

LEGAL SITUATION IF NI EXECUTIVE CANNOT DECIDE ON REPLACEMENT REGULATIONS

1. The 'circuit break' regulations in Northern Ireland expire on Friday 13 November. The NI media widely reports the deadline as midnight on Thursday; it's unclear whether the Executive view this as a hard deadline. If there is no decision to replace them, the legal situation in Northern Ireland will revert to the regulations that were in place prior to the circuit break. This means that:
 - Hospitality would be able to reopen, with pubs able to close at 11pm (with food served until 10.30pm). Hotels could offer services to a wider range of customers (currently very limited).
 - Close contact services, such as hairdressers, can reopen.
 - Indoor sport and contact sport can resume.
 - Restrictions on off licences selling alcohol past 8pm would cease.
 - Cinemas, theatres etc could reopen.
 - Wedding receptions would be allowed.
 - No more than six people to gather in a private garden from no more than two households. Children aged 12 and under from those two households are discounted from this total.
 - No mixing of households in private dwellings, with exemptions for: bubbling with one other household; caring responsibilities including childcare; essential maintenance; supported living arrangements; visits required for legal or medical purposes; or marriage or civil partnerships where one partner is terminally ill.

POWER OF UKG TO INTERVENE IF NO DECISION TAKEN

2. The UK Government's powers to intervene on health policy that applies in Northern Ireland are extremely limited. The UK devolution settlement devolves power over health to the devolved institutions in Northern Ireland. The Secretary of State does not, therefore, have the power to intervene where he considers that an Executive decision, or failure to take a decision, carries negative consequences for Northern Ireland.
3. All decisions to intervene, particularly where devolved institutions continue to function, would result in calls for the UK Government to intervene in other areas where there is stalemate in the institutions. Presentationally it would also undermine the presentation.

Direct Rule

4. Ordinarily, therefore, the only course open to the Government wishing to intervene would be through primary legislation to introduce direct rule. Direct rule in the past has given the Secretary of State power to do anything that a Northern Ireland minister could do, and so applies across all devolved policy areas.
5. It has been considered previously whether direct rule could be introduced in a specific and limited way, applying only to specific subject matter (in this case, for example, giving the Secretary of State the power to make regulations under specific sections of the Public Health Act 1967 inserted by the Coronavirus Act 2020). This was considered in the context of a possible no deal Brexit in the absence of an Executive. A limited form of direct rule would be unprecedented and complex, and would carry risks that any limited power created might not be wide enough to achieve the necessary objectives.