

MEMORANDUM E (20) 97 (C)

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

DATE: 14 May 2020

TO: EXECUTIVE COLLEAGUES

**FINAL EXECUTIVE PAPER: PROPOSED AMENDMENTS TO THE HEALTH
PROTECTION (CORONAVIRUS, RESTRICTIONS) REGULATIONS (NORTHERN
IRELAND) 2020**

Introduction

- 1 Further to the Executive's agreement on 7 May 2020 to the recommendations in Memorandum E (20) 90 (C), following the second review of the COVID-19 restrictions and requirements, and the Executive's agreement on the Approach to Decision-Making on coronavirus published 12 May 2020, I propose to make the following amendments to the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020:
- (i) amend regulation 4(5) to allow places of worship to open for acts of individual prayer, subject to adherence to social distancing precautions and hand hygiene;
 - (ii) amend regulation 5(2) to allow people to take part in any outdoor activity that does not involve contact with shared surfaces that cannot be disinfected;
 - (iii) amend regulation 5(2) to allow people to use critical services provided by a District Council or other public body, such as household recycling centres;
 - (iv) amend regulation 6 (prohibition of gatherings) and regulation 4(5) (closure of places of worship) to permit urgent marriages, i.e. where

OFFICIAL - EXECUTIVE

one or both of the parties is terminally ill, with the total number of people present limited to ten;

- (v) amend regulation 6 to allow up to six people to meet outdoors, subject to adherence to social distancing precautions;
- (vi) amend regulation 6 to allow drive-in church services, drive-in live performances of music and theatre and drive-in cinema, where participants remain in their vehicles throughout the service or performance or screening, and the occupants of each vehicle are members of the same household;
- (vii) amend Schedule 2, Part 2 (types of businesses required to close) to clarify that "Auction houses" does not include livestock markets, whether for slaughter or breeding and
- (viii) amend Schedule 2, Part 3 (types of business that may operate) to include garden centres and ornamental plant nurseries (but not cafés or restaurants in such premises), subject to adherence to appropriate social distancing.

2 As regards enforcement of the restrictions I propose to make the following changes:

- (i) designate district council officers as 'relevant persons' for the purposes of regulation 3 (requirement to close premises) and regulation 4 (further restrictions and closures) but not in relation to regulation 6 (restrictions on gatherings), and
- (ii) designate district council officers as 'authorised persons' for the purposes of regulations 3 (requirement to close premises) and regulation 4 (further restrictions and closures) but not in relation to regulation 6 (restrictions on gatherings).

LPP/LAP

4 I propose that the Executive defer a decision on the following proposals which my Department has considered:

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

- (i) allow services to be held in larger churches;
- (ii) allow people to visit family members in their homes, and
- (iii) allow marriage ceremonies attended only by the participants.

- 5 My Department has assessed the risks and benefits associated with each of the proposals above in accordance with the guiding principles and the decision-making framework set out in Memorandum E (20) 90 (C). The table in Annex A provides a summary of each assessment and of the rationale for the recommendation.

Chief Medical Officer and Chief Scientific Adviser opinion

- 6 The Chief Medical Officer and the Chief Scientific Adviser have endorsed the risk ratings and the recommendations in respect of each proposal for change. The CMO and CSA consider that we can begin to move through Step 1 as outlined in the Executive Approach to Decision Making. As stated in Memorandum E (20) 90 (C), every change carries with it a risk of raising the value of R, so change must continue to be incremental. We will continue to monitor R closely and take proactive measures to bring R down. These include the Test, Trace, Isolate and Support Strategy and the development of the proximity app, which are the subject of separate papers for this Executive meeting.

Designation of district councils as enforcement bodies in respect of Regulations 3, 4 & 6

- 7 As summarised in paragraph 2, I recommend that district council officers be designated as enforcement bodies for the purposes of regulations 3 (requirement to close premises) and regulation 4 (further restrictions and closures) but not in relation to regulation 6 (restrictions on gatherings). Such a designation, if agreed, can be made administratively by DoH and would not necessarily require an amendment to the Regulations. The background and rationale for this are set out in Annex B.

