FROM: **Robin Swann**
Minister for Health

DATE: **15 February 2020**

TO: **First and deputy First Ministers**

SUB-1095-2020: NI CLAUSES FOR SUBMISSION TO THE UK-WIDE DRAFT CORONAVIRUS BILL– URGENT DECISION REQUEST

Introduction

The purpose of this paper is to seek the agreement of the Executive:

- **a.** to the extension to Northern Ireland of powers to make provision (including provision modifying legislation) in connection with an outbreak of pandemic Coronavirus (COVID-19) as set out at **Appendix 1**; and
- **b.** that the necessary legislative provision will be provided for in a UK wide Coronavirus Bill;

1. The Bill will be brought forward on a time-limited basis. The powers being sought are proportionate to the challenges we will face in responding to a severe pandemic and will only be enacted for the duration of the pandemic after which it would be withdrawn through a 'Sun-Setting' process.

2. While this is a cross-cutting issue, I as Health Minister am taking the lead however I can confirm that the other relevant Ministers, i.e. the Minister for Education, Minister of Finance, and Minister for Justice have confirmed to me that they are content with the clauses as drafted which pertain to their area of responsibility. An explanation for each clause as drafted for Northern Ireland is set out in the Explanatory Memorandum at **Appendix 2**.

COVID-19

3. The Department of Health, as Lead Government Department, in collaboration with other Executive Departments is responding to the rapidly evolving situation regarding the novel COVID-19. My Department continue to work closely with the relevant authorities and public health organisations across the UK as the outbreak develops, to ensure we are ready to deal with the health and social care consequences of any outbreak here.

4. On 30 January, the World Health Organisation declared the COVID-19 as a global public health emergency of international concern. The four UK Chief Medical Officers agreed that, given the potential health and social consequences of a major epidemic, it was appropriate to plan and prepare for the **reasonable worst case scenario (RWCS) of COVID-19 pandemic moderate severity, without a vaccine**. Existing pandemic flu guidance was therefore used to plan for the potential impact on health and society while The Cabinet Office collated information in order to devise a RWCS for the 2019-nCoV outbreak.

5. As of the 13 February at 2.00 pm, Public Health England reported **60373** confirmed cases worldwide, UK have **9** confirmed cases to date. There have been **1369** fatalities. To date NI has no confirmed case.

6. The UK-wide response is being led by COBR, chaired by Matt Hancock Secretary of State for Health and Social Care. The directive from COBR was for Devolved Administrations to prepare their contingency arrangements based around reasonable worst case scenario planning for pandemic influenza.

Background

Timing

7. Under normal circumstances where the UK Government proposes new primary legislation that will legislate for NI on devolved matters, the Minister responsible, after consultation with the relevant Assembly Statutory Committee and agreement by the Executive, brings forward a legislative consent motion which seeks the agreement of the Assembly to the UK Parliament considering that Bill

(or, the relevant provisions contained therein) however given the necessity of immediate legislation to deal with the evolving situation there is insufficient time for the customary process to be followed.

8. The urgent decision is required to be made as UK Ministers intend to agree the final text of the draft Bill in time for COBR's meeting on Tuesday 18 February. This means the provisions must be agreed in advance of the next scheduled Executive meeting.

9. We are awaiting confirmation of the Government's time-table for the introduction of this Bill in Parliament.

Consultation

10. Officials are engaging with the relevant Assembly Committees in the absence of being able to seek the Assembly's agreement through the usual Legislative Consent Motion procedure.

Equality and Human Rights

Financial Implications

The financial consequences are difficult to quantify at this early stage. Nevertheless we would need to manage any indemnity commitments and subsequent budgetary calls carefully as they arise.

Regulatory Impact

11. To be considered.

Section 24 of the Northern Ireland Act 1998

12. The Bill is considered to be compatible with section 24 of the Northern Ireland Act 1998. It is necessary to ensure compliance with EU law.

Equality Impact

13. To be considered.

Recommendation/decision required

14. First Minister and deputy First Minister are asked to agree, in accordance with paragraph 2.14 of the Ministerial Code;

    a) to the extension to Northern Ireland of powers to make provision (including provision modifying legislation) in connection with an outbreak of pandemic COVID-19 (as set out at **Appendix 1**, attached separately); and

    b) that the necessary legislative provision is made via the Westminster Coronavirus Bill;

Robin Swann, MLA

Minister of Health

Detailed Background

UK-Wide Pandemic Influenza (Emergency) Bill

Pandemic influenza remains in the highest risk category as the only non-malicious risk with the potential for catastrophic consequences for the whole of the UK, according to The Cabinet Office National Security Risk Assessment 2019.

