



Northern Ireland  
Assembly

Committee for Health

# OFFICIAL REPORT (Hansard)

Coronavirus Act (Extension of Powers to Act for the Protection of Public Health) (Northern Ireland) Order 2021: Department of Health

25 November 2021



During the pandemic, the infection rate has changed rapidly over time, and the regulation powers that were introduced by section 48 have enabled the Department of Health to act quickly to introduce legislation to support efforts to prevent or control the spread of the coronavirus infection. The situation continues to evolve, and the Department wishes to be able to continue to respond effectively and flexibly to meet the need to protect public health.

The Coronavirus Act is due to expire two years after its commencement, unless Parliament decides to end it. When the Coronavirus Act ceases to have effect, all the secondary legislation that has been made to date under the temporary modifications of the Public Health Act by section 48 will also cease to have effect on that date. Unlike other UK jurisdictions, Northern Ireland will revert to a position of not having public health regulation-making powers specific to coronavirus and consistent with those in other jurisdictions, unless and until primary legislation that includes such provisions can be brought before the Assembly.

For that reason and because the virus remains in circulation and it is difficult to predict its trajectory or for how long it could remain in circulation, the Department intends to retain the powers in schedule 18 to make regulations, should they be required, after 24 March 2022, in the absence of any other suitable powers. It has proposed to use the powers in section 90 of the Coronavirus Act to extend the operation of section 48 for six months by the means of this order.

If the Committee is content, I can take some questions at this stage, or, if it prefers, I could walk through the provisions of schedule 18.

**The Chairperson (Mr Gildernew):** Will you walk through the provisions first, Richard? We will then go with questions in a block.

**Mr Duffin:** OK. Schedule 18 inserts various provisions as Part 1 into the Public Health Act 1967. The Committee should note that references to sections here are also the sections in Part 1 of that Act.

Section 25A, which is about infection and contamination, defines certain terms used in that part. It provides that the reference to infection is to that:

*"which presents or could present significant harm to human health".*

It also states:

*"reference to disinfection or decontamination includes ... the removal of any vector, agent or source of ... infection".*

Section 25B concerns health protection regulations on international travel. It enables the Department to make regulations for preventing danger to public health from conveyances, or the persons or articles on those conveyances, arriving at any place or preventing the spread of infection by conveyances leaving any place. It also provides a power for regulation to give effect to international agreements or arrangements, such as World Health Organization recommendations.

Section 25C, "Health protection regulations: domestic", provides a power for the Department of Health to make regulations:

*"for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection ... in Northern Ireland".*

The threat can come from outside Northern Ireland. The section gives examples of particular provisions that may be made, such as to set out the requirements for notification of cases of specified diseases by registered medical practitioners through the Public Health Agency (PHA); to impose restrictions or requirements directly on persons or in relation to things or premises; or to enable another body, such as a district council, to do so. It also provides examples of restrictions or requirements that might be imposed and includes a list of things that are special restrictions or requirements. Some measures, however, are not regarded as special restrictions or requirements, such as a requirement to keep a child away from school; a restriction on the holding of an event or gathering; or a restriction or requirement relating to the handling, transport, burial, commission of dead bodies, or the handling, transport or disposal of human remains.

Section 25D is "Restrictions on power to make regulations under section 25C" and contains the restrictions on the exercise of the powers under section 25C. The section prohibits the Department from making regulations containing restrictions or requirements under section 25C(3)(c) unless the Department considers, when making the regulations, that the measures are proportionate for what it wants to achieve.

Similarly, under section 25E, regulations that enable the imposition of restrictions or requirements under section 25C(3)(c) must provide that the person who decides to impose such a measure can do so only if the person considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it. It prohibits regulations from directly imposing a special restriction or requiring medical examination, removal to or detention in hospital, or other suitable establishment, or isolation or quarantine. Regulations may only enable the imposition of a special restriction or requirement by a decision maker if either of the conditions in section 25D(4) is met. The conditions are that there is a serious and imminent threat to public health when the regulations are made or that the imposing of the restrictions or the requirements is expressed in the regulations to be contingent on there being such a threat at the time that the decision to impose them was made. Section 25E excludes compulsory medical treatment, including vaccination, from the ambit of the regulation-making powers in sections 25B or 25C.

Section 25F is titled "Health protection regulations: supplementary". We make further provision about regulations under section 25B or 25C. This includes details of when the regulations may be used to amend primary or secondary legislation. The section outlines the penalties for the offences that can be created using the regulations. It makes provision about reviews and appeals in relation to special restrictions or requirements imposed by virtue of a decision taken under the regulation made under section 25C. Where a special requirement or restriction is imposed on, or in relation to, a person, thing or premises, the regulations must include provision for an individual or business to have the right of appeal to a court of summary jurisdiction against a decision. The regulations also make available a right of review at specified intervals to specified persons on special restrictions or requirements that continue to be in force in relation to any person, thing or premises for more than a specified period.

