EXPLANATORY MEMORANDUM TO

The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021

S.R. 2021 No. 348

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.8) Regulations (Northern Ireland) 2021.

1.2 The Statutory Rule is made under sections 25C(1), (3)(c), (4)(d) and 25 F(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 ("the principal regulations") by amending the list of reasonable excuses to not wear a face covering by removing severe distress, placing the onus on an individual to prove their exemption and to place a statutory duty on businesses to promote compliance with face covering regulations by ensuring all reasonable measures are in place. They also remove the requirement to wear a face covering when on a transport service premises where area is outdoors and make a minor amendment to the requirement to wear on a ferry.

3. Matters of special interest to the Northern Ireland Assemby

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 in 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Regulations without a draft being so laid and approved so that public health measures can be introduced, amended or withdrawn in response to the latest risk assessment associated with the incidence and spread of the coronavirus disease.

3.2 The Statutory Rule comes into operation at 6am on 27 December 2021 and is available on the Department of Health Website. The Regulations cease to have effect at the end 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 2 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 There has been a gradual decrease in COVID-19 cases since the high point of early January, following the spike which was a result of pre-Christmas relaxations. Restrictions have been in place since late December to prevent further spread of the virus. More than 2,000 people have died as a result of Covid-19 in Northern Ireland, and the health service has been under extreme and sustained pressure. However with the combination of reducing case numbers and the success of the vaccination programme, the Executive produced a 'Pathway to Recovery' document, outlining the plan to gradually exit out of the current restrictions.

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 an important part of the measures taken by the Executive to prevent the community transmission of coronavirus disease where possible. It is 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 Evidence has shown the recently discovered Omicron variant has a highly increased rate of transmission in comparison to previous variants, with more information required on the severity of this. Taking this into consideration further restrictions were required to be introduced to reduce the risk of transmission and spread ahead of a likely peak in January.

5.6 The Health Statutory Rule amends the principal regulations, as follows:

a. removing the reasonable excuse of causing severe distress
b. placing the onus on an individual to prove their exemption;
c. placing a statutory requirement on businesses to comply with regulations by ensuring all reasonable measures are in place; and
d. remove the requirement to wear a face covering when on a transport service premises where area is outdoors and make a minor amendment to the requirement to wear on a ferry.

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.