In October 2016, a major UK-wide exercise (Exercise Cygnus) was conducted, based on an outbreak which was close to the UK's reasonable worst case planning scenario. Whilst providing reassurance on UK preparedness for a mild to moderate pandemic, this exercise did identify gaps in capabilities to overcome a severe pandemic.

To address the lessons from Cygnus, a cross-government UK Pandemic Flu Preparedness Board (PFRB) was established in May 2017, jointly led by The Cabinet Office and DHSC. The PFRB programme is divided into five workstreams, aimed at improving resilience in healthcare and community care, and critical sector resilience.

This work programme was taken forward through the Northern Ireland Civil Contingency Group, with Department of Health in the lead on health and social care, Department of Justice leading on excess deaths, and The Executive Office leading on sector resilience, including collating the Northern Ireland Executive's contribution to a draft UK- Wide Pandemic Influenza Emergency Bill now known as the draft 'Coronavirus Bill'.

Summary of provisions

An explanation for each clause as drafted for Northern Ireland is set out Explanatory Memorandum at **Appendix 2.**

Procedure

The Bill falls into the Negative Resolution Category.

APPENDIX 1

Pandemic Influenza (Emergency) Northern Ireland provisions (Coronavirus Bill) attached separately

APPENDIX 2

Explanatory Memorandum

Clause 3 and Schedule 2: Emergency registration of and extension of prescribing powers for pharmaceutical chemists

1. The Pharmaceutical Society of Northern Ireland (the Society) is the regulatory body for the pharmacy profession in Northern Ireland. The Pharmacy (Northern Ireland) Order 1976 sets out the powers and responsibilities of the Society including the criteria required to be registered as a pharmaceutical chemist (pharmacist) and the criteria required for a pharmacist's entry in the register to be annotated as either a supplementary or independent prescriber.

2. Medicines legislation requires a registered pharmacist to supervise certain activities, for example, the supply of prescription-only medicines from a registered pharmacy. In an emergency, the situation may arise where additional pharmacists are required, or additional pharmacists with annotations are required, to assist with the prescribing and supply of medicines.

3. Clause 3 introduces Schedule 2, which amends the Pharmacy (Northern Ireland) Order 1976 (the 1976 Order) to allow the registrar to temporarily enter in the register the name of a pharmacist, or a group of pharmacists when directed by the Department of Health that an emergency has occurred or is occurring. This will allow people who do not meet the qualifications under the 1976 Order to be registered in an emergency situation at the discretion of the registrar. Groups that could be considered for temporary registration may include pre-registration pharmacists or recently retired pharmacists.

4. Provision is also made to allow the registrar to temporarily annotate a pharmacist's record or the record of a group of pharmacists in the register when directed by the Department of Health that an emergency has occurred or is occurring. The purpose of the annotation would be to extend the power to prescribe certain drugs, medicines and appliances during the emergency period to people who would not be authorised under the 1976 Order.

5. The Schedule also provides that certain regulations and provisions of the 1976 Order that do not apply to temporary registrations and annotations, will be subject to a power to reapply these by regulations.

6. Paragraph 3 of the Schedule also removes certain decisions relating to temporary registrations and annotations from the scope of the normal appeal mechanisms under the 1976 Order.

Clause 4 and Schedules 4 and 5: Temporary modification of mental health and mental capacity legislation

Schedule 4 – Mental Health (Northern Ireland) Order 1986

7. Schedule 4 (which is introduced by clause 4(2)) provides for modifications to the Mental Health (Northern Ireland) Order 1986 (the 1986 Order) during the emergency period.

8. Part 1 provides the introductory provisions including interpretation and how to read the forms that have been prescribed as a result of a subordinate legislation power in the 1986 Order.

9. Part 2, paragraphs 3 to 8 provide modifications to Part 2 of the 1986 Order relating to the application for detention and the periods of detention. This includes temporary modifications of the professional requirements to make applications and reports, timings relating to when medical recommendations or reports can be made and rectified, and the length of time a person can be detained. This is to allow for a situation where a large number of health and social care staff are unable to carry out their normal functions due to the emergency.

10. Without the modifications situations could arise where a person cannot be detained as the right person is not available within the prescribed time limits which could cause significant risks of harm to the person or to others.

