steps to prevent the community transmission of coronavirus disease where possible. 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 during the period of transmission of the virus within Northern Ireland.
- 5.4 Regulation 4 of the principal Regulations requires that a place of worship is closed to members of the public except for: funerals; to broadcast an act of worship; or to provide essential voluntary or community services. For some couples delaying a marriage is not an option. This is most critical for those couples where one of the parties or a close family member is terminally ill and only has a very short period of life left. A marriage requires five people to be present: the parties to the marriage, two witnesses and registrar or officiant. Maximum attendance of ten people would make this consistent with funerals. Granting access to any public building might lead to some degree of risk, albeit

this risk is considered to be relatively low, for participants and anyone working in the place of worship. However, there is a strong humanitarian argument, with significant well-being benefits for the individuals concerned, to allow such marriages to proceed.

- 5.5 Regulation 5 of the principal Regulations provides that no person may leave the place where they are living without a reasonable excuse. Regulation 5 includes examples of what constitutes a 'reasonable excuse'. Broadening the range of 'critical public services', access to which constitutes a reasonable excuse for leaving one's home, to include any services provided by a district council or other public body, would provide legal comfort for councils to re-open recycling centres, and could help to ensure that councils and other public bodies can provide a flexible response to the coronavirus disease outbreak in respect of other services in the future.
- 5.6 Schedule 2, Part 3 of the principal Regulations lists businesses offering goods for sale or hire in a shop that may remain open to the public. In terms of risk, garden centres are comparable with large, mixed hardware stores, which may remain open to the public. The social distancing risks may be lower in garden centres than in most hardware stores as there are normally fewer customers per square metre. Garden centres tend to be partially outdoors, which facilitates the management of social distancing. The availability of gardening supplies helps people to engage in healthy and productive outdoor activity, and supports the 'stay at home' message.

## **6. Consultation**

- 6.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease 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 disease there has been no assessment of equality impacts in relation to this Statutory Rule.
- 7.2 The public health restrictions and requirements introduced by the principal Regulations are 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 disease.

## **8. Regulatory impact**

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

## **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) (Wales) (Amendment) (No. 3) Regulations 2020 came into force on 11 May. The amendment regulations provide that making use of a recycling or waste disposal facility, constitutes a 'reasonable excuse' to leave the place where a person is living. Garden centres and plant nurseries are added to Part 4 of Schedule 1, which means that they may open subject to requirements to take all reasonable measures to ensure a distance of 2 metres is maintained by persons on the premises and persons waiting to enter the premises.

## **13. Additional information**

- 13.1 Not applicable