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

Timing

- 8 Subject to Executive agreement on each proposed amendment, I aim to have the majority of these made, by urgent procedure, by Friday 15 May.
- 9 On the question of allowing people to take part in any outdoor activity that does not involve contact with shared surfaces that cannot be disinfected, there are some challenges with the way the amendment would be made in the regulations and therefore this amendment may take a little longer to make and to implement than the others proposed. Subject to Executive agreement, my Department will continue to pursue a satisfactory resolution to the legal and practical issues, with the aim of making the necessary amendments next week.

Communications

- 10 All changes need to be communicated to the public in the clearest possible terms. This is crucial both for our efforts to keep the value of R below 1 but also in order to enable people to live their lives as freely as possible within the restrictions and in line with public health advice. My officials will work closely with the Executive Information Service and with colleagues in other Departments to ensure that public messaging is accurate and is as clear as possible.
- 11 In this context my Department has received representations about activities that are not restricted by the Regulations, but where the power of the #stayhome message has led to sectors of the economy or activity in community life stopping in ways that were not intended by the Regulations and that need not be inhibited for the protection of public health. The construction and manufacturing sectors are a case in point, where there is scope to emphasise that the steps set out in the Executive's pathway build on what is already permitted and the current position includes these sectors working in safe environments. Further guidance for these sectors could help improve on the practical advice already in place to help employers,

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

employees and the self-employed understand how to work safely during the coronavirus pandemic. As new information comes to light and the Executive's pathway evolves, this could be developed into 'stay safe' and 'work safe' messaging when the time is right to build confidence in our economy and communities.

Acknowledgement

- 12 I take this opportunity to acknowledge the cooperation between Departments which has enabled the Executive to consider these proposals swiftly.

Recommendation / Decision sought

- 13 I recommend that the Executive agrees that:
- i. the legislative changes proposed in this paper are in keeping with the Executive Approach to Decision-Making and with the framework set out in Memorandum E (20) 90 (C);
 - ii. the proposed amendments to the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 should be made;
 - iii. these amendments should be made as soon as is practicable, aiming for Friday 15 May for the majority of the amendments;
 - iv. the amendments to allow people to take part in any outdoor activity that does not involve contact with shared surfaces that cannot be disinfected should be approved and made at the earliest possible time next week following satisfactory resolution of the legal and practical issues, and

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

- v. the amendments must be supported by the clearest possible public messaging.

LPP/LAP

**ROBIN SWANN MLA
MINISTER OF HEALTH**

OFFICIAL - EXECUTIVE

LPP/LAP

Notes

- 1 The options in the risk/benefit assessment matrix table below comprise proposals received by DoH before 6 May and more recent proposals in accordance with the Executive Approach to Decision-making.
- 2 The ratings on each row are not scores that can be summed. They indicate the outcomes of largely qualitative assessments.

Overall rating of risk or potential benefit: key

- 3: highest risk
- 2: significant risk
- 1: moderate risk
- 0: negligible risk or benefit, or neutral
- +1: moderate benefit
- +2: significant benefit
- +3: greatest benefit

Assumptions regarding mitigations to reduce virus transmission, severe disease and death:

1. People will work from home where possible.
2. Social distancing will be maintained where possible and contacts will be kept to a minimum, both in terms of duration and proximity.
3. Good hand hygiene and respiratory hygiene will be maintained at all times.
4. Efficient and regular cleaning regimens for shared surfaces will be in place.
5. Anyone with fever or relevant respiratory symptoms will self-isolate.
6. There will be full co-operation with the Northern Ireland Contact Tracing Service and all individuals advised to self-isolate will do so.
7. In the event of R exceeding 1 and emerging evidence of a significant increase in COVID cases at any time it may be necessary to re-impose restrictions which have been relaxed and to step back one or more stages.

