



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Health Protection Amendment Regulations:
Department of Health

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seated tables: no standing or service at the bar is permitted. Customers must remain seated once in the premises, apart from using the facilities or to leave the premises. Where the venue provides food from a buffet, customers can leave their table to select food from the buffet whilst maintaining two-metre social distancing at all times.

Dancing is prohibited in hospitality venues, as is live or recorded music for dancing. Live music is also prohibited. Background or ambient music is allowed at a volume that allows people to conduct normal conversations without having to raise their voice to be heard. There are exemptions for a couple getting married or entering into a civil partnership, in order to facilitate the traditional first dance, and for professional dancers providing entertainment at a venue.

A maximum of six people from no more than two households can be seated at a table. Children aged 12 or under are not included in the total, and more than six people are permitted to sit at a table if they belong to a single household. At an event to celebrate a marriage or civil partnership, the maximum table size is 10, not including children aged 12 or under. There is no limit on the size of the top table.

In addition to the restrictions and requirements relating to the hospitality sector, the regulations require that the PSNI be provided, on request, with a copy of the risk assessment and details of the relevant measures relating to an outdoor gathering that consists of more than 15 people. The regulations also clarify that the offences can apply to an event organiser. The main regulations limiting indoor gatherings in a private dwelling to six people from two households, outdoor gatherings in a private dwelling to no more than 15 people and a gathering in a private dwelling of up to 10 people where zone of the parties in a marriage or civil partnership is terminally ill have been amended so that children aged 12 or under are not included in those totals.

The Chairperson (Mr Gildernew): Nigel, that is probably a bit more detail than necessary. We are more interested in the overall cumulative impact of the regulations. You were referring to SR 2020/204. Is that right?

Mr McMahon: It was SR 2020/202.

The Chairperson (Mr Gildernew): I will give members a quick update on SR 2020/204 and SR 2020/210. We will then come back to questions.

SR 2020/204 makes changes to the places where restrictions will apply. Restrictions relating to venues where intoxicating liquor may be consumed will be applicable in indoor and outdoor spaces associated with the venue. Places of worship are excluded from that. SR 2020/210 inserts a definition of "intoxicating liquor". It amends the restrictions on movements in a venue at which intoxicating liquor may be consumed and adds restrictions to the opening hours of certain venues at which intoxicating liquor, food and drink may be obtained or consumed.

We understand that the regulations deal with detailed elements of that, but my initial question is about the more general situation. These regulations reopened wet pubs, and we are being asked to confirm them without knowing anything about the circumstances in which they will be used. Given Wednesday's decisions, why would the regulations not simply be revoked and be brought back later should they be deemed necessary?

Mr McMahon: As far as the process is concerned, Chair, as you are aware, we have been doing the regulations via urgent procedure. Effectively, the three sets of regulations that we are considering today are currently the law. They are the position as things stand today. Of course, after 28 days, unless they go through Committee scrutiny and Assembly debate, they will fall and no longer be the law.

I am sure that you will appreciate that there is a lot of work and detailed drafting to be done on how the Executive's decisions yesterday will be implemented. That may or may not involve revoking some of the previous regulations. It may involve amending rather than revoking, so I am not in a position to say what will emerge from that. Obviously, the target is to have that in place by 6.00 pm tomorrow, and colleagues are working urgently on that. At this point, I am not able to say whether the outcome of that drafting will be the revoking of any elements of the regulations.

The Chairperson (Mr Gildernew): Are you saying that they could still be revoked as a result of the drafting process?

Mr McMahon: That is certainly an option, Chair. Given the urgency of the current situation, we are imposing yet another layer of restrictions over and above what is in place. It will be for departmental solicitors to advise us on the best way of doing that. It has been very difficult, but our hope all the way through has been that we can do this in a way that is as easily communicated as possible. If revoking elements of the legislation provides an opportunity to simplify the restrictions and simplify the message, we will look at that.

The Chairperson (Mr Gildernew): OK. In what circumstances would it be proposed to bring the restrictions back? What level of transmission would there need to be for these to come back? What is the advice on and evidence of the level of transmission that would trigger their return?

Mr McMahon: I do not know. I am not involved in the discussions that the Chief Scientific Adviser (CSA) and the Chief Medical Officer (CMO) have with the Executive. I understand that there is no set trigger but that a basket of measures and factors is taken into account. Of course, it is always about a balance as well. There is the scientific evidence, but we need to try to balance that with other issues, such as the economy and the impact on wider society.

