



Submission to Oireachtas Special Committee on the Covid-19 Response

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3 September 2020 (updated)

A. Overview

1. The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to make a submission to the Oireachtas Special Committee on Covid-19 on the legislative framework underpinning the government's response to the pandemic. Our analysis is driven and informed by Ireland's human rights obligations contained within Bunreacht na hÉireann, the European Convention for Human Rights (ECHR), the International Covenant on Civil and Political Rights, as well as the range of other international human rights treaties that Ireland has ratified.

2. ICCL has closely followed the government's response to the pandemic from the outset. We recognised¹ that restrictions on certain rights can be justified in pursuit of public health aims but we also called on² the Government to do more to ensure the law and legal process underpinning the restrictions complied with Ireland's human rights obligations. We also note that the Government introduced a number of measures aimed at vindicating the economic and social rights of individuals, including in relation to social protection and housing.

3. The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (referred to below as the First Emergency Health Act)* gave the Minister for Health the power to make regulations restricting people's movement, gatherings and events by expanding existing provisions within the *Health Act 1947*. It also expanded the right of medical officers to detain those who refused to self-isolate. The Act thereby gave express power to the Minister to restrict the rights to liberty, freedom of movement, association and assembly.

¹ <https://www.irishtimes.com/opinion/there-is-no-conflict-between-human-rights-and-public-health-measures-1.4217915>

² <https://www.irishexaminer.com/business/arid-30989544.html>

4. The rights framework in Ireland permits limitations on certain rights³ where those limitations are provided for by law, where there is a legitimate aim, and where the limitation is necessary and proportionate to that aim. The pandemic presented a legitimate aim in the context of protecting public health and life. The fact that the Government sought to put restrictions on a legislative basis went towards meeting the criteria that such restrictions must be provided for by law. However, we consider that the processes for ensuring each restriction was demonstrably necessary and proportionate to the aim could be greatly improved. We also consider the transparency of the decision-making process that led to the extraordinary restrictions on rights has been problematic, as has communication and dissemination of new laws.

5. ICCL made a comprehensive submission⁴ to members of the Oireachtas once the first draft Emergency Health Bill was published on 18 March outlining our concerns and we published a briefing note⁵ on the human rights implications of the law. In our submission, we called on the government to include an end date for the emergency powers (a sunset clause). We addressed what we viewed as overly broad language permitting restrictions on rights, as well as the expanded powers to detain certain individuals. We suggested adding additional safeguards and tightening the language in order to ensure the least amount of interference with rights possible while taking the necessary measures to protect public health. We provided a human rights analysis⁶ of the changes to the Mental Health Act contained within the *Emergency Measures in Public Interest Act 2020* (the second Emergency Health Act) calling for rights to be carefully safeguarded.

6. We have monitored and analysed⁷ the key Regulations made under the first Emergency Health Act, calling, in particular, for proportionate sanctions, including the removal of criminal penalties for the exercise of rights and for an explicit exception for the exercise of the right to protest. We have consistently called for better processes⁸ in relation to the drafting of regulations, including greater transparency in decision making and clearer messaging to the public. We have also urged all state actors including An Garda Síochána to ensure that any policy responses to the health crisis conforms with their human rights obligations. For example, we consider the use of spit hoods by gardaí, introduced in the middle of the pandemic, could constitute inhuman and degrading treatment or punishment and should therefore be removed from garda kit.

7. The creation of the National Public Health Emergency Team (NPHE) was a positive step in that it allowed the Government to receive high level advice from the country's top medical experts, and provide clear information to the public. The linking of regulations to different sets of NPHE advice

³ Some rights, however, can never be limited or derogated from, including the right not to be tortured or subjected to inhuman or degrading treatment or punishment.

⁴ <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-analysis-emergency-COVID19-legislation.pdf>

⁵ <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-briefing-on-COVID-19-emergency-legislation.pdf>

⁶ <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-Explanatory-Note-on-Emergency-Measures-in-the-Public-Interest.pdf>

⁷ <https://www.iccl.ie/iccl-monitoring-rights-during-the-pandemic/>

⁸ <https://www.irishtimes.com/news/ireland/irish-news/civil-liberties-group-concerned-at-how-covid-19-laws-being-drawn-up-1.4342090>

has demonstrated an evidence-led approach to policy-making and an effort to provide the scientific basis for some of the restrictions that have been introduced. This went towards meeting the 'demonstrably necessary' requirement of human rights restrictions.