OFFICIAL - EXECUTIVE

List of proposals for change in the table

- 1 Allow places of worship to open for individual acts of prayer.
- 2 Allow services in larger churches.
- 3 Allow participation in outdoor activities in general.
- 4 Allow people to leave home to use critical services provided by a District Council or other public body, e.g. household recycling centres.
- 5 Allow urgent marriages (where a partner or close family member is dying)
- 6 Allow marriage ceremonies limited to immediate participants only.
- 7 Allow visits to family members indoors.
- 8 Allow outdoor gatherings of up to six people.
- 9 Allow drive-in church services/drive-in gatherings for cultural purposes.
- 10 Designate district councils as an enforcement body in respect of Regulations 3, 4 & 6.
- 11 Clarify that the closure of auction houses does not apply to livestock markets (breeding or slaughter).
- 12 Allow garden centres to open, although not their cafés.

Possible change to restrictions / requirements	Impact on transmission <i>leading to serious disease</i>	Health impacts medium to long term	Society	Economy
	RISK	POTENTIAL BENEFIT		
Closure of premises – Reg 3(1) – withdrawal of this restriction on the following categories				
Closure of businesses – Reg 3(4) – withdrawal of this restriction on the following categories				
Further restrictions & closures – Reg 4 – withdrawal of any of the following restrictions				
Closure of places of worship / additional reasonable excuse to leave home: 1) Churches to be permitted to open for acts of individual prayer, subject to adherence to social distancing precautions and hand hygiene.	-1	+1	+1	0

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

Notes

1. Consistent with Step 1 'Family and Community' in the Executive Approach to Decision Making
2. This would offer benefits in terms of personal well-being, at low risk, and on that basis should be adopted.
3. It would not meet the current criteria for lowest risk activities: outdoor activities ... during which social distancing can be maintained for individuals who do not share a household contact and where there is no shared contact with hard surfaces.
4. The main risk to mitigate would be shared contact with hard surfaces.
5. Conclusion: low risk and clear benefit. **Should be adopted.**

Closure of places of worship / additional reasonable excuse to leave home:

2) In larger churches, services to take place whilst observing social distancing.

-1 / -2

+1

+1

0

Notes

1. Consistent with Step 4 'Family and Community' in the Executive Approach to Decision Making
2. This appears to offer benefits in terms of personal well-being and societal benefits but the degree of risk requires closer scrutiny.
3. It would not meet the criteria for lowest risk activities: outdoor activities ... during which social distancing can be maintained for individuals who do not share a household contact and where there is no shared contact with hard surfaces.
4. "Large" would have to be defined, and may not be useful as a criterion. A small gospel hall with a regular congregation of about 20 would probably have no problem maintaining SD. Some very large evangelical churches are regularly full, so maintaining SD could be difficult. By contrast there are many large, old churches with very small congregations, for whom SD would not be an issue.
5. Shared contact with hard surfaces would be a risk.
6. Conclusion: **Decision should be deferred.**

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

<p>Restrictions on movement – Reg 5 – additional reasons for leaving home that would become reasonable excuses. Note: This is unlike the provisions above in that instead of a finite list of existing restrictions that could be withdrawn or relaxed, the potential set of reasonable excuses is open-ended.</p>				
<p>Grounds of reasonable excuse – any specific proposals for adding new grounds for leaving home should be generated by Departments. A Department generating such a proposal should lead in assessing the risks and the potential benefits.</p>				
<p>Additional reasonable excuse to leave home:</p> <p>3) Allow to take part in any outdoor activity that does not involve contact with shared surfaces that cannot be disinfected.</p>	0	+2	+1	+1
<ol style="list-style-type: none"> Proposed by DoH. Consistent with Step 1 'Definition of steps' in the Executive Approach to Decision Making This would offer benefits in terms of personal well-being at negligible risk. It would allow for the pursuit of recreational interests such as golf and fishing. It would meet the current criteria for lowest risk activities: <u>outdoor</u> activities ... during which <u>social distancing</u> can be maintained for individuals who do not share a household contact and where there is <u>no shared contact with hard surfaces</u>. Maintaining social distancing may be difficult. Enforcement could be difficult but possibly much less difficult than it would for a series of more specific exemptions (reasonable excuses). Similarly, communicating this clearly to the general public and ensuring that it is understood may not be straightforward but may be much less difficult than a growing list of exemptions. Conclusion: Should be adopted, although implementation may be slightly delayed while further consideration is given to the legal mechanism and enforcement of this broad easement. 				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