All I can say on that is that I understand, from the statement yesterday, that there is a commitment to have this latest set of restrictions in place for four weeks. I presume that that is to see whether they have an impact before taking any further decisions. I am not really in a position to comment today on how the Executive would decide at that point what they wished to do from then on. As you know, the regulations have been amended regularly throughout the whole process, and that has largely been required to reflect the rapidly changing position, so I cannot imagine that the nature of the process will change any time soon.

The Chairperson (Mr Gildernew): During the period in which the wet pubs have been open, how has the impact of that been monitored and measured?

Mr McMahon: The Chief Scientific Adviser provides a weekly update to the Executive — the Executive will get that update today — and that includes comment on whether, during that period, rates are rising or falling and how that looks geographically. It is very difficult, I understand, to unpick that in the sense of attributing any particular rise or fall to one of what is now quite a wide basket of measures in place. It is quite difficult to be definitive about whether any particular intervention is having an effect. Of course, the hope is that, overall, the measures in place at the moment and the new measures that will be introduced, along with people's behaviour and compliance with them, will have the desired effect of pulling the rates down.

Mr Easton: My first comment is an observation. It is almost like this is all obsolete because of what will happen on Friday. It is nearly pointless. That is just the way I feel.

Does the Chief Medical Officer come to you and explain what he is doing so that you can brief us on these new rules? Does he explain his rationale to you? Is he providing you with any evidence of the rationale for choosing different areas, such as restaurants, for closure or regulations? Restaurants have put so many measures in place, and we are having to close them. Where is the evidence to support that? When you go out for a meal, the guys have put up plastic screens, they are wearing PPE, they are providing hand sanitiser, and everybody is socially distancing. What is the evidence that suggests that they have to close and that this will make any difference in reducing the number of cases of COVID? I want to know the rationale for this, because we are not really getting it, are we? We are affecting everybody's lives, and we are affecting the economy. On one hand, we are trying to save lives, but, on the other hand, many of the measures are contributing to suicides and mental health issues. I want to start seeing the evidence for all this. We cannot just keep doing things willy-nilly unless we have the evidence to back it up.

Mr McMahon: On the comment about the regulations and the process being, effectively, obsolete, we probably all share your frustration that the way in which we have to work through this means, sadly, missing out a lot of the steps in the process that would normally happen. I sympathise with the Committee coming to this after the fact, so to speak, when the regulations are already made. In an ideal world, none of us would want that, but we also understand why that has had to happen.

On evidence and rationale, the evidence base and professional advice are given by the Chief Medical Officer and Chief Scientific Adviser to the Executive. Typically, they attend Executive meetings to do that and to clarify any points that the Executive may have. The decisions that come out of that are collective political decisions.

As officials working on the regulatory side, our job is, fundamentally, to implement those decisions by way of making legislation: working with departmental solicitors to draft something that matches and meets that policy intent. It is not so much that the Chief Scientific Adviser and Chief Medical Officer directly provide that advice to us as officials; it is more that they are generous in giving their time to make themselves available to clarify any points that we have about the policy intent. At times, the statements that come from the Executive do not contain the level of detail that we require for legislative drafting. Where we have a query about what the intent may have been, we are able to access the Chief Medical Officer and Chief Scientific Adviser and ask them to explain that detail.

Ms Bradshaw: Thank you for coming this morning. The advice released by the Scientific Advisory Group for Emergencies (SAGE) on 21 September pretty much showed that the opening of wet pubs would contribute to a rise in numbers. How much did that factor in the discussions with the Chief Medical Officer and the Executive's decision a couple of days later to open wet pubs? How does that all fit in?

Mr McMahon: I am not sure that I am able to answer the question, in the sense that I am not privy to those conversations and discussions, so I do not know how that went.

I am afraid that the only thing that I can comment on and am aware of is that the work on the safe opening of wet pubs was, like everything else, conducted at pace. A lot of work was done, particularly by the Department for the Economy and the Executive Office (TEO), along with stakeholders in the industry, to come up with a package that it was felt could be proposed to the Executive for the wet pubs to reopen. It is unfortunate that, in the rapidly changing situation, that came to fruition around the time when we were starting to see increases that meant having to close them again. Transmission of the virus is strongly linked to public mixing in general, in a range of settings. Hospitality is one of those key settings where, unfortunately, and despite the measures in place, it is clear that, at times, there is transmission, so the time is right to reintroduce these stricter requirements and restrictions.

