

**FROM:** CHRIS STEWART  
DIRECTOR, EXECUTIVE SUPPORT & PROGRAMME FOR  
GOVERNMENT

**DATE:** 27 March 2020

**TO:** PS/FIRST MINISTER  
PS/DEPUTY FIRST MINISTER  
PS/MINISTER FOR HEALTH

copy recipients listed below

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

**Summary**

<b>Issue</b>	The making of regulations to introduce measures to tackle the coronavirus outbreak by, <i>inter alia</i> , placing restrictions on businesses, prohibiting anyone from leaving the place where they live without reasonable excuse, and banning public gatherings of more than two people.
<b>Timing</b>	Desk immediate
<b>FoI implications</b>	This submission is likely to be disclosed if requested after decisions on its content are made and announced. Some aspects are commercially sensitive.
<b>Recommendations</b>	<p>I recommend that:</p> <ol style="list-style-type: none"><li>i. the First Minister, deputy First minister and Minister Swann agree that the Department of Health should make the Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020; and</li><li>ii. Minister Swann seeks Executive agreement to make the Regulations at the next Executive meeting on Monday 30 March; and</li></ol>

- iii. **The Department of Health makes the regulations as soon as is practicable, and that they come into operation as soon as possible thereafter.**

### **Background**

1. I attach a draft of the above Regulations. I recommend that they are made and brought into effect 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 understand that the Department of Health considers 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. Further, I understand that the Department of Health is 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).

5. Subject to your approval of the need for, and content of, the Regulations, you will wish to consider how best to engage Executive colleagues. I&S

I&S

6. I&S I recommend that the matter is considered by the Executive at the meeting scheduled for Monday 30 March 2020. If Minister Swann is content with that, I will draft a covering Executive paper for circulation tomorrow (28 March).

### ***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. Ministers have helpfully provided steers on a number of policy issues in response to recent submissions. For convenience, the following paragraphs recap on those, and highlight the 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 system<sup>1</sup>. 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.

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<sup>1</sup> 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 DoH (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.

#### **Workplace canteens**

14. DoH colleagues are content for the relevant provisions to mirror those in the English Regulations, rather than adopt the more restrictive regime originally proposed.

#### **Off-licences**

15. The regulations reflect the view of the First Minister and deputy First Minister that off-licences should not be required to close. This is in keeping with other jurisdictions.

#### **Supermarkets – further restrictions**

16. The regulations reflect the view of the First Minister and deputy First Minister that supermarkets should remain open, and should not be subject to any further restriction in the Regulations.

#### **Coming into operation**

17. Subject to Executive agreement, the Regulations could be made to come into operation at a specified time on Monday 30 March<sup>2</sup>.

## **Recommendations**

18.I recommend that:

- i. the First Minister, deputy First minister and Minister Swann agree that the Department of Health should make the Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020; and
- ii. Minister Swann seeks Executive agreement to make the Regulations at the next Executive meeting on Monday 30 March; and.
- iii. The Department of Health makes the regulations as soon as is practicable, and that they come into operation as soon as possible thereafter.

PD

**CHRIS STEWART**

cc PS/Minister Lyons  
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