8. However, at times the separation of functions between NPHET as an expert public health advisory body, and Government as a decision-making body which may propose legislation, has become confused. We believe that after six months of Covid measures, this is an opportune moment to review the nexus between NPHET's advice and government decision making.

9. It is essential that the public can have confidence that decisions are being made in a considered manner and are grounded in strong and clear processes. ICCL supports the essential work of NPHET and we believe it is essential to ensure that its actual and perceived independence and integrity as an expert advisory body is protected. NPHET must be adequately resourced, and its composition and procedures must ensure a full range of public health and social perspectives.

10. Critically, we believe that there must be clear lines of separation between NPHET's formal advice to Government; the medical science upon which they are basing that advice; the Government's interpretation of that advice (including where it is accepting or rejecting that advice); and guidelines or legal requirements which Government chooses to introduce on foot of that advice, which are demonstrably in line with the state's human rights obligations.

11. ICCL believes that ensuring that all measures, including legislation and regulations, are compatible with human rights can strengthen public confidence in those measures. Trust and solidarity is based on clear and transparent communication about why steps are being taken; and a confidence that decisions being made are rational, demonstrably necessary and that they are proportionate, meaning that they are the least restrictive measures possible to achieve the aim of protecting public health. ICCL believes the Government can do more in this regard and in this submission we make some suggestions for how general rule of law principles and human rights standards can more effectively be taken into account in the development of Covid-19 policies and legislation.

B. General Principles for Legislation and Regulations

Principle 1: Rights can be limited but not suspended

12. All legislation in Ireland must comply with Bunreacht na hEireann unless an emergency is declared. The Constitution allows for an emergency to be declared only in times of war or armed rebellion. International human rights law cannot be suspended in times of emergency unless a

declaration of derogation relating to a specific right is made, noting that certain rights can never be derogated from. Where the government does not declare a state of emergency or make a declaration of derogation, all legislation must be rights compliant. This means all limitations must meet a three part test. Each measure or restriction must be i. provided for by law; ii. demonstrably necessary; and iii. proportionate to a legitimate aim.

Principle 2: Law must be clear, precise and accessible

13. A fundamental rule of law principle is that laws must be clear, precise and accessible. People must know what behaviour is legal and what is not legal and therefore must be able to access laws in good time before they are in force.

Principle 3: Legislation should be subject to consultation and oversight

14. Access to the courts to challenge legislation, and parliamentary scrutiny by the Oireachtas are essential protective mechanisms against executive power in a democracy. Where powers to restrict rights are created by legislation, oversight bodies must be tasked with monitoring the use of all such powers. Where measures are developed in a robust and transparent manner, they are more likely to withstand challenge and they are more likely to retain public trust.

15. Furthermore, s.42 of the Human Rights and Equality Commission Act 2014 places a clear obligation on government to equality and human rights proof legislation, meaning it must be scrutinised in terms of its impact on civil, political, economic, social and cultural rights. The Irish Human Rights and Equality Commission has recently published a guidance note on this duty.⁹

C. Ireland's Covid-19 Statutory Framework

Principle 1: Rights can be limited but not suspended.

Primary Legislation

16. The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020* created the power for the Minister of Health to make regulations that placed extraordinary and unprecedented limits on the right to liberty and the rights to freedom of association and assembly. This was seen as necessary in order to stem the spread of Covid-19 and protect against the “grave risk” the virus posed to life and health.

⁹ <https://www.ihrec.ie/app/uploads/2020/08/Guidance-Note-on-COVID-19-and-the-Public-Sector-Equality-and-Human-Right-Duty-002.pdf>

17. In its submission to the Oireachtas on 18 March, ICCL accepted that some limits on rights were necessary but that each restriction must conform to human rights requirements and be prescribed by law, demonstrably necessary and proportionate. Because the ultimate powers would be created by regulations not subject to Oireachtas scrutiny, we recommended introducing language reflecting these principles in the Long Title of the Act as framing principles; throughout the Act where the Minister's power to place restrictions on movement and events was outlined; and in Part Three of the Act, which expanded the powers of detention of a medical officer while diluting the right to appeal such detention.