Ms Bradshaw: I want to pick up on points made last week about risk assessments and the police being privy to those should they request them. How much do you engage with councils' environmental health and licensing officers? They have a lot of experience of dealing with pubs and licensed premises in their area. Was an opportunity missed to engage with them and provide them with a role, as we said last week, in ensuring that pubs were delivering on the risk assessments and the measures that they said they were going to introduce? There would have been an opportunity there for better compliance and monitoring.

Mr McMahon: There is an enforcement group, which I am not involved in, so I cannot talk about the detail of that. However, the group, which is led by TEO, works with the police and local government to look at that. The Department for Communities has been in discussions with local government about future roles. Currently, councils are designated in terms of business closures under the original restriction regulations. Discussions are ongoing with them about what future support or role they might be able to contribute.

Mr Carroll: Thank you, Nigel. This will be familiar to you. You have heard me banging on about the evidence for months now. The evidence has not been forthcoming, and we have moved far too quickly to lift regulations. Unfortunately, Nigel, you have been in the firing line, and you have been feeling the heat from me and others. There has been a willingness to move far too quickly without having the evidence. We have heard about the high rate of transmission in hospitality. I think that much of the relaxation was premature.

My point is similar to Alex's. I wonder what the rationale is for us, as a Committee, to agree today to this being in operation. It is already in operation, and our endorsement will mean its being in operation for a further period of just over 24 hours. Then, either a new regulation will come in or this regulation will fall. Does it not seem a bit farcical that we are being asked to agree this being in operation for a period of 24 hours before it falls? That seems bizarre to me and to most people outside the Building.

This is what similar to what the Chair was saying, but I am not clear that we have the answer. If this is agreed by the Committee today, is it frozen, effectively, for four weeks on the basis of the announcement on Wednesday? If a new regulation comes in and then falls, do we automatically go back to this? What is the situation? A lot of clarity is needed, certainly by me, and by many others.

Mr McMahon: OK. Thank you. These regulations are currently the law. We have to work with what is in front of us at any given time. It is important that the administrative and scrutiny processes are gone

through to confirm it as the law. It is not possible for me to talk now about what drafting for the new restrictions might look like by tomorrow. However, there is a possibility that the new restrictions will be added as another layer on top of the existing law, a layer that can be removed again, hopefully, in four weeks' time. If that were to be the case, we would revert to the provisions that we are discussing today.

From our perspective, it is important that we get them on the statute book so that they could be relied on in due course, if, in four weeks' time, the wider restrictions were removed. However, I am talking, to some extent, hypothetically, because it depends on what is recommended in drafting at the weekend. For now, we assume that these regulations will be in place and will be ready to fall back to in four weeks' time, hopefully, if the tougher restrictions are lifted at that point.

Mrs Cameron: Thank you, Nigel, for being here once again. Since our last meeting, has a request for sight of the relevant advice and evidence been relayed to the Executive? There is a regulation that sets out what hospitality has to provide: social-distancing measures, hand sanitising and recording customers' details. Is it specified in that regulation what exactly those details are? Does it specify name and telephone number or name, telephone number and address? I have noticed that it differs from venue to venue. In some places, you are asked for just a name and a phone number, and, in others, you are asked for a name, address and phone number. How can the rule of no more than two households at a table be enforced if all the details are not gathered?

Mr McMahon: On the first point, I am certainly not aware that anything has been forwarded to the Executive about the request for evidence to be provided. On the point about the No. 5 regulations, I believe that the requirement for the information to be gathered is in guidance. I was just trying to check. I am not sure that it is specified in the regulations; I will have to check that.

On the point about people from more than a single household going to a hospitality venue, my understanding is that the information that is to be collected often comes from the principle person who made the booking. A lot of hospitality venues that take bookings online obviously gather the name, email, address and telephone number of the person who is making the booking, and I think that that is primarily the information that is gathered rather than information from everybody in the group. That is the information that has to be held for the 21 days.

Mrs Cameron: For clarity, and you are going to check this out, you think that the onus is on the person who makes the booking to provide all the details. You can do this only for a short time now, but if you were to walk into the pub at lunchtime with no booking and sat down with five of your workmates, for instance, is that covered by law or guidelines? Who checks, basically, that the people in that group are from no more than two households?

Mr McMahon: My comment about the person who makes the booking is just a reflection of how I suspect it probably works in practice rather than what the law actually requires. I think that the venue will be set out in such a way that means that it has tables that can accommodate only six people. The venue can do no more than ask or check whether there are more than two households involved; it has a requirement to do so. I suppose there is a certain amount of taking it on good faith if they are told that that is the case. If people are looking for a bigger table because their household has more than six people, I imagine that they would have to organise that in advance with the venue by contacting it and saying, "There are more than six of us, and we are all from one household". Again, I think that the venue would have to take it largely in good faith that those people are, indeed, from one household.

