

 I&S
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OFFICIAL SENSITIVE

FROM: Michael Cooke

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TO: NICS Board

COVID-19 (coronavirus) – How staff within the “vulnerable” people category are identified and managed.

Introduction

The purpose of this note is to highlight an issue that has been raised in relation to the “vulnerable” category of staff. The paper presents two options for consideration by Board members; NICS HR is seeking approval for Option ‘b’, to ask the Board to maintain the current arrangements for treating vulnerable persons in one grouping, and not differentiate for the time being, between 12 week shielded and other vulnerable categories.

Background

1. NICS, in line with guidance from PHA, agreed that any staff who were over 70, pregnant or who had a range of underlying medical conditions, were considered ‘vulnerable’ and should be advised to stay at home, work from home where possible, and where this was not possible, they would be placed on paid special

leave with a special leave group category 'COVID-19 Social Distancing'. This was supported by supported by the Department of Health. We currently have 457 NICS staff in this category.

2. At this stage decisions were being made at pace by the NICS liaising closely with Department of Health Gold Ops Cell and with the available guidance, with a view to maintaining the health and wellbeing of our staff at a time of great concern and uncertainty.

It was within this context that HOCS advised staff on the 18th March 2020, see Annex 1, that:

"Anyone who is over 70, has an underlying health condition (as advised in the guidance attached), or is pregnant should not attend the workplace. You should advise your line manager if this is the case"

He also advised that:

"This remains a developing situation, and it will be necessary to update and amend the guidance as and when the circumstances change. We will make sure the latest and best guidance we can provide is available through NI Direct and the NICS Intranet sites"

New NI legislation - 28 March 2020

3. The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 were published on 28 March 2020 and defined a "vulnerable person" to include

- (a) any person aged 70 or older;
- (b) any person under 70 who has an underlying health condition, including but not limited to, the conditions listed in Schedule 1;
- (c) any person who is pregnant.

The conditions listed in Schedule 1 can be found in Annex 2.

All NICS staff within these categories continue to be told they must stay at home.

Updates to advice to on medical conditions for "vulnerable" people

5. Further clarification regarding these categories issued from PHA and gov.uk at the end of March. Specific medical conditions that, based on what is known about the virus so far, place those with those conditions at the greatest risk of severe illness from COVID -19. Disease severity, history or treatment levels also affected who was in the very high risk group. The list of diseases and conditions in this very high risk category can be found in Annex 2. It is important to note the following:

Gov.uk guidance

- The gov.uk guidance currently separates those who are clinically extremely vulnerable from those who at increased risk of severe illness from COVID-19.
- The clinically extremely vulnerable fall into the categories of organ transplant recipients, those with specific cancers, those with severe respiratory conditions and those with rare diseases or metabolic conditions.

The increased risk category includes a much broader range of medical conditions.

NI legislation

- The NI legislation covers vulnerable people as one group with conditions listed in both of the GOV.uk categories. It does not differentiate more serious conditions and also omits certain people altogether such as organ transplant recipients.
- The legislation was passed on the evening of 28 March 2020 which was after the advice on extremely medically vulnerable was first published by gov.uk on 21 March 2020.

6. This effectively means that NI has not followed GB in the differentiation between two the clinically extremely vulnerable and those at increased risk of severe illness. Perhaps this is where the issues are arising with Departments who for example will be aware of GB guidance which focuses on those being shielded in the extremely vulnerable category. It would appear there are members of our staff who are in the underlying medical conditions group who have not received letter from GPs re twelve week shielding. This has prompted Departments to consider / seek their return to the workplace if they are deemed an essential worker. Specifically questions have come from staff who do not have GP letters but come under the following:

- auto-immune issues - exact nature of their condition not clarified
- stomach issues - exact nature of their condition not clarified

- staff who have had cancer in the past
- high blood pressure
- diabetes
- anxiety stress and depression because the anti-depressant contains a steroid which could weaken the immune system
- asthma and use steroid inhalers
- skin condition – the hand cream used contains a steroid which could weaken the immune system.
- Awaiting cataract surgery