11. Part 2, paragraphs 9 to 14, provide for modifications of Part 3 of the 1986 Order during the emergency period. Paragraph 9 modifies the period during which a

person can be remanded in hospital, whilst paragraphs 10 and 11 make modifications relating to the medical evidence required before a court can make a remand or a healthcare disposal under Part 3 of the 1986 Order or make a determination of unfitness to plead or a direction for recording a finding that a person is not guilty by reason of insanity. Paragraph 12 makes modifications in relation to the medical reports required before a transfer of a prisoner or other person detained in a custodial environment to a healthcare environment can take place. Paragraph 13 makes modifications of the timescales within which an accused or convicted person is conveyed or admitted to hospital under Part 3 of the 1986 Order. These provisions allow for a situation where medical staff may be unable to carry out their usual functions due to the emergency. Paragraph 14 allows the Department of Health to designate a different hospital than the one it previously designated during the emergency period in order to allow maximum flexibility during a period when it may be impractical to admit a person to the previously designated hospital and it would be possible that a person may be admitted sooner to a different hospital.

12. Part 2, paragraph 15, enables the Department of Health to provide a modified Code of Practice during the time of the emergency.

13. Part 3 provides modification for transitions from the emergency period back to the full function of the 1986 Order. Part 4 provides a requirement for each HSC trust to maintain certain records and to report on and review how the emergency provisions were used.

Schedule 5 – Mental Capacity Act (Northern Ireland) 2016

14. Schedule 5 (introduced by clause 4(3)) provides for modifications to the Mental Capacity Act (Northern Ireland) 2016 (the 2016 Act) during the emergency period.

15. Part 1 provides the introductory provisions including interpretation and how to read the forms that have been prescribed as a result of a subordinate legislation power in the 2016 Act.

16. Part 2, paragraphs 3 to 9 provide modifications to parts of the 2016 Act relating to the functioning of additional safeguards, such as the operation of the panels. This includes temporary modifications on timings relating to when reports can be made, the length of time an authorisation can last and the requirements relating to who must be consulted before a report for short-term detention for examination can be authorised. This is to allow for a situation where a large number of health and social care staff are unable to carry out their normal functions due to the emergency.

17. Without these modifications, situations could arise where a person cannot comply with the additional safeguards required for the protection of liability found in section 9 of the 2016 Act to apply. Without this protection, acts where a person over 16 lacks capacity to consent could not be carried out, with the effect that the person could suffer harm or the person doing an act in the person's best interests would not be protected from liability.

18. Part 2, paragraphs 10 to 17 provide for modification of Parts 9 and 10 of the 2016 Act during the emergency period. Paragraph 10 makes provision for an extension to the time limits for detaining a person in a place of safety. Paragraph 11 modifies the period during which a person can be remanded in hospital. Paragraphs 12, 13, and 14 make modifications relating to the medical evidence required before a court can make a remand or a healthcare disposal under Part 10 of the Act or make a determination of unfitness to plead or a direction for recording a finding that a person is not guilty by reason of insanity. Paragraph 15 makes modifications to the timescales for a medical practitioner making an extension report for a public protection order without restrictions. Paragraph 16 makes modifications in relation to the medical reports required before a transfer of a prisoner or other person detained in a custodial environment to a healthcare environment can take place. Paragraph 17 makes modifications to the timescales within which a person subject to a hospital transfer direction is admitted to hospital under Part 10 of the 2016 Act. These provisions allow for a situation where medical staff may be unable to carry out their usual functions due to the emergency.

19. Part 2, paragraph 18, enables the Department of Health to provide a modified Code of Practice during the time of the emergency.

20. Part 3 provides modification for transitions from the emergency period back to the full function of the 2016 Act. Part 4 provides a requirement for each HSC trust to maintain certain records and to report and review how the emergency provisions were used.

Clause 7: Indemnity for pandemic-related health service activity

21. Subsection (1) of clause 7 gives the Department of Health in Northern Ireland (the Department) the power to temporarily indemnify any person acting on behalf of the Department in the absence of other indemnity arrangements.

Subsections (2) and (3) detail the parameters of the indemnity for the purposes of the Influenza Pandemic period.

As per subsections (4) and (5) the extent to any liability and indemnity will be determined by an officer of, or someone appointed by the Department.

Existing healthcare providers would not avail of these arrangements, where they ordinarily retain any professional indemnity arrangement, as part of their normal professional employment.

Clause 10 and Schedule 6: Temporary modification of legislation relating to registration of deaths and still-births

22. The registration of deaths and still-births in Northern Ireland is governed by the Births and Deaths Registration (Northern Ireland) Order 1976 (the "1976 Order") and the Civil Registration Regulations (Northern Ireland) 2012 (the 2012 Regulations). Schedule 1 of the Bill makes amendments to and modifies the application of various provisions in these pieces of legislation.