Additional reasonable excuse to leave home	0	+1	+1	+1
4) Allow to use critical services provided by a District Council or other public body.				
<p>Notes</p> <ol style="list-style-type: none"> Proposed by DAERA. Consistent with Step 1 'Definition of steps' in the Executive Approach to Decision Making District Councils are permitted to operate their Household Recycling Centres. This amendment would give clarity to people that availing of that service is permitted by adding to the list of critical service to which travel is a reasonable excuse. This may lead to a reduction in fly-tipping. Councils would need to ensure that no contact with surfaces was necessary e.g. bin lids propped open The main economic benefit is that a number of waste businesses depend on the materials left at Household Recycling Centres. Conclusion: Should be adopted. 				
Restrictions on gatherings – Reg 6				
Prohibition of public gatherings / closure of places of worship:	-1	+1	+1	0
5) Permit urgent marriages, i.e. where one or both of the parties has a terminal illness. Ceremonies (religious and civil), would be limited to the minimum number of participants.				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

<p><u>Notes</u></p> <ol style="list-style-type: none"> Proposed by DoF Minister 12 May 2020 Consistent with Step 2 'Family and Community' in the Executive Approach to Decision Making (gatherings of up to 10 people), although no specific mention is made For some couples delaying a marriage is not an option. This is most critical for those couples where one of the parties or a close family member is terminally ill (as defined in Article 18 (5) and (6) of the Marriage (NI) Order 2003) and only has a very short period of life left. A marriage requires five people to be present: the parties to the marriage, two witnesses and registrar or officiant. Maximum attendance of ten people would make this consistent with funerals. Attendance by a Registrar or an officiant should be on a voluntary basis. Conclusion: strong humanitarian argument, with significant well-being benefits for the individuals concerned. Low, manageable risk. Should be adopted. 				
<p>Prohibition of public gatherings / closure of places of worship:</p> <p>6) Marriage ceremonies (religious and civil), limited to the immediate participants only.</p>	-1	+1	+1	+1
<p><u>Notes</u></p> <ol style="list-style-type: none"> Consistent with Step 2 'Family and Community' in the Executive Approach to Decision Making (gatherings of up to 10 people), although no specific mention is made It is not clear that the closure of places of worship is an obstacle to this. The obstacle in law to the conduct of civil marriages or civil partnership ceremonies is more likely the list of reasonable excuses for leaving home. This appears (depending on a more rigorous analysis) to offer benefits, in terms of personal well-being at negligible risk and on that basis could be adopted. The main risk to mitigate would be shared contact with surfaces. 				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

5. It would not meet the current criteria for lowest risk activities: <u>outdoor</u> activities ... during which social distancing can be maintained for individuals who do not share a household contact and where there is <u>no shared contact with hard surfaces</u> .
6. Notwithstanding the significance of a marriage or civil partnership ceremony for the couples involved, there must be doubts as to the likely uptake of such ceremonies where the only people present are the couple, witnesses and the person conducting the ceremony, therefore the benefits at macro level in terms of the three pillars are probably negligible.
7. Conclusions: Decision should be deferred . Further work is needed, particularly in relation to outdoor civil ceremonies which may fall within the Step 1 definition.

