

FROM THE MINISTER OF HEALTH



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Dear *Simon,*

Thank you for your letter of 17 April 2020 regarding The Health Protection (Coronavirus, Restrictions) regulations (Northern Ireland) 2020.

Firstly, I would like to take the opportunity to thank PSNI colleagues for rising to the operational challenge of enforcing the restrictions and requirements of the Regulations and for providing ongoing support to the public health response to the spread of coronavirus disease. This is very much appreciated.

Despite the increased risk of breaches of the rules by members of the public during the fine weather over the extended Easter weekend and since, police messaging and tactical deployment of resources appears to have been successful in encouraging most to do the right thing and stay at home. I am very grateful to you and your colleagues for this and ask that you seek to maintain this critical element of the response to COVID-19.

The Prime Minister addressed the nation on 23 March 2020 to announce the need 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. These restrictions and requirements were to be underpinned by emergency legislation introduced in each of the 4 UK countries.

The Health Protection (Coronavirus, Restrictions) regulations (Northern Ireland) 2020 were made by urgent procedure and came into operation on 28 March 2020.

The Regulations are intended to protect the health of the population by limiting the spread of COVID-19 infection in order to minimise the numbers of cases and deaths,

and to ensure as far as possible that the health care system has the capacity to care for COVID-19 patients and care for all patients, present and future.

The Regulations require that my Department carry out a review of the requirements and restrictions imposed by the Regulations every 21 days, with the next review due by 9 May. Decisions on recommendations based on the outcome of these regular reviews is a matter for the Executive, reflecting the fact that the Regulations cut across the responsibilities of a number of my Ministerial colleagues.

In addition to the advice from the Chief Medical Officer and Chief Scientific Adviser, the first review, which was required by 18 April, considered the progression of the outbreak of COVID-19 in Northern Ireland and the modelling of its future progression. Any available evidence on compliance with and enforcement of the Regulations that PSNI can provide would be helpful in informing future reviews.

I note your request that a formal "commissioning arrangement" be established to set out how enforcement supports the public health response and that this should be the subject of regular review. While I note your comment that you have yet to receive this from my Department, I should highlight that this proposal was first raised with my officials on the afternoon of 15 April. Their response, issued a short time later, agreed that there should be further discussions on this. I can confirm that that remains the case, and I am happy for my officials to work with PSNI colleagues to develop a document that sets out expectations in terms of the PSNI enforcement role. To that end, I would be grateful if you would provide contact details for a nominated point of contact in PSNI. You have further suggested that such a document might also be referred to the Executive for consideration. Again, I am content to do this, either as part of the next review of the restrictions and requirements of the Regulations, or as a separate matter as appropriate.

I agree that the need to consider the adequacy of enforcement arrangements, including whether additional enforcement bodies should be designated for the purpose of some or all aspects of the Regulations, should be included as part of future reviews to be considered by the Executive.

The Attorney General wrote to the First Minister and deputy First Minister on 30 March about Regulation 5 (which deals with restrictions on movement). He subsequently wrote to me on 14 April about a different aspect of that Regulation. I am most grateful for the Attorney's advice and policy suggestions, to which my Department has given very careful consideration.

In his note of 30 March, the Attorney offered advice on Regulation 5 suggesting that the Regulation ought to be amended to deal with any uncertainty about its possible effects. The Departmental Solicitor has noted the Attorney's suggestion. However, he is satisfied that the Regulation, as made, is functioning as intended. In these circumstances I am not minded to propose amending Regulation 5 at present, but will keep this matter under review.

The Attorney's letter of 14 April put forward a policy suggestion on a matter that has received considerable attention, namely the extent to which it is permissible to drive in order to take exercise. It has been generally recognised that this was a matter on which

there needed to be a clear, consistent application and explanation of the law, and the approach to enforcement.

The PSNI is actively applying a '*reasonableness test*' to determine whether such travel can be justified in any given instance. This is with a view to preventing travel for leisure purposes, for example, to a beach or coastal town, being presented as travel for the purpose of exercise. I believe this to be a reasonable and pragmatic approach to enforcement.

Cabinet Office guidance published online on 29th March was updated recently to clarify the position on exercising more than once a day due to a significant health condition. The guidance currently reads: "*If you (or a person in your care) have a specific health condition that requires you to leave the home to maintain your health - including if that involves travel beyond your local area - then you can do so. This could, for example, include where individuals with learning disabilities or autism require specific exercise in an open space two or three times each day - ideally in line with a care plan agreed with a medical professional.*

Even in such cases, in order to reduce the spread of infection and protect those exercising, travel outside of the home should be limited, as close to your local area as possible, and you should remain at least 2 metres apart from anyone who is not a member of your household or a carer at all times."

In the exceptional times and circumstances in which we find ourselves, it was never going to be the case that the Regulations would provide for every single situation that might arise for every individual in Northern Ireland. Circumstances will differ and that is why a reasonable approach has to be adopted. This is in keeping with the intention behind the Regulations which is to provide a proportionate response to a public health emergency.

The Attorney also put forward the alternative policy option of a specified limit to the distance one could drive in order to take exercise (legislation in the Republic of Ireland has introduced a travel limit of 2 km from home for this purpose).

I have carefully considered this suggestion, but I conclude that the approach currently reflected in our Regulations is preferable. It would be difficult to determine and justify any particular limit that could be applied in all situations. Adopting a specific distance limit would make enforcement potentially very difficult and potentially raise questions about specified travel distances for other activities, such as travel to work or to a funeral. Taking these considerations into account, along with legal advice, I am not minded to recommend an amendment to the Regulations to introduce a distance limit on driving in order to take exercise.

I hope that my reply provides the clarification you seek in respect of the matters you have raised. I am happy for my officials to continue to liaise closely with your representatives and other relevant parties to work together through these rapidly evolving and extremely challenging times.

I am copying this letter to the First Minister and deputy First Minister, Minister of Justice, Permanent Secretary for the Department of Justice and the Head of the Civil Service.

I trust you find this response helpful.

Yours sincerely

PD

Robin Swann MLA
Minister of Health

CC:

Arlene Foster – First Minister
Michelle O'Neill – Deputy First Minister
Naomi Long – Minister for Justice
Peter May – Permanent Secretary – Department of Justice
David Sterling – Head of Civil Service