Sections 25G to 25O outline the provisions related to court orders made by a Magistrates' Court. Section 25G is the power to order health measures in relation to persons. It sets out the criteria that must be met for a district judge to make an order under that legislation in relation to a person. The judge must be satisfied that the person is or may be infected, that the infection presents, or could present, significant harm to human health, that there is a risk that the person might infect others and that it is necessary to make the order to remove or reduce that risk. The section describes the measures that that order can provide for, including such things as requiring the person to submit to a medical examination; to be removed to or detained in a hospital or other suitable establishment; to be kept in quarantine or isolated; to be disinfected; to wear protective clothing; to provide information; to have their health monitored; to attend training or advice sessions; to be restricted as to where they go and with whom they have contact; and to abstain from working or trading.

There are also powers to order health measures in relation to things and premises. These fall under sections 25H and 25I. They enable a district judge to make an order if conditions similar to those in section 25G are satisfied but in relation to things and premises respectively. An order relating to a thing may require, under section 25H(1), that that thing be seized, retained, kept in isolation, quarantined or disinfected. It may also require that a dead body be buried or cremated, or, in any other case, that a thing be destroyed or disposed of. A number of measures are available under section 25I relating to premises.

Section 25J deals with court orders in respect of groups, things or premises. It will assist a district judge to make the same provision in one order where, for example, more than one person is or may be infected.

Section 25K makes supplementary provision about what can be included in an order of a district judge. It includes, at section 25K(3), a provision that a measure in an order may be conditional. For example, an order may state that, if an individual refuses to comply with a requirement that a judge considers necessary, the individual must stay in isolation until the risk of infecting others has passed. Section 25K(5) allows the judge to include in an order directions for actions that might be appropriate to give effect to the order. That might, for example, include putting in place court provisions for a person to undergo a measure such as quarantine.

Section 25L makes provision for the length of time for which any restriction or requirement imposed by or under a Part1A order may be in force. The section requires any restriction or requirement in an

order to have a specified time limit. Further orders can be made extending the period for which the restriction or requirement is imposed beyond that time limit.

Section 25M sets out the procedures for applying, making, changing or revoking a magistrate's order. Only the Public Health Agency may apply for an order, but an affected person, for example, a partner or a premises owner, in addition to the Public Health Agency, or any other authority with a function of executing or enforcing the order in question, can apply for the order to be varied or revoked.

Section 25N is "Power to make further provision by regulations". It enables the Department to make regulations dealing with matters relating to the taking of measures pursuant to orders, including the provisions described in this section.

Section 25O is "Enforcement of Part 1A orders". It provides that it is an offence to fail to comply, without a reasonable excuse, with a restriction or requirement imposed by or under an order of a district judge in a Magistrates' Court or to wilfully obstruct anyone executing that order. The offence is punishable by a fine not exceeding level 5 on the standard scale. A remedial action order can also be made.

Section 25P looks at Assembly control. It sets out the different Assembly procedures for making regulations under this Part. In general, regulations, including those under section 25B, are made under the negative resolution procedure. Regulations made under section 25C are subject to the draft affirmative resolution procedure unless they contain a declaration under section 25B(5) that the regulations do not contain any provision made by virtue of section 25C(3)(c), imposing a special restriction order requirement or other restrictions or requirements that would have a significant effect on the person's rights.

Section 25Q outlines the emergency procedure. Regulations of a kind to which a draft affirmative procedure would normally apply may be made and brought into effect immediately under section 25Q if they contain a declaration that the Department is of the opinion that it is necessary, by reason of urgency, for them to be made without a draft being approved under that procedure. After regulations are made, in accordance with this procedure, they must be laid before the Assembly. If the Assembly decides to reject the regulations, they will cease to have effect at the end of the day on which they were rejected. They will also cease to have an effect after 28 days if a resolution approving them has not been passed by the Assembly.

**The Chairperson (Mr Gildernew):** Richard, in the interests of time, I will move to members' questions. They may wish to pick up on the detail in subsequent sections. We will move back to a question-and-answer session. Thank you for that.

It is clear that we are still in the midst of a serious public health crisis. I know that we do not want and I do not believe that anyone else would want to pass this type of legislation on an emergency basis. That is certainly not something that we do in normal times, but we have not been, nor are we yet, in normal times. That is hugely important to note.

It is also relevant to note that COVID-19 continues to circulate across the globe and, indeed, across the continent of Europe. In many ways, the situation there is even worse than the one that we are dealing with on the island of Ireland and between here and Britain. That speaks to the necessity of the legislation. While it is regrettable that we are still in this situation and have to look at implementing the regulations forward, that is the context in which we have to move forward. I welcome the opportunity for the Committee to consult on, contribute to and consider the regulations. There have been useful examples of where that has added benefit to the regulations. That should continue to be done, and the Department should continue to consider how that process can be better facilitated in terms of how soon and the process by which the regulations are brought forward to the Committee and the Assembly for consideration. That would be useful.