7. People in Northern Ireland who are classified as extremely vulnerable/shielded category (and their carers) were issued a letter in the last week in March (approx) from their GP practice advising them to *“stay at home at all times and avoid all face-to-face contact for at least twelve weeks, except for carers and healthcare workers who you must see as part of your medical care”*, copy here [Template letter](#)
It was only sent to those at highest risk during the COVID-19 pandemic, therefore, not everyone within the broader vulnerable person category were issued the letter.
8. While the legislation does not indicate this, the vulnerable category has now in effect been split into two groups, those “extremely vulnerable people” who must self-isolate (stay at home) for at least 12 weeks irrespective if they have work or not and “vulnerable people” who have been advised to be particularly stringent about their social distancing measures which includes home working, they have not been advised to self-isolate.

Potential impact to vulnerable staff within the NICS

9. The crucial difference for the purposes of this paper is that all staff within the NICS who are vulnerable are currently being treated as being in the “extremely vulnerable” group and either working from home or on special paid leave. Annex 2 shows the two groups ‘extremely vulnerable’ and ‘vulnerable’ as determined by the UK and NI legislation.

10. We know that with the vulnerable group there are staff who do not have a condition that is determined to be in the high risk category and did not received a letter advising that they should self-isolate. This group of staff sit in a broader “vulnerable” group that are advised by PHA to be particularly stringent about following the social distancing measures. A management interpretation of this change could be that these people can **potentially** return to work.
11. Since the letter issued to the “extremely vulnerable” group of staff, NICSHR has been receiving queries from some Departments as to why they can’t ask staff who sit in the broader vulnerable staff group to carry out essential duties in the workplace. NICSHR advice is still that all vulnerable staff within the NICS should self-isolate with or without work. However questions regarding this position are being asked given the approach to the extremely vulnerable people and the letter they were issued.

Legal advice

12. Advice from Departmental Solicitors Office (DSO) is that :-

- NICS Departments have a legal duty to ensure the health safety of staff, and that includes complying with relevant guidance such as PHA guidance. All PHA guidance should therefore be treated as if it is compulsory.
- That means that it is necessary to ensure that those in the extremely vulnerable group are not required to leave home.
- Those who are vulnerable but not extremely vulnerable can be asked to attend work.
- It would be necessary to stringently apply social distancing protocols to vulnerable staff and to consider any other measures that could be applied to protect them e.g. ensuring that they are given preference in work from home arrangements so that those who are not vulnerable are called on first to attend the workplace.
- A very good paper trail of considerations and options will be needed as this is something that may be judicially reviewed by TUS. (These are the key lines to note in the DSO advice as they place the onus on decision makers to evidence

their rationale for seeking to bring vulnerable staff back into the workplace and to have considered all options first, including the vulnerable not being called on first to attend the workplace.)

Cabinet office and ROI positions

13. NICSHR has considered the Cabinet Office and ROI handling of the vulnerable group of staff. Each jurisdictions has a different approach to managing its “essential” workforce.
14. Current ROI guidance states that only essential workers should be present in the physical workplace. UK Government guidance on social distancing states that you may go out to work, if you cannot work from home. There is no specific requirement for that work to be essential. In terms of staff with medical conditions, Cabinet Office and Republic of Ireland guidance clearly focuses on the extremely vulnerable category and how they should be protected / shielded.

Extremely Vulnerable People

Cabinet Office staff in the “extremely vulnerable group” are advised to work from home or consider paid special leave, even where they are identified as key or essential workers. In addition, staff who live with or care for someone in the extremely vulnerable category are advised to protect them by stringently following social distancing. Consideration is given by managers on a case by case basis for any potential for these staff to work from home and to consider special leave with pay where this is not possible.

