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MEMORANDUM E (20) 62 (C)

FROM: DIANE DODDS
MINISTER FOR THE ECONOMY

DATE: 17 APRIL 2020

TO: EXECUTIVE COMMITTEE

FINAL EXECUTIVE PAPER – LABOUR RELATIONS AGENCY: ENGAGEMENT FORUM ON COVID - 19

I attach a draft Executive paper seeking agreement that:

- a. The Forum is commended for coming together in a spirit of common purpose to protect lives and to make every effort to sustain the continued operation of key industries and businesses.
- b. The Priority Sector list be published with the instruction that this list is for information purposes only and that if a company can work within the social distancing guidelines then it should do so.
- c. The Forum's '**Covid-19: Working Through This Together, A Practical Guide to Making Workplaces Safer (Annex A)**' be published; and

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In order to ensure that we move swiftly to tackle the Coronavirus emergency, as it applies to the NI Economy / Labour Market, I am requesting that this paper is discussed at the Executive meeting on Friday 17 April 2020.

Background

1. On 28 March 2020, the First Minister and Deputy First Minister announced a series of enhanced containment measures designed to restrict the spread of the Covid-19 virus as it applies to the NI Economy / Labour Market.
2. The package of measures included the establishment of a multi-stakeholder forum to advise the Executive on how best to manage the challenge of Covid-19 as it applies to certain issues related to the NI Economy/Labour Market;

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and to be the primary conduit for the Executive to consult on new approaches in response to emerging pressures.

3. I would like to take this opportunity to update the Committee on the work and progress of the Labour Relations Agency (LRA) Engagement Forum (the Forum) to date, including recommendations arising from two specific sub-groups.
4. The core purpose of the Forum is to advise and support the Executive in its commitment to contain the Covid-19 virus as it applies to the workplace. This is a unique and very diverse stakeholder group of Business and Union representatives who came together to be the single voice for employees / workers and businesses alike.
5. Given the urgency of the issues for consideration by the Forum, there has been five plenary meetings to date, and a number of sub-group meetings to expedite discussions and forthcoming solutions.
6. On 6th April I attended the meeting and paid tribute to their effort and commitment. The Forum has come together in a spirit of common purpose to protect lives during the Covid-19 emergency, whilst making every effort to sustain the continued operation of key industries and businesses. I specifically acknowledged the role played by Marie Mallon from the LRA who has chaired the Forum in a very fair, disciplined and competent manner
7. The Forum acknowledges the Ministerial direction given to the group that they must focus on matters that fall within its Terms of Reference. To this end, the Forum assured me that all of its current and future discussions are/will continue to be consistent with these agreed Terms of Reference.

NI Engagement Forum Recommendations

8. The Forum has submitted for my consideration, recommendations relating to the first two of its key tasks as set out in the Terms of Reference:
 - A framework of **priority** sectors/sub sectors; and
 - An Emergency Code of Practice offering practical assistance to essential businesses and their workforce to comply with the Health Protection Regulations and PHA/HSE guidance (single code developed by HSE, LRA and PHA).

Priority Sectors

9. The Forum has produced a Priority Sectors list, which is fully supported by both business and union representatives on the forum; the aim of the list is to clarify what constitutes a priority sector at this time, and to allow NI companies to justify the continuance of their business operations. DSO have looked at the List and ensured all the companies that are included comply with the

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latest Regulations. An accompanying narrative also complements the Priority List.

10. The eligibility test to assist individual businesses to self-determine their inclusion on the new Priority List is contained within the following two Forum documents / publications:

- The list of priority sectors and sub-sectors.
- The Forum’s publication ‘**Covid-19: Working Through This Together, A Practical Guide to Making Workplaces Safer**’; and

11. The Forum have also suggested that Businesses that do not meet the eligibility test can consider repurposing their operations to align with a priority sector / service.

12. The Forum have also proposed a Registration process for all businesses to declare that they are part of one of the priority sectors; the Forum have suggested that this would be managed by the Department for the Economy (DfE). The introduction of such a process would present significant issues for my Department;

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13. My initial assessment is that it should be for the Executive to determine the purpose of any list of essential businesses, taking into account the consequences of any decisions made e.g. should businesses not listed be compelled to close, who would have the powers to enforce this, and how would this impact on businesses with operations in GB as well as NI where there would be different requirements?