I just checked what the regulations say about the information requirement. They say that:

"(where visitor information is not provided in advance of a visit)"

the venue has to:

"obtain visitor information at the time of a visit".

It also has to:

"record visitor information in a filing system (which may be an electronic system)"

and store it for 21 days and provide it on request to a relevant person. That is as much detail as the regulations contain. They do not specify everybody in the group or the nature of the information. I suspect that that is in the guidance.

Mrs Cameron: That needs to be firmed up, Nigel, because if people do not have to provide addresses, it is very difficult for establishments to know whether they are complying with the law or with the guidelines. It is incredibly difficult for the hospitality sector. We understand that the vast majority of venues have gone to great lengths to comply with regulations and guidelines. I just feel so sorry for them coming into the next period of time, because they have worked their socks off but that does not appear to be enough. Given the call from the hospitality sector for us to tell it what it needs to do to stay open, if there are any improvements to be made going forward that could help them to keep any incidences relating to hospitality down, I think that that would be a good thing. If you would not mind, please have another look at that.

Mr McMahon: There is a balance with trying not to overly burden hospitality as well. From a contact tracing point of view, an outbreak associated with that venue or with a particular group would mean that, if it had the contact details of the person who made the booking, contact tracing, I imagine, would follow up with it about who was in the group and ask for their details. That would take the burden and the onus off the hospitality venue in having to take all the details from everybody who comes in. There is a balance to be struck in trying to make hospitality venues safe while not putting any more burden than necessary on them that would put people off visiting and going out to use those premises.

Mrs Cameron: Thank you.

The Chairperson (Mr Gildernew): OK. Órlaithí, are you there on the phone?

Ms Flynn: I am. Thanks, Nigel. It seems a bit bizarre to be discussing the regulations that are coming into force now that they have been overtaken by the four-week amendments that we will see over the next couple of weeks. Nigel, could the next four weeks be used as an opportunity for the Department or us, as the Health Committee, to try to look in more detail at some of the evidence? You may have to chop and change and amend these regulations in a month anyway, because we do not know where we are going to be in four weeks. These regulations, as they stand, are talking about limitations on live music and dancing, but there are exemptions for marriages and things like that, which we know are all going to change over the next couple of weeks. Could the Department possibly use this as an opportunity to try to gather and consider all the evidence on how the wet pubs got on over the past while? Could the Committee use this as an opportunity to use its scrutiny role to get more detail? For example, we could consider Pam's point about the consumer details and how that links in with contact tracing and Paula's point on the enforcement issues.

You mentioned that there is an enforcement group under the Executive Office and the Department for Communities. Could the Committee start to tease out more of the detail on that over the next couple of weeks, or is it the case that these regulations need to be passed even though they have already been overtaken by the new regulations?

Mr McMahon: With regard to the broader evidence, the Chief Scientific Adviser has made himself available to the Committee on a number of occasions, including the last session that we had on the regulations, to talk about the advice. It may be that the Committee wants to explore the broad evidence more in the coming weeks. Something may come out of the work of the contact tracing enforcement group and so on. The difficulty, from our perspective working on the legislation, is that there are other aspects of all this that we are not directly involved in. Certainly, when the Committee has asked before about things like enforcement, PSNI enforcement and the Public Prosecution Service, we have gone to those bodies to request that information on the Committee's behalf. However, that is not something that we, on the legislation side, regularly see.

I am not sure whether that is really an answer to your question, but we are more than happy to do anything that we can to pull the information together to help to support the Committee, but, at times, there will be information that we do not necessarily hold directly; we may have to go to others to get that.

Ms Flynn: I appreciate that response, but maybe I did not make my point clear enough. The regulations are obviously coming into place on Friday evening. In four weeks, when those regulations have expired, the Department will not know whether the regulations that we are looking at today will still be relevant. Do you know what I mean?

Mr McMahon: Yes.

Ms Flynn: How would you get around that if you needed to start chopping and changing? What happens if we pass this today but you need to make amendments depending on how the next four weeks go? That is what I was trying to tease out.

Mr McMahon: That is a fair point, and it is certainly something that I will take away as we should look at it. I was focusing more on what we could provide to the Committee over that period, and that may be a little bit more difficult. I am quite happy to take away the point about using the intervening period to see whether there is any evidence that the restrictions that we are discussing today have had any impact up to this point.

