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MEMORANDUM E (20) 173 (C)

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

DATE: 23 July 2020

TO: EXECUTIVE COLLEAGUES

**FINAL EXECUTIVE PAPER: INTRODUCTION OF HEALTH PROTECTION
(CORONAVIRUS, RESTRICTIONS) (No. 2) REGULATIONS (NORTHERN
IRELAND) 2020**

Introduction

1. This paper seeks Executive agreement that the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 ("The No. 2 Regulations") should be made, and that they should be made on 23 July. These are attached.
2. The paper also provides a brief update on the development of policy on responding to local outbreaks or clusters of cases.
3. Legislation to provide for mandatory wearing of face coverings is the subject of a separate paper.
4. Proposals for specific changes to restrictions and requirements are covered in a separate paper.
5. At the conclusion of the fifth review of the need for the restrictions and requirements in the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 we agreed that:
 - i. a fresh set of regulations should be made, for the purpose of retaining those restrictions and requirements that are considered still to be necessary, and clarifying powers for the imposition of new restrictions should the need arise;
 - ii. the new regulations should update and simplify the restrictions on gatherings, together with any residual restrictions on businesses and premises;
 - iii. the new regulations should allow up to 30 people to gather in a private dwelling and allow people to stay overnight in a private dwelling other than their own;and

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- iv. the Department of Health should aim to make the new regulations by 23 July.

Key provisions in the No. 2 Regulations

6. The main purpose of the No. 2 Regulations is to clarify and simplify the current provisions, therefore there are no significant changes as regards the overall policy intention.

Requirement to close businesses or premises

7. The No. 2 Regulations would require a person responsible for carrying on a business or providing a service or operating any premises listed in Schedule 2 to cease to do so. This would bring into a single regulation the current regulations 3 and 4.

Restrictions on gatherings

8. The No. 2 Regulations would retain the limit of 30 persons taking part in a gathering, whether indoors or outdoors.
9. Exceptions to this restriction would be designated in terms of broad categories of gathering rather than by listing specific exceptions. The proposed list of exceptions is: cultural, entertainment, recreational, outdoor sports, political purposes, social, community, educational, work, legal or religious purposes.

Restrictions on gatherings in private dwellings

10. While I proposed at the conclusion of the fifth review that the number of people in a gathering in a private dwelling should be limited to 30, on further consideration and reflecting on both Executive discussions and the evidence from recent clusters, I have concluded that the limit of 30 persons should not apply to gatherings in private dwellings. Instead I am proposing that the No. 2 Regulations limit the size of gatherings indoors in private dwellings to no more than 10 people (an increase from the current limit of 6), from up to 4 different households, and that any restriction on people staying overnight in a dwelling other than their own is discontinued.
11. A restriction on gatherings in private dwellings would by normal standards be very unusual and draconian. It would render unlawful a large family gathering in someone's home, which in itself would not involve unlawful activity and would not normally come within the scope of the criminal law.

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My Department has considered this carefully and has concluded that gatherings in private dwellings should, on balance, remain subject to this restriction. Recent clusters and outbreaks across the world and in Limavady have been linked to gatherings in private dwellings, providing evidence of the high risk of infection associated with these settings and in particular with house parties. The greater the number of people and households which gather in these settings, the greater the risk of virus transmission and the greater the potential for multiple divergent chains of infection out into the wider community. Therefore, supported by the advice of the CMO and CSA, I am proposing a limit of 10 people in any gathering indoors in a private dwelling, from no more than 4 households, including the people and household receiving the visitors.

12. The Executive should note the following risks to retention of restrictions on gatherings in private dwellings:

- a. We agreed at the conclusion of the second review that one of our guiding principles in respect of restrictions and requirements should be proportionality, i.e. that the detrimental impacts on health, society and the economy that can reasonably be attributed to the restriction or requirement should be tolerated only as long as the risks associated with withdrawal or modification are assessed to be more severe. It could be argued that this would be a disproportionate intrusion by the state into private and family life.
- b. There are enforcement issues which could result in the restriction being enforceable in only a small number of cases. The Public Health Act does not provide for an automatic right of entry to a private dwelling. This would require a warrant from a magistrate's court. By the time this is obtained the suspected illegal gathering may have dispersed or reduced in size to within the legal limit.
- c. Crucially, Article 8 of the European Convention on Human Rights states:

"Everyone has the right to respect for his private and family life, his home and his correspondence.

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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Article 8 is a qualified right. For any infringement of this right by the state the test is necessity

Review period for the Regulations

13. Whereas the review period for the existing Regulations is at least every 21 days I propose that the review period for the No. 2 Regulations should be every 28 days. There is no particular rationale or benefit in conducting a formal review of the need for the restrictions and requirements every three weeks. Moving to a 28-day cycle would allow my officials more time to take forward necessary policy work in relation to COVID-19 and other public health matters. This change would not present an obstacle to the relaxation – or the re-imposition – of restrictions and requirements as these two processes are in effect independent of each other and, as we have seen with the existing Regulations, amendments can be made at any time.

Regulation 5 – restrictions on movement

14. Regulation 5 of the existing Regulations – the requirement to remain in the place where one is living – is revoked, and with it the reasonable excuses listed in regulation 5(2). In practice this terminates the provision which restricted the movement of people.
15. Clearly this needs to be accompanied by clear and persistent messaging about the continuing need for people to exercise caution and act responsibly. My Department and the Executive Information Service are working on this.

Designation and definition of vulnerable people for certain purposes

16. The list of underlying medical conditions in Schedule 1 in the current regulations has been necessary for the purposes of the reasonable excuses to leave where one is living. As regulation 5 is being revoked and therefore any requirement to have a reasonable excuse for leaving where one is living, this list will not be carried forward into the No. 2 Regulations.

