



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Briefing: Coronavirus Act 2020

Get in touch with us

We welcome feedback on your experience of the powers in practice in Northern Ireland.

The Commission can be contacted by emailing info@nihrc.org or by ringing 028 9024 3987 (press 1 for reception).

Briefing: Coronavirus Act 2020

Covid-19 is a public emergency. The Northern Ireland Human Rights Commission (the Commission) asks everyone to follow the UK Government's advice and to all play our part in ensuring we get through this crisis. The UK and Northern Ireland governments have taken emergency powers, which restrict the freedoms we normally take for granted. That does not mean human rights automatically take a back seat. Human rights recognises that public health and other emergencies can arise and has set out principles and legal mechanisms for responding to such contingencies.

This briefing sets out the powers taken and the safeguards that apply. It covers the relevant parts of the Coronavirus Act 2020 that apply to Northern Ireland, the Health Protection (Coronavirus Restrictions) Regulations 2020 and the Temporary Modification of Education Duties (No 2) Notice (Northern Ireland) 2020.

Overview of the Act

The Coronavirus Act 2020 introduces new emergency powers to help contain and cope with COVID-19. These powers have a time limit of two years and can only be used where necessary to deal with the COVID-19 public health crisis. It is possible that some of the powers set out in the Act may never be applied.

In terms of holding the government to account in its use of these powers, the Act will be reviewed by Parliament after six months and the Secretary of State must provide a report on the powers that are used every two months.

The Health Protection (Coronavirus Restrictions) Regulations 2020 and the Temporary Modification of Education Duties (No 2) Notice (Northern Ireland) 2020 set out the detail of how certain aspects of the Act apply in Northern Ireland.

The Commission will raise any human rights concerns flowing from the application of the powers in practice to the relevant Ministers, Departments and the Joint Committee on Human Rights. We welcome

feedback on your experience of the powers set out the Act and associated Regulations in practice in Northern Ireland.

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Human Rights and the Act

The emergency powers set out in the Coronavirus Act are unprecedented, far reaching and severely limit our freedoms. Certain rights can be restricted during a public emergency.

The Siracusa Principles cover how public emergencies can limit rights within the UN International Covenant on Civil and Political Rights. The principles state that severe restrictions of basic rights are allowed as long as the restrictions are necessary, proportionate, have a legitimate aim and are only used for as long as required to meet that aim. The restrictions should be no more than are required by the circumstances of the situation. The principles cover rights such as freedom of assembly and association and freedom of thought, conscience and religion.

The World Health Organisation has confirmed that prevention of the spread of COVID-19 and preserving the life and health of those affected or under threat of infection, particularly the most vulnerable, are legitimate aims.

In terms of legally enforceable rights under the European Convention on Human Rights and the Human Rights Act, some rights apply no matter what the circumstances. These include rights, such as the right to life (Article 2 ECHR) and the right to freedom from torture, inhuman or degrading treatment or punishment (Article 3 ECHR), which must be protected under all circumstances.

Other rights can be limited and are qualified under certain circumstances. These rights include the rights to liberty (Article 5), education (Protocol No 1, Article 2 ECHR), respect for private and family life (Article 8 ECHR) and to peaceful assembly (Article 11 ECHR). The qualifications vary depending on the individual right but, generally any qualification must be defined in law, be necessary and proportionate and pursue a legitimate aim.

The challenge is ensuring the powers set out in the Coronavirus Act 2020 are used in line with human rights laws and standards.

Restrictive powers under the Act

Protection of public health

Section 48 of the Act allows proportionate restrictions on international and domestic travel, with the aim of preventing danger to public health and the spreading of infection or contamination. It also allows a person to be medically examined; admitted to or detained in hospital; put in isolation or quarantine; disinfected or decontaminated; required to wear protective clothing; restricted in terms of movement, interactions and work; and subject to monitoring or training. A similar approach can be taken towards objects and buildings, including closing or destroying premises. A dead body can also be buried or cremated in a particular way designed to protect public health. However, section 58 of the Act is clear that such decisions must have regard, if known, to a dead person's wishes, or to what appears consistent with the dead person's religion or beliefs.

