

- In consequence we produced advice on the legal requirements which included a process for ensuring that the legal requirements would be properly assessed based on all relevant and available scientific and medical evidence and advice.
- This involves following a four step process (set out in full in the Annex) which reflects the legal framework, the First Minister's "7 tests" and the "4 public health harms":

**STEP 1            ASSESS IMPACT ON CONTAINING CORONAVIRUS**

**STEP 2            ASSESS POSSIBLE MITIGATION OF NEGATIVE IMPACT ON  
CONTAINING CORONAVIRUS**

**STEP 3            ASSESS IMPACT ON GENERAL PUBLIC HEALTH**

**STEP 4            ASSESS OTHER SOCIAL, ECONOMIC AND ENVIRONMENTAL IMPACTS**

- Since developing this we have discovered that a very similar decision making process has been adopted in Northern Ireland.
- For reasons that are not totally clear (because we don't understand them), those responsible for collating advice to Ministers on easing restrictions are unwilling to adopt this process. We believe this is based on the following:
  - a distinction is being drawn between the "regulatory review" and the "21 day review" which is apparently a review of lockdown "in the round"
  - it is said that because the 21 day review looks at lockdown "in the round" the "legal" decision making process we proposed is inadequate;
  - it is believed that the legal decision making process can only consider restrictions in isolation and can only consider those changes that "do not require balancing against competing easements";
  - it is said that "...decisions on coming out of lockdown are not simply a technical legal exercise" and "it is not possible to isolate the purely legal restrictions and assess them on their own".
  - It is argued that the legal decision making process can't take into account a variety of "non-legislative actions" that can have a material impact on the degree of threat to public health (e.g. public messaging, policy choices) and also affect the proportionality of the regulatory restrictions in turn."
- We disagree with this on the basis that everything said is either incorrect or an inaccurate reflection of the decision making process we proposed:
  - the "21 day review" derives from the Regulations, it is an assessment of whether the restrictions imposed continue to have a public health purpose and are proportionate;
  - even if the 21 day review does purport to consider the lockdown "in the round" (whatever that means) this is not a reason for not following the decision making process we advise;
  - this is partly because it has to be done and partly because the decision making process (in assessing the public health purpose and proportionality of