ROI guidance for staff in the first tier “extremely medically vulnerable” group mirrors that of Cabinet Office in that they are told to cocoon, stay at home and not go to work. They should be facilitated to work from home to the maximum extent. Staff who live with people in this category are not eligible for special leave with pay.

Vulnerable People

Cabinet Office staff in the vulnerable group, those who are considered at “increased risk of severe illness” are advised to be particularly stringent in following social distancing measures. Guidance states that priority must be given to this group in terms of facilitating flexible working arrangements, including working from

home. FAQ's indicate that if this cannot be accommodated and another suitable location to work cannot be found, then paid special leave should be given.

Living with a vulnerable person

Where a member of staff is living with and/or caring for someone who is in the second tier of vulnerable people, Cabinet Office states that they are not expected to adopt the shielding measures themselves but should stringently social distance. However, and on a case by case basis, where an essential worker in this position cannot work from home paid special leave should be considered.

ROI advises its essential workers in the at more serious risk category to take extra precautions to protect themselves from coronavirus in line with guidance given by HSE.ie. They are given priority to flexible working arrangements including working remotely. However, where working remotely is not possible, if the employee is at home, and is not ill, they are considered to be available for work including temporary assignment of work outside their usual core duties as required. In ROI, staff living with people in this category are not eligible for special leave with pay.

NICSHR is of the opinion that we take our lead from Cabinet Office guidance and as such if this question arises then there is flexibility in management making decisions on a case by case basis.

TUS

15. The matter of 'vulnerable' staff is one which NIPSA has raised on a number of occasions. NIPSA is of the view that NICS staff who live with a "vulnerable" person should be allowed to stay at home with or without work.

16. It is NICSHR's view that if we now seek to ask essential staff who originally came under the original vulnerable category to attend the workplace this would provoke a negative reaction.

Additional information

17. Testing for Coronavirus is now available in Northern Ireland for essential/key workers who are self-isolating due to having coronavirus-like symptoms or because

a member of their household has symptoms. All staff in the NICS staff were advised of this by e-mail on 29th April 2020.

18. England changed its criteria for testing to include anyone who has to leave the house to go to work if they have symptoms. This also includes members of their household. It is possible that the rules will change in NI to reflect this position.

Summary

19. Current NICS guidance for managers and staff, and the accompanying FAQs, neither accounts for the differences within the vulnerable category groups nor contains advice that requires self-isolation only for those people most at risk (or for staff who care for people within this category).
20. We currently have special leave category for the 'vulnerable' group of staff. A further category has been developed to identify the extremely vulnerable shielded group of staff but is not yet 'live'. Staff in this group who are not working from home should be placed in this paid leave category.
21. In addition, an exercise should be carried out to have these categories noted on HRConnect for staff in both groups, who are currently working at home and therefore have not been placed on special leave, so that they can be identified. This will not only support the work that is being carried out by resourcing colleagues, through the new redeployment protocols, but will be invaluable when the NICS is planning its return to normal working.
22. If the NICS guidance for managers and staff is changed to account for the different guidance, and therefore arrangements that are currently in place for the two levels of vulnerable people is amended, then potentially a number of staff in the current vulnerable category could be asked to return to the workplace if they can stringently follow the social distancing measures. This is supported by the latest medical guidance, and we will remain in step with GB.

23. DSO advises that Departments have a legal duty to ensure the health safety of staff, and that includes complying with relevant guidance such as PHA guidance. All PHA guidance should therefore be treated as if it is compulsory. That means that it is necessary to ensure that those in the extremely vulnerable group are not required to leave home. Those who are vulnerable, but not extremely vulnerable, can be asked to attend work whilst stringently applying social distancing protocols. In addition managers should consider any other measures that could be applied to protect them e.g. ensuring that they are given preference in work from home arrangements so that those who are not vulnerable are called on first to attend the workplace. A very good paper trail of considerations and options is advised in the event that TUS request a judicially review.

