EXPLANATORY MEMORANDUM

The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment No. 2) Regulations (Northern Ireland) 2020

S.R. 2020 No. 220

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before the Northern Ireland Assembly to accompany the Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment No. 2) Regulations (Northern Ireland) 2020.

1.2 The Statutory Rule is made under sections 25C(1), (3)(c), (4)(d) and 25F(2) of the Public Health Act (Northern Ireland) 1967 ("the 1967 Act") and is subject to the emergency procedure under section 25Q of that Act.

2. Purpose of the Regulations

2.1 The Rule amends the Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020.

2.2 The Rule extends the requirement to wear a face covering to a private bus or coach, a taxi, a vehicle being used to train for or take a driving test; an aeroplane; an airport; a restaurant, café, bar or public house(unless seated), banks and similar businesses; and areas of government buildings where members of the public access services. It also extends the requirement to wear a face covering to members of staff in retail and hospitality settings when they are in areas accessible to the public, unless they are protected by a partition.

3. Matters of special interest to the Northern Ireland Assembly

3.1 The Statutory Rule is made under the emergency procedure set out in section 25Q of the 1967 Act. The Regulations are made without a draft having been laid before, and approved by a resolution of, the Assembly. The Department of Health is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be introduced, amended or withdrawn in response to the latest risk assessment associated with the incidence and spread of coronavirus disease.

3.2 The Statutory Rule came into operation at midnight on 13th October 2020 and is available on the Department of Health website. The Regulations cease to have effect at the end of the period of 28 days beginning with the day on which the Statutory Rule is made unless, during that period, the Statutory Rule is approved by a resolution of the Assembly.

3.3 The need for the restrictions must be reviewed by the Department of Health within 6 months of their coming into operation.

4. Legislative Context

4.1 The 1967 Act and regulations made under it provide a legislative framework for health protection in Northern Ireland.

4.2 Part 1A of the 1967 Act, as inserted by the Coronavirus Act 2020 ("the 2020 Act"), provides a legal basis to protect the public from threats arising from infectious disease or contamination with coronavirus, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, Part 1A of the 1967 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

4.3 Section 25C of the 1967 Act provides a power for the Department of Health to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination with coronavirus in Northern Ireland. The threat can come from outside Northern Ireland.

4.4 These Regulations are made under section 25C to enable public health measures to be introduced, amended or withdrawn in respect of the public health risks posed by the incidence and spread of coronavirus disease.

5. Policy background

5.1 The temporary modifications to the 1967 Act made by the Coronavirus Act 2020 provide regulation making powers that were previously not available in Northern Ireland.

5.2 The Prime Minister addressed the nation on 23 March 2020 to announce the need for further restrictions to be underpinned by legislation. The principle Regulations provided for a range of restrictions and closures, as well as requiring persons to stay home by prohibiting people from leaving the place where they live except for limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people. A series of 11 Amendment Regulations were subsequently made, gradually easing the restrictions and closures.

5.3 The requirement to wear face coverings on public transport was set out in the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (as amended). Those Regulations have been revoked by the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 and the provisions relating to the wearing of face coverings are now set out in the Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020.

5.4 The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020 are critical for the Executive to take all reasonable steps to prevent the community transmission of coronavirus disease where possible. It is also essential that the Executive retains public trust in its public health protection measures. This level of trust continues to be critical to ensuring that the public continues to engage and comply with interventions designed to protect individuals and communities during the period of transmission of the virus within Northern Ireland.

5.5 The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment No. 2) Regulations (Northern Ireland) 2020 extends the requirement to use a face

covering to a number of settings and circumstances that were earlier excluded and where individuals may come into close contact with others.

5.6 There has been a progressive rise in COVID-19 cases since early July, and recently there has been a further acceleration. Any approach to apply enhanced restrictions needs to be appropriate, propionate and only applied for as long as is necessary.

5.7 The reasonable excuses not to wear a mask and provision for enforcement and penalties is unchanged, as is the need for the Department of Health to review the need for the requirements imposed.

5.8 These Regulations are a critical measure to protect individuals and communities during the period of transmission of the virus within Northern Ireland.

6. Consultation

6.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease there has been no public consultation in relation to this Statutory Rule.

7. Equality impact

7.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease there has been no assessment of equality impacts in relation to this Statutory Rule.

7.2 The public health restrictions and requirements introduced by the principal Regulations are part of a range of measures designed to assist and support efforts to protect the population of Northern Ireland by seeking to limit the spread of coronavirus disease.

8. Regulatory impact

8.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease there has been no assessment of regulatory impacts in relation to this Statutory Rule.

9. Financial implications

9.1 Given the rapidly evolving global situation regarding the spread of coronavirus disease there has been no assessment of the financial impacts in relation to this Statutory Rule.

10. Section 24 of the Northern Ireland Act 1998

10.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations are 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.

11. EU implications

11.1 There are unlikely to be any EU implications.

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

12. Parity or Replicatory Measure

12.1 Not applicable.

13. Additional information

13.1 Not applicable