Prohibition of public gatherings:	-3	+1	+1	0
7) Allow visits to family members indoors				

Notes

- 1 Proposed by TEO, 12 May 2020.
- 2 Consistent with Step 1 'Family and Community' in the Executive Approach to Decision Making
- 3 It is not safe to assume that social distancing would be maintained generally at indoor visits/gatherings, and it would be impossible to enforce.
- 4 Conclusion: clear benefits in terms of well-being and society but high risk in relation to infection rate. **Decision should be deferred**.

Prohibition of public gatherings:	-1	+1	+1	0
8) Allow outdoor gatherings of up to 6 people.				

Notes

- 1 Proposed by TEO, 12 May 2020.
- 2 Consistent with Step 1 'Family and Community' in the Executive Approach to Decision Making
- 3 Assumption 2, above, is that social distancing will be maintained.

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

4 Conclusion: low risk, clear benefit. Should be adopted.				
Prohibition of gatherings / additional reasonable excuse to leave home:	-1	+1	+1	0
9) Church services in public places on a drive-in basis, with worshippers remaining in their cars.				
<p>Notes</p> <ol style="list-style-type: none"> Consistent with Step 1 'Family and Community' in the Executive Approach to Decision Making where drive-in church services are mentioned specifically. Drive-in cinemas are also mentioned under 'Sport, cultural and leisure activities'. Drive-in church services would by definition not be held in churches, mosques, synagogues or other built or enclosed places of worship, so the closure of places of worship would not be an obstacle. The necessary amendment would presumably be to the list of reasonable excuses to leave home. This would need to be thought through re enforceability. Could be broadened to include drive-in live performances (music, theatre) and cinema. These would appear to offer benefits in terms of personal well-being, at low risk and on that basis should be given sympathetic consideration. It would meet not the current criteria for lowest risk activities: outdoor activities ... during which <u>social distancing can be maintained for individuals</u> who do not share a household contact and where there is no shared contact with surfaces. The main risk to mitigate would be maintenance of social distancing, if any significant numbers of people cannot resist the temptation to leave their vehicles and mingle. Conclusions: <ol style="list-style-type: none"> Low risk and clear benefit to drive-in church services. Should be adopted, subject to participants only sharing a vehicle with members of their own household and remaining in their vehicle. Drive-in live performances (music, theatre) and cinema share the same low risk and clear benefit. Should be adopted, subject to participants only sharing a vehicle with members of their own household and remaining in their vehicle. 				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

Enforcement of Requirement – Reg 7 – Reg 7(1) A ‘relevant person’ may take such action as is necessary to enforce any requirement imposed by regulation 3, 4 or 6.				
Enforcement of Requirement – Reg 7 – Reg 7(12)(b) A ‘relevant person’ means a constable or a person designated by the Department of Health for the purposes of this regulation.				
Designation of additional enforcement bodies:	+1	0	0	0
10)(a) District Council officers to be designated as ‘relevant persons’ for the purposes of regulations 3, 4 and 6.				
<p>Notes</p> <ol style="list-style-type: none"> Proposed by DoJ 12 May 2020. Request for designation of district councils as an additional enforcement body for regulations 3 (requirement to close premises), 4 (further restrictions and closures) and 6 (restrictions on gatherings). As more businesses begin to reopen, the enforcement landscape will become increasingly more complex. PSNI are likely to require support to sustain enforcement. NI is the only region of the UK where local authorities are not designated as enforcement bodies. In England, Scotland and Wales, local authorities are only designated in relation to the equivalent of NI regulations 3 and 4 (closure of businesses and premises). The proposal is for district council officers to assist with the PSNI, ‘four Es’ approach, i.e. engagement, education, encouragement and specifically enforcement if required. This is to help ensure continued compliance with the restrictions in order to minimise the transmission of COVID-19 in the community. There have been preliminary discussions between DOH, TEO and DOJ and between DOH and TEO with SOLACE, on behalf of Local Government. These discussion have centred on the business restrictions (regulations 3 & 4), but not regulation 6 – gatherings. Businesses/premises: a ‘relevant person’ may enforce regulations 3 and/or 4 by issuing a prohibition notice to the owner/manager – non-compliance with such a notice is an offence under regulation 8(3). Movement/gatherings: a ‘relevant person’ may enforce regulation 5 and/or 6 by directing a person to return to the place where they are living or removing a person to 				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