24. Testing for the coronavirus is now available in Northern Ireland for essential/key workers who are self-isolating due to having coronavirus-like symptoms or because a member of their household has symptoms. It is possible that the criteria will be extended to reflect the position in now in England which is test anyone who has to leave the house to go to work if they have symptoms and members of their household.

Conclusion and next steps

25. The NICS should remain committed to the importance of protecting all our vulnerable staff, regardless of category. The most effective way for us to do that is to continue to instruct them to stay at home. It is however acknowledged that this position is above what is required in current gov.uk guidance and that some Departments are facing greater operational difficulties with this than others. The potential for change to be considered by the NICS Board is outlined below.

26. Where a Department has no option but to request an essential worker to return, the current gov.uk guidance gives it scope to do so for those staff who are vulnerable but not in the extremely vulnerable category. This guidance states that all efforts should be made for work to be done at home, but where alternative arrangements are not possible these staff must be allowed to stringently socially distance within the workplace.

27. How this could be facilitated would be a matter for that Department and the managers concerned who should follow the NICS guidance and FAQs, medical evidence provided by an individual and where necessary seek an opinion, through the NICSHR Employee Relations team, from one of the OHS Medical Officers so an informed decision can then be taken.
28. If this revised position is agreed by the NICS Board, the current guidance and FAQs will be amended to allow for these departmental considerations to be made for vulnerable staff (without the 12 week shielding letter) to be asked to return to work. This guidance would continue to focus heavily on the obligations of managers to protect vulnerable staff and take all steps necessary to ensure this happens. Should the Board agree this option it will be important to engage with CTUS prior to any changes being made.
29. If this revised position is not agreed by the NICS Board, NICSHR will still update the guidance to acknowledge the difference between the vulnerable groups in order to inform, educate and to have the information in place should a change to the position be required in the future.

RECOMMENDATION

30. That you take note of the information in this paper and consider the two options of:
- a. NICSHR to amend the current guidance and FAQs to allow for departmental considerations to be made for vulnerable staff (without the 12 week shielding letter) to be asked to return to work. The guidance would continue to focus heavily on the obligations of managers to protect vulnerable staff and take all steps necessary to ensure this happens.
- OR
- b. Maintain the current position in that all vulnerable staff, regardless of category, to be treated the same way and be allowed to remain at home with

or without work. NICS HR would still undertake to update the guidance to acknowledge the differentiation between the vulnerable groups in order to inform, educate and to have the information in place should a change to the position be required in the future.

NICSHR recommends at this point, that the Board agrees to option 'b' on the basis of:

1. recognising the importance of handling vulnerable staff on a consistent basis taking staff well-being ahead of presence in the workplace
2. taking note of DSO advice in point 12 especially the reference to the:
 - *It would be necessary to stringently apply social distancing protocols to vulnerable staff and to consider any other measures that could be applied to protect them e.g. ensuring that they are given preference in work from home arrangements so that those who are not vulnerable are called on first to attend the workplace.*
 - *A very good paper trail of considerations and options will be needed as this is something that may be judicially reviewed by TUS. **(These are the key lines to note in the DSO advice as they place the onus on decision makers to evidence their rationale for seeking to bring vulnerable staff back into the workplace and to have considered all options first, including the vulnerable not being called on first to attend the workplace.)***
3. maintaining good industrial relations at this time

NICSHR understands there are Departments who would wish to bring staff in the vulnerable category back into the workplace, however we would urge caution at this point in time. This matter should be approached on an NICS wide basis and not on an individual Department one – if we are challenged it will be as an organisation not as a Department. If there is a relaxation of lockdown conditions in the future by the NI Executive thereby enabling an employer bring staff back into the workplace, under stringent social distancing conditions, then Option 'b' would clearly require review

and the NICS could quickly move to implementing Option 'a' following TUS consultations.

I am more than happy to clarify / respond to any queries you may have regarding the content of this paper. Please let me know directly.