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15. The proposals also contain recommendations that “Should a business be forced to close, contrary to the advice provided by the UK government, then the NI Executive must confirm that those impacted businesses will fully qualify for the furlough scheme / Job Retention Scheme.”

16. It should be noted that the Job Retention Scheme was initiated under the authority of HMRC and is a reserved matter and not the responsibility of the Department or the Executive. I would be happy to reflect these comments to the Chancellor.

17. Finally, the sub group has recommended the establishment of a ‘Resilience Fund’ similar to the one developed in Wales to enable grants to be provided to any business forced to close as a consequence of the priority list. The Welsh

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Government announced the Economic Resilience Fund to 'plug the gaps' in the support schemes already announced by the UK Government, including the Job Retention Scheme and the Self-employed Income Support Scheme, which will guarantee 80% of people's wages and income.

18. The establishment of a 'Resilience Fund' would be a matter for the NI Executive as it would be cross cutting in its nature and would likely draw enquiries from the private and third sector organisations. There are no indicative costs established for such a fund but it can be assumed that they would be substantial. This suggested Fund is in addition to the support funds already announced by me as Minister for the Economy i.e. the £10K scheme and the £25K Scheme.

Code of Practice

19. In relation to the Forum's publication '**Covid-19: Working Through This Together, A Practical Guide to Making Workplaces Safer**', this has been developed and informed by professional advice from the HSE, HSC and the LRA as well as input from an employer and trade union perspective. The key objective being to ensure that the guide does not compromise any statutory requirements and have practical application in the workplace.
20. Bearing in mind that this publication is a guidance document for businesses, rather than a statutory list of enforceable requirements, the Executive may wish to consider its publication.
21. My officials are currently working as a matter of urgency to assess the viability of all of the Forum's recommendations; taking into consideration, legal, administrative and resourcing implications. It should also be noted that the attached Priority List will likely be subject to change as a result of our considerations. Once this work is completed I will respond formally to the Chair of the Engagement Forum and provide the Committee a further detailed update.

**DIANE DODDS
MINISTER FOR THE ECONOMY**

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April 2020

Priority Sectors During COVID-19: Setting the Context

Instructed by the Northern Ireland Executive and in response to the COVID-19 pandemic, the NI Engagement Forum (the Forum), a collaboration of business bodies, trade unions and key statutory bodies, has compiled an agreed list of sectors and industries deemed to be providing priority goods and services in the immediate future

The COVID-19 pandemic is primarily a public health crisis and in responding to it, the **number one priority should also be the protection of lives** and responding to it will require everyone taking action to protect lives

This guidance must be treated as a live document; it is intended to enable those businesses operating within the named sectors, and importantly those that form part of the extensive supply chain supporting the continued provision of a priority goods and services, to continue to do so.

The Northern Ireland Executive has been clear that no one should leave their home without a justifiable reason, and that includes the requirement to travel to work.

The Forum would re-affirm that everyone should work from home where possible. No one should travel to work unless their work cannot be done from home and it is in a priority sector.

As a society, every citizen has a duty of care to ensure we do all we can to ensure lives are not exposed to unnecessary risk while also finely balancing the enablement of the economy to continue to function to allow for the ongoing provision of essential goods and services, avoid significant job losses and ensure people get paid.

It is therefore imperative, as we move into the period during which the spread of the coronavirus is expected to peak, that there is unambiguous clarity about what constitutes priority work to help fight the virus and sustain healthy homes and communities. This can only be achieved through the avoidance of unnecessary social interaction, which we know increases the risk of spreading the virus.

This is vital to allay any confusion and bring greater clarity to those businesses which should be expected to continue trading and businesses which should be encouraged to temporarily close to reduce the risk of community infection.

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This guidance is directed at companies critical to local, national and global supply chains that are responding to the COVID-19 crisis, and other companies that perform critical global roles.

Furthermore, businesses, which supply priority sectors, including down-stream suppliers and subcontractors, are covered by this guidance.

The Forum also acknowledges that some sectors may not be considered priority under this guidance but are able to continue to operate with staff working from home.

Similarly, organisations providing priority services should facilitate remote working as far as possible.

Those organisations operating in sectors not included on the list will have an opportunity to appeal the exclusion.

Furthermore, all priority sectors must fully comply with the Emergency Code of Practice that offers practical assistance for priority sectors and their workforce, to ensure full compliance with Health Protection Regulations and Public Health Agency (PHA)/Health and Safety Executive (HSE) guidance (single code developed jointly by HSE, Labour Relations Agency and PHA).