The Act makes it an offence to fail to comply with any of these actions and provides the courts with the power to make a court order to ensure these actions are followed. However, a person cannot be forced to undergo medical treatment.

Events, gatherings and premises

Section 52 of the Act allows the Executive Office for Northern Ireland, under the guidance of the Chief Medical Officer, to publically declare or revoke a threat to public health due to coronavirus. It also allows the Executive Office to take certain steps to prevent, protect against, delay or control transmission of coronavirus, or to facilitate deployment of medical or emergency personnel and resources. These steps include prohibiting or restricting events or gatherings in Northern Ireland, and closing or imposing restrictions on persons entering or remaining in premises. The police have powers to enforce these provisions, including the ability to enter any premises and, if necessary, to use reasonable force. It is an offence to fail to comply with these restrictions, which can result in a conviction and fine. The Executive Office also has the power to pay compensation if these powers are misused or cause damage to a person or property.

The Health Protection (Coronavirus Restrictions) Regulations (Northern Ireland) 2020 set out the detail of how this will be applied in Northern Ireland.

The Department of Health has declared that the restrictions and requirements are proportionate to what they seek to achieve, namely, a public health response to the COVID-19 threat. As soon as the requirements or restrictions are no longer necessary, the Department must publish a direction to end the restriction or requirement. These regulations expire after six months and the Department of Health must review the need for them at least once every 21 days, starting from 18 April 2020.

Under these regulations, the requirement to close premises applies to any business that has to offer its services in-house (for example, bars, restaurants, concert venues). These restrictions do not apply to businesses that can be adapted to offer takeaway or online services. For example, a restaurant cannot continue to offer sit-in services, but can continue or establish take away services. All accommodation providers are to close, except in certain circumstances, such as providing accommodation for the homeless or at request of government. Places of worship and burial grounds should be closed, except when hosting essential voluntary services, online broadcasts or funerals.

No more than two people may gather in a public place, except in defined circumstances, including where everyone is a member of the same household, for essential work purposes, to provide emergency assistance attend a funeral and participate in legal proceedings.

In addition, no one should leave home except in specified circumstances including to obtain essential food and medical supplies, to seek medical assistance and access other essential services, to provide care or assistance including emergency assistance to a vulnerable person, to travel to work or provide voluntary or charitable services and to donate blood. It is also possible to attend a funeral, but who is allowed to go to a funeral is confined to family members and members of the household and in the absence of anybody else going, only then are friends permitted to attend.

Where it is reasonably possible to do so, a person is expected to work from home.

The rules do not apply to homeless people.

The rules can be enforced by a police officer and anyone designated to do so by the Department of Health. A police officer can direct a person to return home or use reasonable force to remove a person to his or her home.

It is an offence not to follow these regulations, which if ignored can result in a fine or conviction. There is a right of appeal against the fine in certain circumstances.

Border operations

Section 50 of the Act allows the Secretary of State to suspend operations at the UK's ports where there is a real and significant risk that not enough Border Force officers are available to police borders and there is no other option. The first suspension must be limited to six hours; any further suspension can be extended to 12 hours and this extension can be made more than once.

Closure of education and childcare providers

Section 37 of the Act allows the Department of Education to temporarily close schools, the Department for the Economy to temporarily close further and higher education institutions, and the Department of Health to temporarily cease childcare provision. The use of these powers must be necessary and proportionate.

Section 38 of the Act allows each Department, guided by advice from the Chief Medical Officer, to determine if some education or childcare providers should stay open. For example, these powers can be used to close all schools in Northern Ireland, except for those that are offering schooling for children of key workers.