PD

Michael Cooke

Urgent COVID-19 (coronavirus) update

David Sterling

Head of the Civil Service

18 March 2020

Many of you will have seen the latest advice from the UK Government on COVID-19 (coronavirus).

This advice relates to social distancing measures to help to reduce the transmission of COVID-19. Please be aware that as the situation develops, this advice may change.

In addition to asking individuals displaying symptoms to stay at home, the advice is now that households in which one person is displaying symptoms should all stay at home.

We also need to reduce non-essential social contact particularly for those in vulnerable groups. People have been asked to work from home where possible, limit use of public transport and avoid unnecessary social gatherings.

As we enter this critical new phase in our response to COVID-19 I understand many of you will be concerned about the steps you should take to protect yourself, family and friends.

As an NICS we must continue to deliver our essential work and services to the public.

This remains a developing situation, and it will be necessary to update and amend the guidance as and when the circumstances change. We will make sure the latest and best guidance we can provide is available through NI Direct and the NICS Intranet sites.

So from Wednesday 18 March the following measures will be taken within the NICS applying to all staff and all workplaces:

- If you live alone and have a new, continuous, cough or a high temperature (37.8 degrees and above), then you should isolate and stay at home for 7 days. You should advise your line manager if this is the case.
- If you live with other people and one of you displays symptoms, everyone in your household should isolate and stay at home for 14 days. You should advise your line manager if this is the case.
- Anyone who is over 70, has an underlying health condition (as advised in the guidance attached), or is pregnant should not attend the workplace. You should advise your line manager if this is the case.

- If your work allows, you should work from home – you should discuss arrangements with your line manager.
- If your job role does not permit this, for example, if you have duties that can only be carried out at the workplace, but there is a compelling reason for you not to attend the office, you may be granted special leave subject to discussion with your line manager.
- Anyone not in the ill, self-isolating or at risk categories stated above and whose work cannot be carried out at home should attend the workplace.
- If you feel this puts you or someone else at risk then please contact your line manager to discuss arrangements.
- Managers will assess which roles can and cannot be carried out from home and will be talking to individuals and teams as soon as possible. We are working closely with IT Assist to prioritise allocation of IT equipment.
- Offices will remain open for teams with a need to work in the office or to collect IT or other materials required for home working.
- For those working in the office every action should be taken to enable physical distancing within the office, including trying to reconfigure seating arrangements to allow for 2 metres distance apart. Meetings should not take place unless absolutely essential. Use telephones and ICT to avoid face to face meetings. If these must be held you should try to ensure attendees are 2 metres apart.
- You should avoid non-essential use of public transport, varying your travel times on public transport to avoid rush hour and where it is practical/possible please consider walking or cycling to work.
- You should continue to maintain the highest possible personal hygiene, including washing your hands thoroughly and frequently.
- Business areas are looking at scaling back activities, determining minimal/reduced staffing levels that enable key services to continue and developing rotas based on staff working a reduced number of hours per day/days per week or alternate weeks without any financial detriment.
- We are reviewing other measures like suspending/changing methods for recruitment competitions, training courses and OHS visits.

Frequently asked questions and advice for NICS colleagues and managers are attached and are also available on the intranet. Line managers should bring these to the attention of colleagues who do not have access to the intranet. Please make sure you also look at the latest PHA advice:

- COVID-19 information on the intranet

- [Public Health Agency website](#)

In all cases, you should take sensible measures and discuss working arrangements within your business area.

We will need to divert resources to COVID-19 and every department has extensive plans in place, including the working patterns of staff in frontline roles, to ensure we can continue to deliver public services.

Teams across the NICS are already working incredibly hard, pulling together to manage the challenges we face. Over the coming months the NICS, like every organisation, will have to adapt the way we work and this may involve changing colleagues' roles and at a later stage calling some people back into work. This means following the official advice while managing higher than average levels of absence.

Please speak to your line manager if you have any concerns.

We have an extremely important role in not only helping to delay this virus and supporting those affected, but also continuing to provide the services that our citizens rely on every day.