Fixed penalty notices referring to the current Regulations

17. PSNI and DoJ raised concerns regarding the current fixed penalty notices (FPNs) which refer to the existing Regulations. Creating, printing and distributing new FPNs would take two weeks. This changeover could result in a lacuna in enforcement unless the No. 2 Regulations were delayed until the new FPNs are ready to be used. To address the immediate issue the No. 2 Regulations will expressly provide for FPNs issued under the current Regulations to continue to be valid under the proposed Regulations.

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Substantive changes to restrictions

18. A separate Executive paper sets out a series of amendments that are proposed to the restrictions. These amendments are reflected in the attached draft of the No.2 Regulations. They are less obvious than they would have been if they were amendments to the current Regulations because instead of being a visible addition to a list of businesses or premises that may open, they are omissions from the list, in Schedule 1, of businesses or premises that are required to be closed.

Mandatory face coverings

19. The regulations mandating the use of face coverings on public transport, introduced on 10 July, will be excluded from the No.2 Regulations and a separate set of Face Coverings regulations will be made simultaneously, preserving these legal requirements in full. The expansion of mandatory face coverings is the subject of a separate Executive paper today.

Responding to local clusters of COVID-19

20. There has been much discussion and speculation about the possible introduction of localised restrictions since the re-imposition of lockdown measures in Leicester, Melbourne and other places. Although the power is available in primary legislation, the No. 2 Regulations do not include any specific provisions for responding to localised clusters or outbreaks. Leicester is the only place in the UK and RoI where a regulatory route has been taken to address local clusters and/or outbreaks.

21. My Department has considered possible options for legally enforceable restrictions imposed on designated geographical areas or specific establishments, such as the re-imposition of the regulation 5 requirement to remain in one's home. This could require the establishment of a *cordon sanitaire* enclosing a town, village, neighbourhood or establishment. We have serious concerns that such a measure:

- a. could be extremely difficult to police, or place unreasonable demands on the police;
- b. could be a disproportionate response to a one-off spike in cases;
- c. could be a blunt instrument, e.g. locking down Limavady in response to the recent cluster of cases associated with a single event;
- d. may prove in a real scenario to be ineffective and not timely;
- e. could generate difficulties as regards determining the geographical extent of a zone;
- f. could require a disproportionate amount of potentially nugatory work on the details of the legislation;
- g. could prove unacceptable to the people affected, and difficult to defend, and

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- h. would be particularly vulnerable to challenge in the courts, especially on human rights grounds.

22. Set against this, legislation is just one instrument of health protection and is not necessarily the most appropriate or the most effective response to a particular or immediate public health threat. One of the statutory functions of the Public Health Agency (PHA) is the protection of the community or any part of the community against communicable disease, in particular by the prevention or control of such disease in NI.

PHA Framework for addressing local clusters and outbreaks

23. The PHA has developed a framework to provide assurance that local outbreaks and clusters are managed and contained in an effective way. This is based on PHA's *Infectious Disease Incident/Outbreak Plan* of September 2018 which outlines the process for identification, risk assessment and management of incidents or outbreaks of infectious diseases. It is based on recognised best practice in the international health protection community. The principles, aims and objectives are aligned, but the novel nature of COVID-19 and the risk posed make it necessary to have a specific management plan and associated standards to provide assurance to all stakeholders.
24. The aim of the framework is to ensure an effective and coordinated approach to outbreak management, from initial detection to formal closure and review of lessons identified. It promotes and ensures a consistent approach across all levels within PHA and includes sets of standards for outbreak response.
25. The objectives of the process are to protect public health by identifying the source of infection and to implement control measures to prevent further spread or recurrence of infection.
26. The framework, which is a living document, sets out in detail roles and responsibilities and PHA's approach to the early detection of clusters and graduated support. The multi-level response of the PHA Health Protection team is designed to flex from single cases to very large outbreaks.
27. This framework includes the Test, Trace and Protect programme which has been established to break the chains of Covid-19 infection and support the return to a more normal way of life for the people of Northern Ireland.

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Central role of the citizen

28. Finally, throughout the pandemic legislation and the efforts of statutory agencies have been complemented by a high level of voluntary compliance with public health advice on the part of the public, and much of the progress to date in overcoming the epidemic has been achieved through active citizenship. We will rely increasingly on individual alertness and responsibility in the months ahead. Localised coercive restrictions could diminish this social capital.

29. I have concluded that localised statutory restrictions would not be appropriate at this time.

CMO and CSA advice

30. The Chief Medical Officer and the Chief Scientific Advisor have both seen and agreed to the proposed changes in the context of the current state of the COVID-19 epidemic in NI.

Recommendation / Decision sought

31. I recommend that the Executive agrees that:

- i. the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 should be made;
- ii. these Regulations should be made on 23 July and come into operation on 24 July, in line with commencement dates for specific changes to restrictions and requirements;
- iii. the restriction on gatherings in private dwellings should be relaxed to increase the number of people allowed to meet indoors to 10, from up to 4 different households, and any restriction on people staying overnight in a dwelling other than their own should be discontinued;
- iv. the No. 2 Regulations would retain the general restriction limiting gatherings to 30 participants, with a number of general categories of exception to this limit in place rather than the current list of more specific purposes for which an exception applies;
- v. we should not legislate for localised enforceable actions to respond to clusters of cases, and

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- vi. the primary focus of our efforts should now be on promoting and maintaining public awareness and understanding of the continuing danger of COVID-19 transmission and promoting voluntary compliance with public health advice, particularly in light of the ending of the lockdown provision and the approaching flu season.

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**ROBIN SWANN MLA
MINISTER OF HEALTH**

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