

**From:** Name Redacted  
**Emergency Planning Branch**

**DATE** 03 March 2020

**TO:** 1. DR. MICHAEL MCBRIDE  
2. RICHARD PENGELLY  
3. ROBIN SWANN MLA, MINISTER

**POTENTIAL ADDITIONAL MEASURES FOR INCLUSION IN THE UK-WIDE  
DRAFT CORONAVIRUS BILL**

**Issue:** Whitehall Departments have identified a list of areas where further legislation will be needed to build resilience to the Coronavirus. Work is continuing and changeable therefore we are only seeking your agreement in principle at this time for Northern Ireland (NI) proposed Clauses for inclusion in the UK-wide draft Covid-19 Bill.

**Timing:** IMMEDIATE –It is expected that the draft Covis-19 Bill will be discussed at COBR on Wednesday 4 March 2020 at 5.00pm.

**Presentational Issues:** The proposed draft Coronavirus Bill will contain some provisions which could be regarded as controversial, and which could cause adverse publicity. The Cabinet Office have requested that material is not widely distributed at this stage. **NEEDS CLEARED BY PRESS OFFICE**

**FOI Implications:** S35 – Policy in development

**Executive Referral:** a further options paper will be provided to Minister for his decision on Executive referral

<b>Financial Implications:</b>	The financial consequences are difficult to quantify at this early stage. Nevertheless we would need to manage any indemnity commitments and subsequent budgetary calls carefully as they arise, with Finance informed early in process to ensure appropriate support.
<b>Equality Implications:</b>	EQIAs to be completed
<b>Legislation Implications:</b>	Drafting of Clauses for inclusion in a UK-wide draft Coronavirus Bill will enable the UK Government to legislate on behalf of NI.
<b>Recommendation:</b>	<p>Minister is asked to note the attached briefing and:</p> <ul style="list-style-type: none"> <li>i. Agree in principle the proposed additional measures pertaining to health as presented in the table, attached in <b>Annex A</b>.</li> <li>ii. Note the table of 'Asks' proposed for all four nations in their entirety in <b>Annex B</b>, attached separately.</li> </ul>

## Issue

1. The purpose of this submission is to seek your agreement in principle to the draft proposed measures pertaining to Health, attached at **Annex A**. You will return to COBR(M) Wednesday 4th March when it is expected the final full content of the Bill will be agreed and it will be decided whether to introduce the Bill and provisions, based on the latest scientific advice.

2. The Department of Health and Social Care are leading on the Bill and have indicated the Bill is likely to be laid before Parliament on the 19 March 2020 with Royal Assent expected on 31 March 2020. The timings remain tentative.
3. The introduction of the Bill later this month will place significant difficulties on the procedure for scrutiny of legislative consent memorandums and Motions in the NI Assembly. A further paper identifying the options for taking the legislation through the Assembly within the indicative Parliamentary timescales will be provided to you for your consideration and decision.
4. You will be aware that you gained Executive agreement to consent to Westminster legislating on our behalf, by way of the draft Covid-19 Bill at the Executive meeting on 17 February 2020. (SUB14 2020 refers) You also granted your approval for the initial draft proposed Clauses pertaining to Health to be included in the UK-wide draft Covid-19 Bill.
5. In addition to the draft Clauses previously agreed by the Executive for the draft Covid-19 Bill, The Whitehall Departments have now identified a number of areas where they do not believe they have the necessary statutory or common law powers to fully respond to a Covid-19 outbreak.
6. The list of areas where further legislation might be needed has been developed on a UK wide basis, attached at **Annex B**. The needs identified vary between the different jurisdictions of the UK (reflecting the different legal landscapes). Officials in the relevant NI Executive Departments have reviewed these areas and are currently drafting additional Clauses to be included in the UK wide Covid-19 Bill. This will ensure NI have additional powers and flexibilities to enable a rapid and effective response in the event of an outbreak.
7. As this is a rapidly evolving situation work to develop the Bill is ongoing and changeable with the potential that further measures may be amended or enhanced prior to COBR(M) meeting on Wednesday 4<sup>th</sup> March 2020, at 5.00pm We are therefore, at this time, only seeking your agreement in principle for the additional proposed measures identified for NI for inclusion in the UK-wide Covid-19 Bill.

8. Departmental Officials are working with colleagues in the NI Office of Legislative Council to draft Clauses in respect of these additional measures and when finalised, further briefing will be provided to seek your approval of the additional final Clauses for inclusion in the UK-wide draft Covid-19 Bill.
9. You will also be aware that in addition to the proposed Clauses for inclusion in the draft Covid-19 Bill additional amendments have been made to existing domestic legislation.

