

Message

From: Rooney, Bernie [/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C7CF96A1C4A84DCC99B0D59D6BCDBFCB-BERNIE ROONEY 0749]
Sent: 03/05/2020 14:06:19
To: TEO CCPB [ccpb@executiveoffice-ni.gov.uk]
Subject: FW: Official: Sensitive: Legal: Instructions for mass gatherings clause - CV Bill

TRIM

From: Stewart, Chris (TEO)
Sent: 04 March 2020 8:19 PM
To: Jackson, Neill (TEO) <Neill.Jackson@executiveoffice-ni.gov.uk> [REDACTED]
[REDACTED]@executiveoffice-ni.gov.uk; McPolin, Laura <Laura.McPolin@finance-ni.gov.uk>
Cc: [REDACTED]@executiveoffice-ni.gov.uk; [REDACTED]@executiveoffice-ni.gov.uk; Rooney, Bernie <Bernie.Rooney@executiveoffice-ni.gov.uk>
Subject: RE: Official: Sensitive: Legal: Instructions for mass gatherings clause - CV Bill

Colleagues

Like Neill, I can see the merit in NI having the power of direction to sit alongside any new regulations. The latter, as a public health measure, are clearly for DoH.

It is tempting to say that having similar powers residing in different Departments might lead to confusion or dispute. However, in practice that may be a moot point - any exercise of either power would surely be on the basis of professional public health advice (and open to challenge if it were not so).

I can't really see how cross community buy in would be a material consideration in any such decision, if evidence based.

Taking all of that together, I don't think there is a compelling argument either way on the location of the powers, which could be regarded as a civil contingencies matter (for TEO) or a public health matter for DoH.

C

Sent with BlackBerry Work (www.blackberry.com)

From: "Jackson, Neill (TEO)" <Neill.Jackson@executiveoffice-ni.gov.uk>
Sent: 4 Mar 2020 16:48
To: [REDACTED]@executiveoffice-ni.gov.uk; "McPolin, Laura" <Laura.McPolin@finance-ni.gov.uk>
Cc: [REDACTED]@executiveoffice-ni.gov.uk; "Stewart, Chris (TEO)" <chris.stewart@executiveoffice-ni.gov.uk> [REDACTED]
Subject: RE: Official: Sensitive: Legal: Instructions for mass gatherings clause - CV Bill

I note from the Instructions to Parliamentary Counsel that (DOH?) is seeking to have Part 2A of the Public Health (Control of Disease) Act 1984 incorporated in the Bill as a new provision applying to NI. I am assuming this is to allow

the appropriate department to make Health Provision Regulations which would impose or enable the imposing of a restriction, including the holding of an event or gathering in the event of or in response to a threat to public health. I see however that UKG are intending to go beyond this by seeking additional powers of direction for these purposes for the Secretary of State and that Scotland is also seeking an extension of Part 2A and these powers of direction. Powers of direction are seen as a more direct and efficient method of securing the desired result including in cases where the legislature cannot actually meet to pass Regulations. The document sets out the instructions for this – I’m not clear if NI is also intending to seek such powers which would seem to have equal merit for us.

In relation to the ownership of Public Health regulations this will depend on

- The purpose of the Regs above and beyond the simple issue of assembly and closure etc – the Act enables a broad range of provisions to be included in them, some of which are purely health matters and this would suggest the DOH should have control of them
- The most efficient way of achieving the outcome without elongated chains of clearance within the administration as to recommendations for prohibition or closure
- Related to this, and for the protection against challenge, that the grounds for closure are limited purely to scientific and medical advice – I demur therefore from Paul’s suggestion that making FM and dFM responsible to provide a cross-community element should be a material factor in the decision to close an event

The issue is self-evidently cross-cutting, but that, like the contingency plan itself, does not automatically make it a TEO responsibility. I’m also not sure what significance DOH see “cross-cutting” as having here: it is a factor in Executive referral but that is not an issue here; while cross-cutting Regs do come to the Executive because they contain offences and penalties, it is the principal sponsoring Minister who implements them not FM and dFM; I also agree with Laura that the TEO overview argument is weak – mass gatherings are not going to be cancelled just because TEO has a feeling that something looks potentially vulnerable – as above the cancellation needs to be based on an objective assessment of risk which would come from the CMO.

The issue for NI is also the use of the Emergency powers in Part 2 of the Civil Contingencies Act 2004. In an emergency situation, as defined as an event involving loss of human life or human illness “any of her majesty’s principal secretaries of state” can make emergency regulations which can confer a function on a Northern Ireland department, which may be a power to give directions or orders to prohibit assemblies of specified kinds at specified places or at specified times. There is no specific power to close premises but there are two general provisions within which this could be brought.