The Temporary Modification of Education Duties (No 2) Notice (Northern Ireland) 2020 temporarily modify legal duties covering special educational needs including assessment and providing statements and require that the Education Authority, schools and others will have a duty to use their best endeavours to make provision. This modification only applies where an inability to comply with a legal duty is attributable to temporary closure of schools and the reallocation of Education Authority and health

and social care resources to meet other essential services and applies for 28 days only, though it is renewable for further periods of 28 days.

Potentially infectious persons

Section 51 of the Act allows public health officers, police constables and immigrations officers in Northern Ireland to place persons suspected of being able to transmit coronavirus into a place suitable for screening and assessment. The official must consider it necessary and proportionate and in the interests of the person, for the protection of other people, or for the maintenance of public health. The person can be held for assessment by immigration officers for three hours, by police constables for 24 hours and by a public health officer for 48 hours. The health assessment must be carried out by a public health officer. The public health officer can impose necessary and proportionate requirements or restrictions on the person being assessed, if it is confirmed they are infectious, the assessment is inconclusive or there are reasonable grounds to suspect the person is potentially infectious.

Mental health legislation

Section 10 of the Act allows the government to temporarily modify the UK's mental health and mental capacity laws. Ordinarily an 'approved' social worker must apply for a person to be admitted to hospital for a mental health assessment. Under these new powers, this is broadened to allowing a 'relevant' social worker to make such an application, where it is impractical or will lead to significant delays to have to wait for an 'approved' social worker to make the application. The Act allows the patient to be detained for longer, as they wait for the application to be processed and medical assessment to be undertaken. During the patient's detention, he or she would ordinarily be assessed by an 'RQIA' practitioner. The Act allows for a 'relevant medical' practitioner to assess the patient when the usual process is impractical. It is also possible to move patients to a different hospital. Time limits for certain procedures for assessment and detention pending a decision following assessment have also been relaxed.

Modifications are made to time limits to allow prisoners held on remand in hospital for an extended period.

The relevant Health and Social Care Trust must keep a record of when a number of these powers are used and provide an evaluation report to the Department of Health.

Courts and tribunals

Section 57 of the Act allows the expansion of the use of live video or audio links at court hearings in Northern Ireland. This is allowed when the court directs, of its own motion or through an application, that it is satisfied that it is in the interests of justice to do so considering all circumstances of the case, including public health interests. The court's direction for a live link can be withdrawn at any time, if it is viewed in the interests of justice to do so. Any person, including the accused, can participate through a live link. However, jury participation cannot take place through live video or audio link. Live link can also be used for the purpose of enabling the public to see and hear proceedings, but it is an offence to record or transmit the broadcast or live link without authorisation.

Fingerprints and DNA profiles

Section 24 of the Act allows the Secretary of State to extend the time limit on how long fingerprints and DNA profiles are retained for the purposes of national security in specific cases where there is not already an indefinite period for retention. Initially the time limit can be extended for up to six months. There can be further extensions, but the maximum total extension period is 12 months.

Elections

Sections 61-64 of the Act provide the powers to postpone Northern Ireland local election to fill casual vacancy, policing roles, recall of MPs and election canvassing.

Enhancing powers under the Act

Temporary registration of healthcare professionals

Sections 2 and 5 of the Act allow the government to register temporarily a person as a nurse, midwife or pharmacist in Northern Ireland. For example, this allows the government to expedite qualifications for trainee nurses or to re-register retired nurses. The powers set out in sections 6 and 7 of the Act that allow the temporary registration of social workers in England, Wales and Scotland, do not extend to Northern Ireland.

Statutory sick pay

Sections 39-44 of the Act allow the Government to support financially employers in paying statutory sick pay to employees that are unable to work due to coronavirus. Ordinarily employers do not have to pay statutory sick pay for the first three days of illness, but this Act removes this waiting period and allows employees that are unable to work due to coronavirus to be paid statutory sick pay from the first day of illness. Given that things are developing at a rapid pace, section 44 of the Act allows for further amendments to these powers in Northern Ireland, so that steps can be taken to accurately reflect evolving health advice.

