



Chief Constable Simon Byrne QPM
Police Service of Northern Ireland
Police Headquarters
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Our Ref: AGNI/20/015

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Dear Chief Constable

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

The legality of travelling to a place in order to undertake exercise at that place has become a matter of some public debate and I see from the BBC NI News website that a view has been attributed to PSNI that travelling to a place in order to take exercise there 'breaches regulations'. See <https://www.bbc.co.uk/news/uk-northern-ireland-52306568>

It is vital that the demands of our criminal law be as clear as possible; in the content of our present health emergency citizens should not suffer unnecessary anxiety about whether or not their conduct breaches the law.

While PSNI will have taken its own legal advice, it might be helpful if I provided my view as to how exceptions on the restrictions on movement provided for by regulation 5 (2) of the The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 ought to be interpreted.

I begin by observing that Regulation 5 is not particularly 'user friendly': it will be noted, for example, that the only express reference to travel occurs in Regulation 5 (2) (f). It will also be noted that Regulation 5 (2) (f) does not expressly permit working or the provision of voluntary or charitable services but only *travelling* for those purposes. It would, plainly, be absurd to regard necessary work as falling outside Regulation 5 (2).

In order for Regulation 5 to be read in a manner compatible both with reason and with article 8 of the European Convention on Human Rights, travel taken in order to reach a place at which necessary exercise is to be undertaken falls within Regulation 5 (2) (b). The travel must be ancillary to

the exercise and the exercise must need to be taken, but it would be quite wrong for the impression to be given by anyone, but especially the PSNI, that a person is not permitted to travel to a place in order to exercise there. I hope that PSNI will clarify this in the coming days.

All of the activities specified in Regulation 5 (2) (a) to (m) may be reasonably regarded as, at one time or another, requiring transport in order to engage in them: one thinks particularly, perhaps, of attending a funeral or of moving house but a rational, ECHR compliant interpretation of Regulation 5 requires that they be read so as to permit travel ancillary to the activity specified in (a) to (m).

Importantly, as you will agree, the content of the criminal law in Regulation 5 cannot depend on how police discretion is exercised; rather, police discretion comes into play when the requirements of the criminal law have been breached.

Importantly also, there is a distinction between behaviour that is unlawful and behaviour that is ill-advised. Citizens may be urged by government (and others) to avoid ill-advised behaviour but only unlawful behaviour should attract police enforcement or be relieved by police discretion.

Yours sincerely

Personal Data

John F Larkin QC
Attorney General for Northern Ireland