Again, I’m unsighted as to whether this has been taken into account – UKG is clearly relying on the Public Health Legislation instead - but in principle there is nothing to be lost in bringing NI up to par on this

N

From: NR
Sent: 04 March 2020 13:35
To: McPolin, Laura <Laura.McPolin@finance-ni.gov.uk>; Jackson, Neill (TEO) <Neill.Jackson@executiveoffice-ni.gov.uk>
Cc: NR <NR@executiveoffice-ni.gov.uk>
Subject: RE: Official: Sensitive: Legal: Instructions for mass gatherings clause - CV Bill
Importance: High

NR thanks so much for coming back to us so quickly with your view.

Neill – where to next with this? A decision needs to be taken very quickly as to which department should take the lead (OLC hoped to have received final instructions for all legislative asks by the end of last week) and if it is for TEO who would you say is best placed to take it forward?

NR

From: McPolin, Laura

Sent: 04 March 2020 13:13

To: NR <neill.jackson@executiveoffice-ni.gov.uk>; Jackson, Neill (TEO)
<Neill.Jackson@executiveoffice-ni.gov.uk>

Subject: Official: Sensitive: Legal: Instructions for mass gatherings clause - CV Bill

NR

As you may know, the Public Health Act (Northern Ireland) 1967 sets out certain provisions in relation to infectious diseases. I note that the Act was amended in 2008 to extend DoH's regulation-making powers in order to facilitate revision of the Public Health (Ships) Regulations (Northern Ireland) 1971 [S.R 1971 No 183] and the Public Health (Aircraft) Regulations (Northern Ireland) 1971 [S.R. 1971 No 182]. This was in order to comply with the UK's obligations in relation to the World Health Organisation's International Health Regulations 2005 (IHR). I understand, however, that amending regulations have not been made.

I think the above shows that, previously, these powers tended to sit with DoH and I expect that was because it was recognised that DoH had the medical expertise and that there should be consistency of approach. My own view is that, once you start distributing the direction-making powers you run the risk of something falling through the cracks or of a decision-maker being unable to access the relevant medical information. So, I incline to the view that any powers in relation to mass gatherings should also sit with DoH.

I have spoken to my colleague who is advising DoH and she has agreed that I can share her thoughts with you. She believes TEO should be in the lead because this is cross-cutting and TEO is more likely to have an overview of what is happening out in the community. On the cross-cutting point, she has noted the provisions relating to appeals and enforcement. However, as I have said to her, every department will have legislation that creates offences, but that doesn't take it into the cross-cutting field. Rather, those departments will confirm with DoJ that it is content with what is proposed. I'm afraid I also disagree with the local knowledge argument (i.e. I doubt whether TEO would have a greater knowledge of NI's social event calendar than DoH). However, ultimately, this is really a judgment call and TEO may feel that DoH will have enough on its plate dealing with the demand for medication/hospital beds.

Finally, I note that the instructions propose a discretionary power to pay compensation. I have raised a separate, but related point at an earlier stage. The Bill will include an indemnity in relation to clinical negligence. I do not know why that has been singled out for specialist treatment, as there may be other instances where a claim could arise, including a claim for breach of contract. Departments may wish to reflect further on whether there should be a wider range of indemnities or, indeed, a more general power to pay compensation.

Regards

L

From: NR

Sent: 04 March 2020 11:38

To: Jackson, Neill (TEO) <Neill.Jackson@executiveoffice-ni.gov.uk>

Cc: McPolin, Laura <Laura.McPolin@finance-ni.gov.uk>

Subject: FW: Instructions for mass gatherings clause - CV Bill

Importance: High

NR I'm not sure who best to forward this query to but it needs urgent TEO legal consideration. Apologies – I was sent this yesterday but with everything else it fell between the many stools.

Thanks,

NR

From: McMahon, Nigel

Sent: 04 March 2020 11:22

To: NR <[redacted]@executiveoffice-ni.gov.uk>

Cc: NR <[redacted]@health-ni.gov.uk>; NR <[redacted]@health-ni.gov.uk>; NR <[redacted]@health-ni.gov.uk>; NR <[redacted]@finance-ni.gov.uk>

Subject: FW: Instructions for mass gatherings clause - CV Bill

Importance: High

NR

You will have seen the draft instructions on the proposed mass gatherings clauses that have just come in (attached). I note that the expectation is that now that these have been received, the DAs will be preparing instructions for what is required in their respective jurisdictions. I think this makes it even more important that we have a position agreed with TEO as soon as possible as to whether this is cross-cutting or a matter for DoH alone. Decisions about where this power would sit in NI and how the provisions might be implemented will flow from that. I would welcome a TEO view ASAP.