<p>that place, which includes the power to use reasonable force; by directing the dispersal of a gathering and directing a person involved a gathering to return to the place where they are living and removing such a person to that place, which includes the power to use reasonable force.</p> <p>9. The distinction between the two types of enforcement powers above is apparent – the former is the type commonly found in food standards, consumer protection, etc, legislation – i.e. exercisable by council officers, whereas the latter is the type commonly found in criminal justice, anti-social behaviour, etc, legislation – i.e. exercisable by police officers.</p> <p>10. Conclusion: It is recommended that district council officers be designated as ‘relevant persons’ for the purposes of regulations 3 (requirement to close premises) and regulation 4 (further restrictions and closures) but <u>not</u> in relation to regulation 6 (restrictions on gatherings).</p>				
<p>Enforcement of Requirement – Reg 9 – Reg 9(1) An ‘authorised person’ may issue a fixed penalty notice to a person over the age of 18 who commits an offence under the Regulations.</p>				
<p>Enforcement of Requirement – Reg 9 – Reg 9(10) An ‘authorised person’ means a constable or a person designated by the Department of Health for the purposes of this regulation.</p>				
<p>Designation of additional enforcement bodies:</p> <p>10)(b) District Council officers to be designated as ‘authorised persons’ for the purposes of the Regulations.</p>	+1	0	0	0
<p><u>Notes</u></p> <ol style="list-style-type: none"> Proposed by DoJ 12 May 2020. Request for designation of district councils as an additional enforcement body for regulations 3 (requirement to close premises), 4 (further restrictions and closures) and 6 (restrictions on gatherings). As more business begin to reopen, the enforcement landscape will become increasingly more complex. PSNI are likely to require support to sustain enforcement. NI is the only region of the UK where local authorities are not designated as enforcement bodies. In England, Scotland and Wales, local authorities are only designated in relation to the equivalent of NI regulations 3 and 4 (closure of businesses and premises). The proposal is for district council officers to assist with the PSNI, ‘four Es’ approach, i.e. engagement, education, encouragement and specifically enforcement if required. This is 				

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

to help ensure continued compliance with the restrictions in order to minimise the transmission of COVID-19 in the community.

6. There have been preliminary discussions between DOH, TEO and DOJ and between DOH and TEO with SOLACE, on behalf of Local Government. These discussion have centred on the business restrictions (regulations 3 & 4), but not regulation 6 – gatherings.
7. An ‘authorised person’ may issue a fixed penalty notice (FPN) where that person reasonably believes that anyone has committed an offence under the Regulations, including a contravention of a direction or prohibition notice.
8. FPNs feature in a range of regulatory legislation – e.g. food hygiene, sale of tobacco to children, planning, dog control, etc – all involve issue of FPNs by council officers. It follows that designation of a council officer as an “authorised person” for the purposes of issue of a FPN under regulation 9 ‘fits’ within the type of regulatory enforcement powers commonly exercised by council officers.
9. In practical terms, the issue of a prohibition notice to e.g. a person who breaches regulation 3 by opening up a hairdressers shop, is unlikely to be contentious and is the type of enforcement act routinely undertaken by council officers. However, directing the dispersal of a late-night gathering, with or without the use of reasonable force, would appear to be beyond those usual acts of council enforcement.
10. Conclusion: It is recommended that district council officers be designated as ‘authorised persons’ for the purposes of regulations 3 (requirement to close premises) and regulation 4 (further restrictions and closures) but not in relation to regulation 6 (restrictions on gatherings).

Schedule 2, Part 2 – types of businesses required to close

Businesses required to close:	0	0	+1	+2
11) Amend to clarify that “Auction houses” does not include livestock markets, whether for slaughter or breeding.				

