EXPLANATORY MEMORANDUM TO

The Coronavirus Act 2020 (Extension of Powers to Act for the Protection of Public Health) (No. 2) Order (Northern Ireland) 2023

S.R. 2023 No. 139

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 90(2) of the Coronavirus Act 2020 for approval by resolution of the Assembly and is subject to the confirmatory resolution procedure.

2. Purpose

2.1. The purpose of the Rule is to alter the expiry date of Section 48 of, and Schedule 18 to, the Coronavirus Act 2020 from 24 September 2023 to 24 March 2024.

3. Background

3.1 Section 48 of and Schedule 18 to the Coronavirus Act 2020 (CVA) inserted powers into the Public Health Act (Northern Ireland) 1967 enabling the Department to make Health Protection Regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of Coronavirus infection or contamination in Northern Ireland. These powers were to expire on 24 March 2022.

3.2 The Health Protection Regulations made under these powers were revoked during February and March 2022, however by way of contingency preparedness and in order that the powers provided by the CVA did not lapse on 24 March 2022, The Coronavirus Act 2020 (Extension of Powers to Act for the Protection of Public Health) Order (Northern Ireland) 2022 was brought forward which came into operation on 23 March 2022 (the "first extension"). The Order provided that section 48 of and Schedule 18 to the CVA should not expire but be extended for a further 6 months to 24 September 2022. Section 48 of and Schedule 18 to the CVA were subject to a further two 6-month extensions, (the “second extension”) until 24 March 2023 and (the “third extension”) until 24 September 2023.

3.3 In order to maintain contingency preparedness, using powers in section 90(2) of the CVA, the expiry date of section 48 and Schedule 18 is to be extended for a further 6 months until 24 March 2024 (the "fourth extension"). Without these extended powers, Northern Ireland would be the only region out of contingency alignment with the rest of the UK should health protection measures need to be stood up in response to a new Covid variant of concern.

4. Matters of Special Interest to the Assembly Consultation

4.1 The first extension of the CVA powers, which came into operation on 23 March 2022, was made subject to the Affirmative Resolution Procedure. This is set down in section 96(5) of the CVA.

4.2 The second extension of the CVA powers, which came into operation on 24 September 2022, was made subject to the Confirmatory Resolution Procedure. This is set down in section 96(2) of the CVA.

4.3 The third extension of the CVA powers, which came into operation on 24 March 2023, was made subject to the Confirmatory Resolution Procedure. This is set down in section 96(2) of the CVA.

4.4 Legal advice indicates that as a consequence of the continued absence of an Assembly and Executive, the fourth extension can be made subject to the Confirmatory Resolution Procedure. The powers set down under section 96(2) of the CVA enables a Northern Ireland Department to make an order under section 90(2) which must be laid before the Northern Ireland Assembly as soon as reasonably practicable after being made.

4.5 It should be noted that under this alternative resolution procedure, the Assembly still retains the ability to approve/not approve the Rule. It should also be noted that under section 96(7) of the CVA a Rule laid before the Northern Ireland Assembly by virtue of section 96(2) ceases to have effect at the end of the period of 40 days beginning with the day on which the Rule is made unless, during that period, the instrument is approved by a resolution of the Northern Ireland Assembly. Section 96(8) of the CVA provides that the 40 days does not include any time during which the Assembly is dissolved, in recess for more than 4 days, or adjourned for more than 6 days.

5. Consultation

5.1 The purpose of this Rule is to continue existing policy for a temporary period. However, in the continued absence of an Executive, a functioning Assembly, and Ministers, the Permanent Secretary of each Northern Ireland Department was notified of the Rule for awareness purposes.

6. Equality Impact

6.1. Equality screening identified no disproportionate impact, a full assessment was not considered necessary as the Rule is not making changes to the policy, only extending it.

7. Regulatory Impact

7.1. A Regulatory Impact Assessment has been considered and screened out and there is no impact on business, charities, social enterprise or voluntary bodies.

8. Financial Implications

8.1. None.

9. Section 24 of the Northern Ireland Act 1998

9.1. The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Rule is not incompatible with

any of the Convention rights; are not incompatible with Community law; do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

10. EU Implications

10.1. This Statutory Rule does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

11. Parity or Replicatory Measure

11.1. The provisions in the Rule will enable Northern Ireland to maintain contingency parity with Great Britain in terms of the capacity to make health protection regulations, in response to a new Covid variant of concern, if required.

12. Additional Information

12.1. Not applicable.