I am confident the NICS will rise to the challenge.

Look after yourselves and each other.

Thank you in advance

PD

Summary note:

Gov.uk guidance

- The gov.uk guidance currently separates those who are clinically extremely vulnerable from those who at increased risk of severe illness from COVID-19.
- The clinically extremely vulnerable fall into the categories of organ transplant recipients, those with specific cancers, those with severe respiratory conditions and those with rare diseases or metabolic conditions.

At risk category includes a much broader range of medical conditions.

NI legislation

- The NI legislation covers vulnerable people as one group with conditions listed in both of the GOV.uk categories. It does not differentiate more serious conditions and also omits certain people altogether such as organ transplant recipients.
- The legislation was passed on the evening of 28 March 2020 which was after the advice on extremely medically vulnerable was first published by gov.uk on 21 March 2020.

GOV.UK Clinically Extremely Vulnerable	GOV.UK At Increased Risk of Severe Illness from Coronavirus (COVID-19)
Guidance on shielding and protecting people who are clinically extremely vulnerable from COVID-19	Guidance on social distancing for everyone in the UK and Protecting other People and Vulnerable Adults
<ol style="list-style-type: none"> 1. Solid organ transplant recipients. 2. People with specific cancers: <ul style="list-style-type: none"> ○ people with cancer who are undergoing active chemotherapy ○ people with lung cancer who are undergoing radical radiotherapy ○ people with cancers of the blood or bone marrow such as leukemia, lymphoma or myeloma who are at any stage of treatment 	<ul style="list-style-type: none"> • aged 70 or older (regardless of medical conditions) • under 70 with an underlying health condition listed below (ie anyone instructed to get a flu jab as an adult each year on medical grounds): <ul style="list-style-type: none"> ○ chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis ○ chronic heart disease, such as heart failure

<ul style="list-style-type: none"> ○ people having immunotherapy or other continuing antibody treatments for cancer ○ people having other targeted cancer treatments which can affect the immune system, such as protein kinase inhibitors or PARP inhibitors ○ people who have had bone marrow or stem cell transplants in the last 6 months, or who are still taking immunosuppression drugs <ol style="list-style-type: none"> 3. People with severe respiratory conditions including all cystic fibrosis, severe asthma and severe chronic obstructive pulmonary (COPD). 4. People with rare diseases and inborn errors of metabolism that significantly increase the risk of infections (such as Severe combined immunodeficiency (SCID), homozygous sickle cell). 5. People on immunosuppression therapies sufficient to significantly increase risk of infection. 6. Women who are pregnant with significant heart disease, congenital or acquired. 	<ul style="list-style-type: none"> ○ chronic kidney disease ○ chronic liver disease, such as hepatitis ○ chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy ○ diabetes ○ problems with your spleen – for example, sickle cell disease or if you have had your spleen removed ○ a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy ○ being seriously overweight (a body mass index (BMI) of 40 or above) <ul style="list-style-type: none"> ● those who are pregnant
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The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

(2) In these Regulations “vulnerable person” includes—

(a) any person aged 70 or older;

(b) any person under 70 who has an underlying health condition, including but not limited to, the conditions listed in Schedule 1;

(c) any person who is pregnant.

SCHEDULE 1 Regulation 1

Underlying Medical Conditions

1. Chronic (long term) respiratory diseases, such as all cystic fibrosis, asthma (including severe asthma), chronic obstructive pulmonary disease (COPD) (including severe COPD), emphysema or bronchitis.
2. Chronic heart disease, such as heart failure.
3. Chronic kidney disease.
4. Chronic liver disease, such as hepatitis.

5. Chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy.
6. Diabetes.
7. Cancers.
8. Problems with the spleen, such as sickle cell disease or removal of the spleen.
9. A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
10. Being seriously overweight, with a body mass index of 40 or above.
11. Rare diseases and inborn errors of metabolism that significantly increase the risk of infections such as SCID, homozygous sickle cell.