As for enabling other bodies to carry out some of the enforcement that you mentioned, I am conscious that the Committee took a decision and provided that ability, but we have not seen a huge amount of that being done. An awful lot of the enforcement seems to have fallen to the police. I wonder whether there is the potential to review who else can assist in dealing with the outworkings of COVID and the restrictions.

In particular, it is important — this has been a continual theme in the Committee — that we find a way of monitoring the impact of individual restrictions being imposed or lifted and how those interact with the transmission of the virus. At times, there are ways to leverage in the experience of councils'

environmental health teams to assist with that process and potentially with enforcement. People appear to be paying less care and attention to the basics of mask wearing and social distancing. It is important that we have a cohesive message on that and that the regulations address those issues in the best way possible. That is something to consider.

I know that some of the powers have not been activated. Is it possible for the Department to provide us with a breakdown in table form of which powers have and have not been activated to give us an idea of which ones have been useful? Can you provide that to the Committee, Richard?

**Mr Duffin:** Yes, Chair. We can certainly provide that. We know that Magistrates' Court orders have not been applied or used to date in the pandemic. We are getting advice on whether we can remove those powers for a Magistrates' Court, as it is difficult to retain a power that has never been used.

**The Chairperson (Mr Gildernew):** Are there any plans or is work ongoing to improve how we monitor the impact of the restrictions, how we enforce them, how we provide the evidence, and how we build learning into the process in a dynamic way? Is there anything ongoing in that area?

**Mr Duffin:** Various bodies on the Executive's task force are involved in enforcing and messaging, although I have not, on the regulation or the order side, been involved with that work.

**The Chairperson (Mr Gildernew):** OK. I will go to members for questions. I have an indication from Gerry Carroll. Go ahead, Gerry, le do thoil. *[Pause.]*

**Mr Carroll:** My apologies. I had a wee connection issue.

On a point of clarity, is this an extension of what has been in force for an extra six months beyond the March deadline? Has there been any discussion of what happens if there is no Executive after the next election? If that is the case, whom does implementation of the regulations and powers fall to? Is it the Secretary of State or the permanent secretary to the Department? Finally, since this is an SL1, will it go to the Floor for a vote? Maybe that is more a question for the Clerk, but there are a couple of questions there.

**Mr Duffin:** I am not entirely up to date on what the procedure would be should there not be an Executive, but I can certainly provide that information. On your second point, yes, the intention is to bring the order before the Assembly, using the normal confirmatory procedure.

**Mr Carroll:** As it is an SL1, there can be no amendments — the vote is to extend or not or to abstain — or attempts to amend the initial legislation. Does that possibility exist?

**Mr Duffin:** Some of the provisions that have not been used would be difficult to retain, such as, certainly, those for Magistrates' Court orders, but I do not think that we can amend it.

**The Chairperson (Mr Gildernew):** Given that we have a fully devolved health system, Richard, can you describe how the Department has taken on board recommendations from organisations such as the World Health Organization on international best practice? How do we access that information and apply it in a way that has direct impact and deals with our situation? I ask that because transmission rates have been of such a degree that hospitals have repeatedly come under pressure throughout the pandemic. I acknowledge that a lot of the pressures were already there and that COVID has made things worse, but how do we link directly into the best practice and the guidance coming from some of the major health organisations around the world?

**Mr Duffin:** That is outside my area of expertise. The Chief Medical Officer (CMO) and Chief Scientific Adviser (CSA) take in the information and provide advice and guidance to the Executive.

**The Chairperson (Mr Gildernew):** OK. The Minister will appear before the Committee next week, so there will be an opportunity to follow up on that with the CMO or the Minister. Another element to that is the fact that we live on a small island that is widely recognised — I will follow that up with the Minister — as a single epidemiological unit. In light of the extension of powers that is sought, will you outline how restrictions are being discussed or managed with regard to the Twenty-six Counties, to ensure the greatest harmony and impact? What plans are there to improve that? Clearly, there have been issues. I am not convinced that those issues have been fully resolved, but they need to be resolved urgently, given that we are still in a pandemic and we are looking at extending emergency

legislation. It is incumbent on both Health Departments on this island to do the maximum that they can. Can you outline how that process has worked to date and what plans there are to improve it in future?

**Mr Duffin:** Again, that is not one of the areas that I have been involved with, but I know that there is work going on in the Department and between the two jurisdictions, and they work together as best they can.

**The Chairperson (Mr Gildernew):** OK. A considerable number of the powers give power to the Department of Health or other Departments to act unilaterally in relation to the response here. Is that correct?

**Mr Duffin:** That is correct. However, the Minister has said that he will not act unilaterally; he will always seek to get the Executive's agreement.

**The Chairperson (Mr Gildernew):** OK. No other members have indicated that they have any more questions. Thank you for coming to the Committee and briefing us this afternoon, Richard. We will move on to consider the regulations.

**Mr Duffin:** Thank you.

**The Chairperson (Mr Gildernew):** Members, are there any other comments? No.

Are members content that the Department make the statutory rule?

*Members indicated assent.*

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