1. This amendment would be a technical fix, not strictly necessary but useful and harmless. “Auction houses” was not intended to capture livestock markets but if the operators of livestock markets are hesitant about opening the position should be clarified. This could be done by means of a letter to all market operators from DAERA or some other authority, but a change in the regulations would provide confirmation for anyone consulting the legislation.

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

2. Conclusion: should be adopted.				
Schedule 2, Part 3 – types of businesses that may operate				
Businesses that may operate:	-1	+1	+1	+1
12) Amend to include garden centres and ornamental plant nurseries, but not cafés or restaurants in these premises.				
<p><u>Notes</u></p> <ol style="list-style-type: none"> Proposed by DAERA Consistent with Step 1 'Retail' in the Executive Approach to Decision Making The sector comprises primarily wholesale growers of bedding plants, perennials, shrubs, ornamental plants and cut flowers. In Northern Ireland, there are 210 main producers selling approximately £24 million of product per year. The main outlets for produce are direct sales, garden centres, multiple retailers, and local retailers in Northern Ireland and the Republic of Ireland. There is a narrow window for sales and a short shelf life for the product with 60% of annual sales occurring from March to June. Most plants have a 'shelf life' in the nursery of 2-5 weeks and cut flowers a number of days – thereafter, they are unfit for market. There is an argument that, as regards risk, garden centres are comparable with large, mixed hardware stores but are not being treated equitably by the regulations. Work is ongoing at UK level to develop protocols on social distancing specifically for this sector. SD risks may be lower in garden centres than in most hardware stores as there are normally fewer customers per square metre. Garden centres tend to be partially outdoors, which facilitates the management of SD. The availability of gardening supplies helps people to engage in healthy and productive outdoor activity, and supports the 'stay at home' message. May need to be added to the list of reasonable excuses to leave home. Conclusion: should be adopted. 				

OFFICIAL - EXECUTIVE

Proposal to designate district councils as enforcement bodies in respect of Regulations 3, 4 & 6: background and rationale

- 1 Enforcement of the Northern Ireland restrictions regulations is currently a matter for the PSNI and the Harbour Police (“a constable”). Additional enforcement bodies can be designated by DoH.
- 2 In England, Scotland and Wales, local authorities are designated for enforcement in relation to the equivalent of NI regulations 3 and 4 (closure of businesses and premises).
- 3 In Northern Ireland, the Health and Safety Executive and district councils already have a key enforcement role in relation to health and safety at work legislation.
- 4 PSNI has adopted a four-phase approach to enforcement (‘the 4 Es’):
 - Engage with the public to encourage voluntary compliance.
 - Explain why dispersal is vital to reduce the spread of this virus.
 - Encourage people to disperse.
 - Enforce where necessary when people do not listen and put others at risk.
- 5 It is argued that as more businesses begin to reopen, the enforcement landscape will become increasingly more complex and that PSNI are likely to require support to sustain enforcement.
- 6 The Health and Safety Executive position is that there is no need to designate HSENI to enforce the restriction regulations as it already has powers that it can use under the Health and Safety at Work (NI) Order 1978.
- 7 There have been preliminary discussions between DoH, TEO and DoJ and between DoH and TEO with SOLACE, on behalf of Local Government.

OFFICIAL - EXECUTIVE

These discussions have centred on the business restrictions (regulations 3 & 4), but not regulation 6 (gatherings).