#### **Covid-19 Notifiable Disease**

10. The Public Health Act (Northern Ireland) 1967 has been amended to make Covid-19 a notifiable disease. The changes came into effect on 29 February 2020. The Statutory Rule will mean that medical practitioners are required to share patient information with the Director of Public Health if they become aware, or have reasonable grounds for suspecting, that a person they are attending has Covid-19. The Statutory Rule is subject to negative resolution procedure before the Assembly.
11. Covid-19 was made a notifiable disease in Scotland under the Public Health (Scotland) Act 2008 on 22 February 2020. Similar action is under consideration for England. It is not known if Wales intend to make Covid-19 notifiable. The Republic of Ireland made Covid-19 a notifiable disease by introducing the Infectious Diseases (Amendment) Regulations 2020 on 20 February 2020.

#### **Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015**

12. Proposals to amend the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 will enable the health service in Northern Ireland to take steps to ensure that there is no financial barrier to visitors to Northern Ireland being given hospital treatment for Covid-19 thus ensuring that the risk to public health from symptomatic visitors is minimised.

Entitlement to free healthcare in Northern Ireland requires someone to be "ordinarily resident" here, in other words living here lawfully, voluntarily and on a continuous and settled basis with an identifiable purpose for the residency. A visitor is someone who is not ordinarily resident in Northern Ireland.

13. The Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 make certain health services available to visitors in Northern Ireland at a charge determined by the Department. The Regulations also provide various exemptions from charge: some services are always exempt from charge whilst some categories of visitor are exempt from charge.
14. The proposed amendment to these Regulations adds hospital treatment for Covid-19 to the list of services which are exempt from charge thus ensuring that hospital treatment for the Disease is provided to any visitor to Northern Ireland without charge.
15. You have agreed the proposal, the SL1 has gone to the DALO and will be presented to the Health Committee at its meeting on Thursday 5th February with a view to making the Regulations on Friday 6th February, coming into operation on Saturday 7th.

## Recommendation

16. Minister is asked to note the attached briefing and:
  - i. Agree in principle the additional proposed measures pertaining to health as presented in the table, attached in **Annex A**.
  - ii. Note the table of 'Asks' proposed for all four nations in their entirety in **Annex B**, attached separately.

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**Official sensitive not for wider circulation**

PROPOSED CLAUSES PERTAINING TO HEALTH			
Clause	How it currently applies	Proposed provision to be made in Bill for purpose of dealing with a pandemic	Comment
Public Health Regulation Making Powers for Northern Ireland in the Uk Covid-19 Bill	<p>The Secretary of State for Health made The Health Protection (Coronavirus) Regulations 2020. The Regulations only apply to England. In particular, the 2020 Regulations allow for further restrictions and requirements relating to the isolation of persons suspected to be infected with COVID-19 and for the detention of persons in isolation where that is deemed to be necessary.</p> <p>This Clause will allow the Department to make regulations for additional measures to be introduced to help delay or prevent further transmission of an infectious agent which constitutes a serious imminent threat to public health.</p>	<p>NI currently has no legislative equivalent to the main provisions of Part 2A of the Public Health (Control of Disease) Act 1984 or the provisions of The Health Protection (Coronavirus) Regulations 2020.</p> <p>Clauses required to provide public health protection against infectious disease which is broadly equivalent to that available in the rest of the UK and in the quickest possible time given the current level of threat.</p> <p>Given the legislative deficit in NI, it would be advantageous to have the relevant public health regulation making powers not subject to a sunset clause. This would mean that the provisions would remain extant and the situation could be reviewed when the proposed revision of Northern Ireland Public health legislation takes place.</p>	
Mandatory vaccinations (with soft enforcement powers)			Policy Instructions have been shared with DSO for final proofing before submitting to OLC to draft Clause

PROPOSED CLAUSES PERTAINING TO HEALTH			
Clause	How it currently applies	Proposed provision to be made in Bill for purpose of dealing with a pandemic	Comment
Indemnity for Social Care Workers	Currently social care providers (care home operators, dom care providers) provide their own indemnity cover for staff.	Cover to be provided through a new provision in the Bill to provide workers moving between different care providers and voluntary workers with cover.	Currently being explored with DHSC.
Indemnity scheme for volunteers			This ask was only added to the Clause Table on 02/03/20. Department of Health Finance colleagues are reviewing
Protection of Employment Rights and Compensation for Volunteers	DHSC advise that this clause has not been drafted as yet, the policy intention only having been approved by their SoS late on 27 Feb. We should see a draft clause early March.	<p>DHSC and Department for Business, Energy and Industrial Strategy (BEIS) are leading on the development of employment rights protections for volunteers. This would create a new form of statutory unpaid leave: Emergency Volunteer Leave – which could be triggered by the DHSC SoS at the point of maximum pressure on the NHS. BEIS is working with DfE NI on the employment legislation implications. DoH NI is contributing to the drafting of the following UK-wide powers in the Bill:</p> <ul style="list-style-type: none"> <li>Power to provide the DHSC SoS with powers to establish a UK-wide compensation scheme to compensate volunteers for loss of earnings if they take the new unpaid Emergency Volunteer Leave. NI will be expected to contribute to the fund.</li> </ul>	These clause(s) are still being drafted by Parliamentary Counsel. We will seek DSO advice on clause(s) once drafted and your approval of NI participation in the planned scheme. We will also seek legal advice on whether the legislation will require a legislative consent motion in the Assembly.



