

MEMORANDUM E (XX)

**[Executive Secretariat will
assign the appropriate
number]**

**FROM: ROBIN SWANN MLA
MINISTER FOR HEALTH**

DATE: 28 March 2020

TO: EXECUTIVE COMMITTEE

**THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NORTHERN
IRELAND) REGULATIONS 2020**

Introduction

1. I attach a draft of the above Regulations. I recommend that they are made and brought into operation as soon as possible, in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Northern Ireland.
2. I consider that the restrictions and requirements that would be imposed by these Regulations would be proportionate to what they (the Regulations) seek to achieve, which is a public health response to that threat.
3. I am also of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by a resolution of, the Assembly.
4. Nevertheless, the Regulations will be subject to the Confirmatory control procedure in the Assembly. This means that they can be made and brought into operation, but would cease to have effect unless approved by resolution of the Assembly within a specified period (28 days). I recommend that we should aim to schedule the debate as soon as possible.

5.

LPP/LAP

6. In these circumstances, and given the highly intrusive nature of the Regulations in legal terms, I consider that the matter requires consideration by the Executive. Given the urgency and gravity of the matter, I am obliged to use the urgent decision procedure in paragraph 2.14 of the Ministerial Code.

Scope and content of the Regulations

7. The Regulations reflect the policy discussions and agreement reached during meetings of the COBRA (M) Committee in recent weeks, in which the Devolved Administrations participated. They reflect the agreed 'four nations' approach that has been adopted, and follow very closely the form and content of similar Regulations that have been made (and are now in operation) in England – The Health Protection (Coronavirus, Restrictions) (England) 2020.
8. For the most part, any departure from the English Regulations is to reflect jurisdictional differences. The following paragraphs highlight the main differences from the English regulations.

Penalties

9. The English regulations allow for an unlimited fine upon summary conviction (magistrate's court). That is not permissible under the Northern Ireland legal system¹. Instead, the draft Regulations allow for a maximum fine of £5000.
10. This may seem low in comparison with the English regulations. However, it would be proportionate for any minor offences under the Regulations. If there is very serious or more persistent offending, that would be unlikely to be deterred by such a fine, then consideration could be given to using the power of the Executive Office to issue directions. Such directions can require the closure of premises or restrictions on their use, or the banning of mass gatherings. The penalties for failing to comply with a direction are substantial – a fine of up to £100,000 on summary conviction, or an unlimited fine following conviction on indictment.

Enforcement

11. For both the English and draft Northern Ireland regulations, enforcement would be primarily a matter for the relevant police services. In addition to that, the English Regulations provide for enforcement by:
- local authorities;
 - persons designated by local authorities;
 - police community support officers; or
 - persons designated by the Secretary of State for Health.

¹ There is also a limitation on penalties in the parent primary legislation – The Public Health (Northern Ireland) Act 1967

12. For the Northern Ireland Regulations, I have recommended a simpler approach of enforcement by:

- PSNI (“a constable”); or
- persons designated by my Department (in respect of Regulations 3 and 4).

13. I understand that we do not have police community support officers in Northern Ireland. The provision would allow for Health and Safety Executive and district council staff (who will already have a key enforcement role in relation to health and safety at work legislation) to be designated to enforce relevant regulations.

Coming into operation

14. Subject to Executive agreement, the Regulations could be made to come into operation at a specified time later today² - I recommend 11.00pm.

15. Executive colleagues will appreciate that the Coronavirus pandemic will affect every one of our citizens, and every aspect of public life. Every Northern Ireland Department is disrupted, and every Department has a key role to play. It is vital – in the literal sense of that word - that we, as an Executive, take forward a coherent strategy to tackle the pandemic. These Regulations will be an essential component of that strategy. In my view they are necessary, but may, of course, not be sufficient. In the coming weeks we may need to take further action, using the powers available to my Department and those of the Executive Office.

Recommendation / Decision sought

16. I recommend that the First Minister and deputy First Minister agree that, under paragraph 2.14 of the Ministerial Code:

- I. I should make the decision that, in accordance with Section 25Q of the Public Health Act (Northern Ireland) Act 1967, the Department of Health should make and lay in the Assembly to day, the Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020; and
- II. the Regulations should come into force as soon as possible.

17. I am also copying this paper to the Attorney General and Departmental Solicitor, and to First Legislative Counsel.

**ROBIN SWANN MLA
MINISTER FOR HEALTH**

² If the operative date is the day the Regulations are made, the time must be specified in order to avoid retrospectivity.