Regards

Nigel

From: McMahon, Nigel

Sent: 03 March 2020 11:07

To: NR <[redacted]@executiveoffice-ni.gov.uk>

Cc: NR <[redacted]@health-ni.gov.uk>; NR <[redacted]@health-ni.gov.uk>; NR <[redacted]@health-ni.gov.uk>

Subject: FW: Instructions for mass gatherings clause - CV Bill

Importance: High

NR

Late on yesterday, DHSC sent round draft instructions on a new proposal to include clauses in the UK Coronavirus Bill, which would allow for direction-making powers to restrict or prohibit events or mass gatherings (see attached). OLC have raised some initial points below, including where this power might sit in the NI context (see point 2). I had wondered about this being a cross-cutting issue but would seek a view from TEO colleagues. As ever, the timescale on this is likely to be very short.

Regards

Nigel

From: NR

Sent: 03 March 2020 08:53

To: McMahon, Nigel <Nigel.McMahon@health-ni.gov.uk>

Cc: NR <[redacted]@executiveoffice-ni.gov.uk>

Subject: RE: Instructions for mass gatherings clause - CV Bill

Nigel,

I have taken a quick look, and here are a few comments.

1. The proposal for E&W seems to be that the new direction-giving power is going to sit alongside the regulation-making powers that are conferred by Part 2A of the 1984 Act. Although there can be difficulties with having two very similar (not to say overlapping) powers sitting on the statute book, it is not impossible or unprecedented. If they are doing that for E&W, I don't see why we can't have both our new Part 1A of the 1967 Act and the new direction-giving power for NI.
2. I did wonder about who was intended to exercise the power in Northern Ireland – conferring power on the SoS to cancel gatherings in NI would be a non-starter! The recent exchange with Scottish colleagues confirms that the power would sit locally. But where exactly? Others will have to decide this. Should it be the Department of Health, as lead Dept in a pandemic situation? I did wonder whether there would be any sensitivities about conferring the power to cancel gatherings on one Department (even in this context). If so, then we might have to consider some mechanism to ensure some cross-community buy-in. One option might be to confer the power on the Executive Office. This would be slightly outside TEO's normal range of functions, but (being under the direction of the FM and DFM) ensures a cross-community element. Functions are not usually conferred on the NI Executive as whole (and, in any case, in this context that would be far too unwieldy).
3. There are a few other NI-specific points. For example, publication of notice will have to be in the Belfast Gazette rather than the London Gazette (though this is rather archaic now). And advice will have to be sought from our CMO.
4. I have noted the more recent correspondence about the possibility of compensation payments. We will need to keep an eye on that.

Otherwise, I don't see any reason why we cannot produce a regime for NI equivalent to that proposed for E&W.

All the best

NR

From: McMahon, Nigel
Sent: 02 March 2020 17:55
To: NR <NR@executiveoffice-ni.gov.uk>
Cc: NR <NR@executiveoffice-ni.gov.uk>
Subject: FW: Instructions for mass gatherings clause - CV Bill
Importance: High

NR

This is our first sight of draft instructions relating to proposed freestanding UK-wide provisions on mass gatherings for inclusion in the UK Bill. Whilst the email does not include a specific ask at this stage, I am anticipating that the DAs will be asked to sign off on a revised version of this in the very near future. I would appreciate any comments you may have, particularly regarding the proposals and their application to NI in the light of our attempts to replicate Part 2A of the E&W 1984 Act.

Regards

Nigel

From: NR
Sent: 02 March 2020 15:56

To: McMahon, Nigel <Nigel.McMahon@health-ni.gov.uk>
Subject: FW: Instructions for mass gatherings clause - CV Bill

Nigel

Can you consider and advise please

NR

NR
NR Deputy Head of Emergency Planning Branch | Department of Health
Castle Buildings | Stormont Estate | BELFAST | BT4 3SQ
☒ NR [@health-ni.gov.uk](mailto:health-ni.gov.uk) | 📞 landline Irrelevant & Sensitive

From: NR [@dhsc.gov.uk](mailto:dhsc.gov.uk)
Sent: 02 March 2020 15:48
To: chris.taylor@gov.scot; NR [@gov.scot](mailto:gov.scot); NR [@gov.scot](mailto:gov.scot); SGLD.PublicHealthBranch@gov.scot;
NR [@gov.scot](mailto:gov.scot); NR [@gov.scot](mailto:gov.scot); NR [@gov.scot](mailto:gov.scot); NR [@advocategeneral.gov.uk](mailto:advocategeneral.gov.uk);
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Subject: Instructions for mass gatherings clause - CV Bill

Hi all,

Please find attached draft instructions for the mass gatherings clause. The policy lead in DHSC is the Port Health team (PortHealthTeam@dhsc.gov.uk) – in copy now.

I know policy and legal colleagues have already been in touch about this over the weekend – please do flag any outstanding issues!

Also copying in: NR for WG consideration.

Thanks,
NR



NR
Reasonable Worst Case Scenario Team (RWCS)
Covid-19 Incident Team
Department of Health and Social Care
5th Floor, 39 Victoria Street, London, SW1H 0EU
NR [@dhsc.gov.uk](mailto:dhsc.gov.uk) (sic)

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