Pensions

Ordinarily, pensions include terms that restrict whether someone who has retired can return to work and, if so, for how many hours over a certain period of time. Section 47 of the Act allows these restrictions to be suspended for those on health and social care pension schemes that are coming out of retirement or increasingly their working hours to assist with tackling coronavirus in Northern Ireland.

Social security, tax credits and other protections

Sections 72-74 of the Act allow the government to alter social security and national insurance contributions. Section 75 of the Act removes the limit placed on financial assistance for industry. Section 76 of the Act allows the Treasury to direct the HMRC's functions in relation to coronavirus. Each of these powers are aimed at enhancing the ability for the government to provide financial support to employees, employers and claimants affected by coronavirus.

Evictions

Section 81 of the Act introduced powers to protect introduced legislation to protect tenants from eviction by extending notice periods in England and Wales. Scotland has also introduced legislation to protect tenants from eviction. In Northern Ireland, the Department for Communities has an agreement with the NI Housing Executive and Housing Associations that any social housing tenant facing difficulties paying rent during COVID-19 will not be evicted.¹ The Private Tenancies (Emergency Modifications) Bill is also due to be fast tracked through the NI Assembly.

¹ Department for Communities, 'Press Release: Housing support crucial in this crisis – Hargey', 27 March 2020.

This Bill is designed to protect private tenants from eviction during a period of the health crisis by extending the notice to quit period from four to 12 weeks.

Section 83 of the Act aims to protect business tenants that are unable to pay their rent due to coronavirus by temporarily suspending landlords' usual rights of entry or forfeiture.

Annex: List of provisions that extend to Northern Ireland

Section	Schedule	Provision
1		Meaning of coronavirus
2; 5	1; 4	Emergency registration of nurses, other health care professionals, pharmacists
8; 9	7, Parts 1, 2, 4 & 5	Leave and compensation (loss of earnings, travel and subsistence) for emergency volunteers
10(3); 10(4)	10; 11	Temporary modification of mental health and capacity legislation
13		Indemnity of qualifying health and social care activity
18(3)	13, Part 3	Registration of deaths and still births
21		Reduce requirements for medical certificates for cremations
22		Appoint temporary Judicial Commissioners if shortages
23		Alter time limits for judicial decisions on urgent warrant, length and renewal period for urgent warrant
24		Extend time limits for retention of fingerprints and DNA profiles
25-29	15	DAERA can require information on food supply chains and restrict use and disclosure of information
31		Suspension of requirement to hold inquest with jury
32		Suspension of requirement to hold inquest with jury for deaths in custody from natural illness – jury can be summoned
37(3); 38(3)	16, Part 3; 17, Part 3	Temporary closure of educational institutions and childcare premises – DoE and DfE can require provision of education/childcare
42-44		Statutory sick pay - fund employers' liabilities (includes powers to reduce or recover funds), remove waiting period, allow modification of regulation making powers
47		Remove pension restrictions on return to work for health and social care professionals
48	18	Special powers to protect public health
50	20	Powers to suspend port operations
51	21	Powers to restrict and detain potentially infectious persons
52	22	Powers to issue directions on events, gatherings and premises
54; 57	24, Part 2; 27	Use of live links in legal proceedings
55	25, para 2	Public participation in proceedings conducted by video or audio
58	28	Powers on transporting, storing and disposing of dead bodies
61-64		Power to postpone NI local election to fill casual vacancy, policing roles, recall of MPs and election canvassing
71		Administrative requirements – Treasury Commissioners signatures

Section	Schedule	Provision
72-74		Alter national insurance and social security primary and secondary contributions
75		Disapply limits on financial assistance for industry
76		General expansion of HMRC functions as required
77(1); 77(2)		Up-rating of working tax credit
78		Alternative arrangements for local authority meetings
80		Extension of Business Improvements Districts arrangements
83		Protection from right of re-entry or forfeiture for business tenancies
85-102		Extent and procedures for implementation of Act