23. Article 15 of the 1976 Order places a duty on a registered doctor or registered midwife to give an informant a certificate of cause of stillbirth; the informant must

deliver it to the registrar. On registration of the still-birth the registrar must provide a certificate of registration to the informant or funeral director to enable the disposal of the body to proceed.

24. Paragraph 10 requires the doctor or registered midwife to send the certificate electronically to the registrar.

25. Paragraph 11 modifies Form 10 in consequence of paragraph 10.

26. Article 15 also enables a registrar who has received written notification and the certificate of cause of still-birth from the informant to issue a certificate of registration to the informant without the registration of death having been completed.

27. Paragraph 12 enables the registrar, following receipt of the notification and a copy of the certificate of cause of stillbirth, to electronically issue the certificate of registration directly to the funeral director to enable the disposal of the body to proceed.

28. Regulation 25 of the 2012 Regulations requires that a qualified informant attend personally before a registrar to give information for the registration of a death and to verify and sign the registration in the presence of the registrar.

29. Paragraph 13 relaxes these requirements to allow informants to provide the particulars required for the registration of deaths or still-births either by telephone or electronically and it removes the need for informants to sign the register. The purpose of this provision is to enable members of the public who cannot travel to the register office, due to illness, transport difficulties or other commitments to register deaths without attendance at register office. It is also intended that this will reduce the chance of cross infection by collecting information for death registration by a different means rather than face to face interview. Staff shortages at the registrar's office and other reasons are also covered.

30. Paragraph 14 modifies Forms 2 & 3 of the 2012 regulations in consequence of paragraph 13.

31. Article 25 of the 1976 Order requires that, where a person has died of a natural illness for which the person was treated by a doctor within 28 days before dying, that doctor must sign a certificate stating the cause of death (the Medical Certificate of Cause of Death (MCCD)) and give this to a qualified informant. The qualified informant must then deliver the MCCD to the registrar to enable the death to be registered.

32. Article 25 of the 1976 Order also, therefore, provides that the doctor must not give an MCCD to a qualified informant if the death is referred to the coroner.

33. Paragraphs 15 & 16 relax these requirements by providing that, if the deceased died of a natural illness and no doctor attended the deceased during their last illness, the MCCD may be signed by any doctor who is able to state the cause of the deceased's death to the best of their knowledge and belief. If the deceased was seen by a doctor within 28 days prior to death another doctor can sign the MCCD if the person died as a result of natural illness, it is impracticable for the attending doctor to sign the MCCD and the signing doctor can state to the best of their knowledge and belief the case of death.

34. Paragraph 17 covers the amendment of Form 12 of the 2012 Regulations where a doctor who signs the certificate of cause of death under the conditions of paragraphs 7 & 8, and the form will be amended to remove the references to "date last seen alive and treated by me".

35. Section 7 of the Coroners Act (Northern Ireland) 1959 requires a death from natural illness or disease to be notified to the coroner if the deceased has not been seen or treated by a registered doctor within 28 days prior to the death.

36. Paragraph 18 removes this requirement for persons who die from natural illness or disease during the emergency period.

37. Article 25 of the 1976 Order also provides that, on completion of a MCCD, the doctor must give the certificate to the informant who will deliver it to the registrar within 5 days to enable the registration to be completed.

38. Paragraph 19 enables the doctor who signs the MCCD during the emergency period to send this electronically directly to the registrar. It does not have to be given to the informant although they can receive a copy if they wish. The informant does not need to take any action in relation to the certificate.

39. Paragraph 20 modifies various provisions in consequence of paragraph 19.

40. Article 29 of the 1976 Order deals with the certificate of registration of death, which is required by the funeral director to enable the disposal of the body to proceed. This provides that, on completion of the registration of death, the registrar must give the person providing the information a certificate that they have registered the death. That person is then required to give this certificate to the funeral director.

41. Paragraph 21 enables the certificate of registration to be issued directly to the funeral director and in an electronic format.

42. Paragraph 22 allows for anything that is being done in reliance on anything in the Schedule to continue to be done even after the emergency period ends. For example, documents relating to the registration of a death or still-birth (such as the cause of death or cause of still-birth certificate) that have been sent electronically before the end of the emergency period to be processed after the end of the period.

Clause 12: Modification of requirements regarding medical certificates for cremations

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Clause 13: Deaths in custody from natural illness

44. Section 39 of the Prison Act (Northern Ireland) 1953 requires an inquest to be held into any death in prison and section 18 of the Coroners Act (Northern Ireland) 1959 requires an inquest into a death in prison to be held with a jury.