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		<ul style="list-style-type: none"> <li>Power to provide indemnity cover for volunteers working in the NHS/HSC.</li> <li>List of employers (i.e. Trusts) who would be given power to appropriately deploy volunteers.</li> </ul>	
NHS Pensions Scheme (suspension and reduction of pension)	The current draft of the Bill seeks to allow retired NHS/HSC staff to return to work if they have retired, to help alleviate pressures on the system.	A new clause is being drafted by Parliamentary Counsel, so that the relevant provisions in the 1995 NHS Superannuation Regulations - which could financially penalise pensioners who take on paid work - do not have effect during any emergency period.	Instructions have been provided to OLC to the effect that the equivalent NI legislative provisions could be suspended on the same basis. This would be in line with established policy on pensions – i.e. – to maintain the same legislative framework in NI as exists in England.
Consideration given to suspending DBS checks due to pressures on service to supply them	Regulations made under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 require criminal record checks before an individual can commence work in a nursing home, a residential care home, a children's home or a day care setting, or before a domiciliary care agency or nursing agency can supply a worker to a service user.	To allow an individual to commence work in a nursing home, a residential care home, a children's home or a day setting or for a domiciliary care agency or nursing agency to supply a worker to a service user, pending a criminal record check, if certain conditions are met. The conditions are met if an enhanced disclosure check has been applied for and that AccessNI confirm that the individual is not on a barred list maintained by the DBS.	<p>AccessNI have confirmed that they can quickly process barred list checks outside of formal enhanced disclosure check application process, subject to the volume of checks that would require to be undertaken.</p> <p>The AccessNI minimum requirement would be to have a spreadsheet completed with full names (and previous names) and date of birth of those persons that required to be checked (as long as this manner of transmission complies with the Data Protection Act 2018). That would allow AccessNI to run the information against the DBS and Scottish lists of barred persons. We believe this could be</p>

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			<p>undertaken within a couple of hours, subject to, as previously indicated, the number of people requiring to be checked. AccessNI would then either return the spreadsheet noting the status against each individual name or simply send confirmation that no-one on the list was barred to the organisation that provided the spreadsheet, subject to no matches or potential matches being made.</p> <p>On that basis AccessNI could manage the process within its existing resources.</p> <p>Policy Instruction with OPC – drafting Clauses</p>
PROPOSED CLAUSES RELATING TO OTHER DEPARTMENTS WITH HEALTH INPUT			
Mass Gatherings			UKG are drafting additional powers on mass gatherings on a UK wide basis with DAs invited to comment. We await sight of drafted policy instruction for further consideration.
Quarantine			<p>A UK meeting called by BEIS to discuss Office of Parliamentary Council instructions for quarantine powers in the UK Coronavirus Bill has been scheduled for 4pm tomorrow (Wednesday 4 March)</p> <p>We await sight of draft policy instructions for further consideration.</p>
Powers of Immigration Officers			UK-wide drafted with comments to be invited from the DAs. We await sight of draft policy instructions for further consideration.

PROPOSED CLAUSES PERTAINING TO HEALTH			
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Ambulance Services			No further information had been received and we have sought clarification from DHSC on what this Ask refers to.
PROPOSED ASKS NOT REQUIRING ADDITIONAL LEGISLATIVE POWERS			
Reduction in Local Authority services under the Care Act		Discounted	Not necessary in NI as the Care Act does not apply here and we do not have the same requirements in our legislation. For instance, rather than requiring the provision of support to carers, our legislation only prescribes HSC Trusts to make carers aware of their right to an assessment.
LA Services under care act - Sickness of care providers		Discounted	Current powers to direct the RQIA, and for the RQIA to put requirements on providers, are broad and as such no additional powers are needed.
Prescription only medicines in prisons		Discounted	Contingency arrangements are in place for the ongoing delivery of prison healthcare, including the administration of medication, and legislative change in this area is not required to support these plans.
Prescribed Rights (NI)		Discounted	Already covered by the previous clauses that were submitted and approved by Minister 17/02/20.

**COVID-19 BILL PROVISIONS TRACKER - Attached separately**