- 8 SOLACE has highlighted existing resource pressures, including providing support to DfC on the Food Parcels Service and on contact tracing for the Public Health Agency. Councils are not actively seeking designation as enforcement authorities, however, taking cognisance of their officers knowledge of local businesses and enforcement capabilities, have indicated that they would respond constructively to any request for support.
- 9 SOLACE has requested:
 - Council enforcement responsibilities are limited to regulation 3 and potentially regulation 4 pertaining to restrictions on businesses;
 - The Department produce clear guidance for councils on the enforcement of the Regulations;
 - Councils are given sufficient notice prior to designation to prepare and plan enforcement activities and protocols in line with the above guidance;
 - PSNI support may be required in respect of the service of notices and enforcement of closures;
 - Should the Department be considering any media release affecting Councils role then that should be discussed with Councils in advance.
- 10 The proposal is for district councils to be designated as enforcement bodies under Regulations 3, 4 & 6 to assist with the PSNI 'four Es' approach. This is to help ensure continued compliance with the restrictions in order to minimise the transmission of COVID-19 in the community.
- 11 The distinction between the two types of enforcement powers above is apparent. Providing advice and, if necessary, issuing fixed penalty notices and prohibition notices to businesses (under regulations 3 and/or 4) is the type of enforcement approach used in respect of food safety, consumer protection etc. legislation, i.e. exercisable by council officers, whereas

OFFICIAL - EXECUTIVE

OFFICIAL - EXECUTIVE

directing a person to return home, or removing a person to that place, which includes the power to use reasonable force, or directing the dispersal of a gathering and directing people involved to return home and removing people, potentially including the power to use reasonable force, is the type of enforcement commonly found in criminal justice, anti-social behaviour etc. legislation, i.e. exercisable by police officers.

OFFICIAL - EXECUTIVE

Technical amendments

There are a number of technical amendments proposed, to clarify inconsistencies identified within the Regulations and to emulate recent amendments to the corresponding Regulations in England and Wales. The proposed amendments are as follows:

Regulation 2. The emergency period and review of need for restrictions.

Amend to Insert - "Section 28(2) (effect of repeal) of the Interpretation Act (Northern Ireland) 1954 applies in relation to the termination of a restriction or requirement by a direction as it applies in relation to the repeal of an enactment."

This is a technical "fix" to avoid a potential enforcement loophole – Section 28(2) of the 1954 Act provides that where a provision is repealed, that repeal does not affect the previous operation of the provision, or affect any right etc accrued or penalty etc incurred while the provision was in force. It applies automatically to any legislation which is repealed – the effect of the amendment is to extend that automatic "saving" to a direction published under regulation 2 i.e. a direction terminating a restriction or requirement.

Regulation 4. Further restrictions and Closures during the emergency period

Amend to include "or enquiries" to enable businesses to provide e.g. information about pricing or future bookings etc. rather than only in response to "orders" received.

Amend (6) (closure of place of worship) and (7) (closure of community centre) to insert "*upon the request of the (Department)*" after "*urgent public support services*". This clarifies that a place of worship or community centre cannot unilaterally/randomly decide what constitutes an urgent public support service for the purpose of remaining open.

Regulation 5. Restrictions on movement

Amend (2) to insert "or deposit money with" to clarify a potential ambiguity, i.e. it takes account of practical situation, e.g. a person attending a bank might reasonably either obtain or deposit money.

Regulation 6. Restrictions on gatherings

Amend to insert “*provide or receive care or assistance*” to take account of the practical situation whereby e.g. a person who participates in a gathering as a result of providing care or assistance to an injured person in the street does not commit an offence, whereas the injured person (who is receiving the care or assistance) might commit an offence.

Regulation 7. Enforcement of requirement

Amend to insert new paragraphs which clarify that the exercise of the powers under (5) and (6) apply to both movement and gatherings. This clarifies the enforcement powers insofar they apply to children participating in gatherings.

Amend (10) to insert express reference to the use of reasonable force in relation to gatherings. The purpose is to clarify that the enforcement powers applies to both breach of the movement and gathering restrictions rather than applying only to a breach of the movement restrictions.

Regulations 9. Fixed penalty notices

Amend (1)(b) to “*is aged 18 or over*” to correct a drafting error.

Schedule 2:

Part 2 (14) – “*and tanning services, electrolysis or acupuncture*” to be inserted to provide further clarification for these businesses following a number of queries received.

Part 3 (30) – Amend “Car” to “Motor Vehicle” to enable other forms of transport.

Part 3 (33) – Insert “*savings clubs and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers*” to provide further clarification.