45. The purpose of clause 13 is to enable a coroner to hold (or continue to hold) an inquest into a death in prison without a jury, if the death occurred during the emergency period and was caused by natural illness. The inquest must open either during the emergency period, or within six months of the end of the emergency period. Under the provision, the inquest can still be heard with a jury if the coroner considers this desirable (however, the statutory requirement for a jury to be summoned does not apply).

46. Section 13 of the 1959 Act enables one inquest to be held into a number of deaths resulting from the same circumstances. The clause also modifies the application of this provision to enable one inquest without a jury to be held into a number of deaths in prison from natural illness occurring during the emergency period.

47. The territorial extent and application of this clause is Northern Ireland.

Clause 14 and Part 3 of Schedule 7: Temporary closure of educational institutions and childcare premises

Part 3 of Schedule 7 to the Bill (introduced by clause 14) is intended to provide a power for the Department of Education in Northern Ireland to direct schools in Northern Ireland to close in the event of a Pandemic Influenza outbreak in Northern Ireland.

[Paragraph 9(1)] provides that the Department of Education in Northern Ireland has the power to direct the managers of particular schools, or schools in general, to close, during the period of an emergency caused by a Pandemic Influenza outbreak. This is described as a "temporary closure direction".

[Paragraph 9(2)] describes the effect of a temporary closure direction. The managers of schools must take all reasonable steps to ensure that no persons are in

attendance at the school for the duration of a temporary closure direction. However, it also allows the managers of schools with boarding departments to allow the pupils therein to remain but that they should be confined to the boarding department of the school. This is to allow for the situation whereby the pupils boarding at the school cannot travel home because of the emergency caused by the pandemic influenza event.

[Paragraph 9(3)] allows the Department to direct a school to completely close or to only direct that part of the school should close. This allows flexibility so that the decision to close part or all of the school is commensurate with the risk and danger caused by the pandemic influenza event. It is intended to allow flexibility to respond to medical advice in the most appropriate fashion.

[Paragraph 9(4)] places a duty on the Department to publish a temporary closure direction when it is issued.

[Paragraph 9(5)] describes the length of time that a temporary closure direction can have affect. That is, it can be for a specific period of time, or it can be open-ended until such time as the Department issues a new direction allowing the school to re-open.

[Paragraph 9(6)] places a duty on the managers of a school, which is subject to a temporary closure direction, to have regard to any guidance issued by the Department about how to comply with a temporary closure direction.

[Paragraph 9(7)] allows the Department of Education to apply to a Court for an Injunction forcing a school (or schools) to close should they fail to comply with a direction to close in a pandemic influenza event. [Paragraph 9(8)] provides that no notice need be given to the managers of the school (or schools) in question before the Department applies for an injunction. This is because, in the circumstances, it may be necessary to move very quickly.

[Paragraph 9(9)] relaxes (for the period of the temporary closure direction): the current duty on parents to secure education of their children; the duty on managers of schools to provide milk and meals; the duty on the managers of schools to admit a child who is the subject of an attendance order; the duty on parents to ensure their

children regularly attend school; and the duty on the Education Authority to make exceptional education provision for children who require it.

[Paragraph 9(10)] states that a child cannot be considered as not having regularly attended school, if the school has been the subject of temporary closure direction and has been closed because of pandemic influenza emergency.

48. [Paragraph 9(11)] provides an interpretation of some terms used in the paragraph.

Childcare

49. [Paragraph 10 of Schedule 7]: The provisions relating to childcare give the Department of Health in Northern Ireland the power to issue temporary closure directions to registered day care providers and childminders (childcare providers) in the event of a pandemic influenza outbreak. This requires the affected childcare providers to take reasonable steps to ensure that persons do not attend their premises for any purpose relating to childcare for the period of time set out in the direction.

50. Paragraph 10(3) of the Schedule allows the Department to specify, in any temporary closure direction: any steps required to be taken by the childcare provider; the persons affected by restrictions in attendance at the premises; and the purposes for which attendance is restricted.

51. The Department is required to publish any temporary closure direction and a temporary closure direction would apply until either the end of the period specified in in the direction, or the revocation of the direction by a further Departmental direction issued before that date.

52. Registered childcare providers are required to have regard to any guidance issued by the Department in relation to compliance with temporary closure directions.

53. The Department has a power to enforce a temporary closure direction by way of an injunction. An application for an injunction may be made without notice.

54. Provision is made, where or a temporary closure direction is in place, for duties which an authority is required to discharge in respect of children in need by Article

19(2) or (5) of the Children (Northern Ireland) Order 1995 to be disregarded for the duration of the application of the temporary closure direction.