Eligibility test

To assist businesses in determining their eligibility to continue to operate under this guidance, the following guide should be used:

1. Can you meet the requirements of **the Forum's guidance: Covid-19: Working Through This Together – A Practical Guide TO Making Workplace Safer'** to fully comply with the Health Protection Regulations and Public Health Agency (PHA)/Health and Safety Executive (HSE) guidance (single code developed by HSE, Labor Relations Agency and PHA).

If yes, move to step 2

If no, can you:

- (i) make provisions for staff to work from home? Those businesses that can facilitate remote working for sufficient staff, to sustain their operations, may continue to operate unhindered
 - (ii) redesign your production operations to ensure compliance with the **the Forum's guidance: Covid-19: Working Through This Together – A Practical Guide TO Making Workplace Safer'**.
2. Is your business directly involved in a priority area?
If yes, you may continue to operate
If no, move to step 3

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3. Is your business a significant downstream supplier or subcontractor servicing or supplying a priority sector?
If yes, you may continue to operate
If no, move to step 4
4. Is your business able to repurpose production to provide one of the many priority goods and services to help fight against COVID-19 and can meet the emergency code of practice as outlined in step 1.
If no, move to step 5
5. Businesses not deemed eligible after following the above steps will have formal recourse through an appeals process. Further guidance is provided below to provide

Registration

Organisations must register as a business in a 'priority sector' with the Department for the Economy within five working days of the list being published (by XX April) in order to assist the public and indeed Government Departments and Agencies who are coordinating the response to this health emergency.

Any business that does not immediately identify as part of the agreed priority sectors will have the opportunity to repurpose, to provide goods or services critical to the fight against COVID 19. Businesses will be given a grace period of 5 working days to repurpose from non-essential to priority and apply to the Department for the Economy to seek approval and registration.

Many firms have already successfully repurposed to meet the demand from priority sectors, are playing a huge role in sustaining life. These initiatives are hugely welcomed and to be encouraged.

Registered businesses will be included on a publicly available list on the Department for the Economy website.

The list will also form part of the verification process used by government agencies that are responsible for the enforcement of The Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020 such as the Health and Safety Executive Northern Ireland and the Police Service of Northern Ireland.

The list will also enable the signposting of evolving procurement opportunities from government and other agencies and provide a vital communication tool for the sharing of information pertaining to the ongoing fight against the spread of COVID-19.

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Right of Appeal

An appeals process, run by the Department for Economy, will enable organisations to query their exclusion from the list by clearly identifying how they (i) meet the requirement of the aforementioned priority list and/or (ii), how they are assisting in the fight against COVID-19.

This need not apply to those businesses that are able to operate entirely on a remote basis, whose operations should be allowed to continue unhindered.

Further guidance / other considerations

A list of primary, secondary, and third tier suppliers must be established to ensure those supply chains are satisfactorily prioritised. Employers in priority sectors should assist their downstream supply chains by confirming in writing their importance to their continued operation.

As the COVID-19 pandemic continues to make a significant impact on economic and community life, all businesses and individuals must reflect on how we can reduce social interaction and prioritise operations to stem the spread of the coronavirus.

Where possible, businesses should identify what operations/plans can be postponed, delayed, or streamlined where appropriate to assist with reducing the numbers of people interacting in the workplace.

Special provisions

Should a business be required to close, contrary to the advice provided by the UK government, the NI Executive must confirm that impacted businesses will fully qualify for the furlough scheme/Job Retention Scheme.

For those businesses with sister operations in Great Britain that will continue to operate, it must be guaranteed Northern Ireland-based operations are not unfairly disadvantaged by HMRC during the furlough rebate process and incur liabilities for the 80% salary costs.

A Resilience Fund similar to that available in Wales should also be considered, making grants available to any businesses forced to close as a consequence of this list.

Affected businesses should be able to apply for grants to cover costs such as contractual liabilities (assuming force majeure clauses are not enacted or rejected by insurance companies who refuse to recognise a deviation from UK government advice), pay salaries until the HMRC rebate is paid. Ongoing running fixed costs and additional security costs to ensure vacant buildings are protected from a higher risk of theft/burglary should also be covered.

Updates

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The list of priority sectors, and the accompanying guidance will be updated on an ongoing basis and as such, should be treated as a live document.

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