Ms Flynn: Thanks, Nigel.

The Chairperson (Mr Gildernew): OK, Nigel. Given that the confirmatory process is designed so that the regulations will be confirmed when you have seen their impact and how well they are working, and given that issues that are still outstanding were raised today about how they are working, would it not be simpler to revoke them and to build in what you know? We are looking at these now, but they have already been overtaken by events, and we do not know what things will look like in four weeks' time. Would it not be simpler to revoke and then draft them again based upon the learning that will have been gleaned from this period and build that into the new regulation to fine-tune it?

Mr McMahon: Chair, that has been considered as one of the options over the last 24 hours, and it may well be the route that we take. There are other ways of doing this. One of things that we need to be very careful of is that, as you are aware, the Executive are considering the potential financial package for businesses today. There is a very strong link between the way that the legislation is drafted and worded and business eligibility for that package. The two have to marry. We will, in a sense, have to wait to see what the financial package looks like and what its criteria are before we draft the legislation. In drafting, we are not inadvertently excluding businesses from financial support that would otherwise get that support. You will know that a financial package is already agreed that is linked to the element of the regulations that applies to Derry and Strabane. We need to have a detailed look at what new drafting would work in the delivery of the financial package. That is probably all that I can say at the moment. That is an additional and very important factor that we need to look at in the drafting. To that extent, the model that is adopted may have to fit in with that.

The Chairperson (Mr Gildernew): Am I to take it from what you are saying, Nigel, that there is active consideration going on in the Department and by the Minister about whether to revoke or move these at this stage?

Mr McMahon: Absolutely, yes. That is the case.

The Chairperson (Mr Gildernew): OK. You said that you were not aware that our request for further information that has been provided to the Executive had been relayed. Why is that, given the number of times that we have asked you to do that?

Mr McMahon: I am not sure, Chair, that I have been asked to relay that to the Executive in these sessions. We have simply said that, when asked about the evidence, it is provided for the Executive and it is up to the Executive to make a decision about whether to publish or make it available. I am not entirely sure that it would be my or the Department's role to do that. I would have to take advice on whether that is something that would be appropriate for us to do on the basis of a briefing session.

The Chairperson (Mr Gildernew): Can you undertake to do that and to address it the next time that you are in front of the Committee, and, indeed, can you relay the request to the Executive, because we want the additional assessment? While Professor Young was here, I do not feel that the issue has been addressed, and I think that we will return to it.

OK, Nigel, thank you, as ever, for coming this morning and dealing with member's questions. We will see you again.

Mr McMahon: Thank you, Chair.

The Chairperson (Mr Gildernew): We will move on to our Committee consideration. Before we formally consider each of the regulations, the Department has advised that the motions for the SRs will be tabled by the Department for Communities in the week beginning 19 October, so this is the last opportunity for the Committee to come to its decision on the regulations prior to the Assembly debate. The Examiner of Statutory Rules has advised that she will report on the SRs tomorrow and will raise no issues. All three are subject to confirmatory resolution. What are members' views or thoughts on this?

Mr Carroll: To repeat, it just seems bizarre. Anybody who is watching this from outside will be saying, "Why is the Committee agreeing to an SR or a change that is going out of operation tomorrow evening?". I do not know why we need to do that. I assume, based on Nigel's —.

Ms Flynn: Chair, can you hear us? We cannot really hear what Gerry is saying.

Mr Carroll: Sorry, apologies.

Ms Flynn: It is cutting in and out.

Mrs Cameron: *[Inaudible.]*

The Chairperson (Mr Gildernew): We can hear you, Órlaithí, and Pam, we can hear you now. Gerry is going to move a little closer —.

Mr Sheehan: Chair, the sound quality is very ropey.

Mrs Cameron: It is for me too.

Mr McGrath: It is the same in Newcastle.

The Chairperson (Mr Gildernew): In light of that, I will suspend the meeting to see whether we can get the sound improved, because, obviously, it is not satisfactory for you to not be able to hear what is being discussed.

The Committee suspended at 10.26 am and resumed at 10.31 am.

The Chairperson (Mr Gildernew): OK, members. If you agree, we will go into closed session to take guidance on our options on the SRs. Are members content to go into closed session?

Members indicated assent.

The Committee went into closed session from 10.31 am until 10.45 am.

The Chairperson (Mr Gildernew): OK, members, we are back in public session.

Are members agreed that we do not take a view on the regulations?

Members indicated assent.

The Chairperson (Mr Gildernew): Thank you, members.