18. The initial draft of the first Emergency Health Act did not include an end date. It was positive that following calls from civil society and members of the Oireachtas, the Government proposed its own amendment to the first Emergency Health Act to include a sunset clause of 9 November 2020 and this date was also reflected in the Second Emergency Health Act. This means that the current legislative framework must be debated by the Oireachtas before it can be extended beyond 9 November. ICCL considers a requirement to periodically review the need for the emergency powers created by emergency legislation should always be included.

For more detail please see our [submission](#)¹⁰.

Regulations: Penal Provisions, Affected Areas, Specific Time Frames

19. The First Emergency Health Act created the power for the Minister to make regulations restricting the rights to freedom of movement, assembly and association. The legislation gave the Minister the power to classify particular restrictions as '**penal provisions**'. Any penal provision could attract up to six months in prison or a €2,500 fine following prosecution.

20. ICCL voiced concerns from the outset that public health guidance should be primarily education and advice based. We understand that at the very beginning of the crisis - when there was great uncertainty and anxiety about how the disease would affect the country and protecting lives was paramount- ensuring the population's behaviour through enforceable rules appeared necessary. However, ICCL considered that 6 months in prison and a €2,500 fine were disproportionate criminal sanctions for breaching rules requiring people to i. stay at home and ii. not to move outside 2km from their home. We highlighted the following principles that should always apply to the creation of criminal sanctions:

- i. Criminal sanctions should always be a measure of last resort.

¹⁰ <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-analysis-emergency-COVID19-legislation.pdf>

- ii. New criminal offences must be drafted clearly and narrowly to ensure they are easily understood and not subject to overbroad discretionary police powers.
- ii. Where alternative enforcement measures can be appropriately implemented they should be considered before criminal sanctions.

21. The first ten days of the policing operation that sought to enforce the guidelines were done without regulations underpinning the public health advice. It is very significant that An Garda Síochána reported widespread compliance with the restrictions before criminal penalties were introduced. ICCL considers that this shows criminal sanctions are not necessary to ensure the general population follows public health guidelines when their content and rationale are clearly communicated.

22. ICCL has consistently called on the government to use criminal law in a sparing manner and only where clear public health advice grounded in scientific medical evidence is communicated effectively and efforts to ensure compliance through consent have demonstrably failed. We see this as a key area of improvement for the future.

ICCL considers that the list of ‘reasonable excuses’ within the regulations could have included an exception for urgent protest to allow for the expression of views on decisions that were drastically affecting people’s lives. We saw inconsistent policing of protests from the outset and more guidance both for protest groups and for gardaí would have been useful.

23. The primary legislation gave the Minister the power to designate a particular geographic area as an ‘**affected area**’ where there was “sustained transmission” of the virus.¹¹ Regulations under the act cannot impose restrictions in an area unless it is designated as an affected area. The Minister chose to designate the whole country as an ‘affected area’ so each set of regulations applied to the entire country. This remained the case even as it became clear that the numbers affected by the virus were very different in different regions of the country. ICCL considers the potential to designate different areas of the country as an ‘affected area’ is a tool that can be used to respond in a more targeted manner to the behaviour of the virus in the future.

24. The fact that each set of regulations had a **specific time frame** was positive. However, communication about the end date of some regulations was lacking and certain regulations were extended without proper advance notice. Over the past few months, there has been obvious confusion among the public about what regulations were in force and when.

¹¹ S.31 B, Health Act 1947 as amended by s.10 of the *Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020*

Principle 2: Law must be clear, precise, and accessible

Primary Legislation

25. In its submission on the first Emergency Health Act, ICCL identified several clauses that lacked clarity and precision. We questioned the power for the Minister to take “any other measures that the Minister considers necessary in order to prevent, limit, minimise or slow the spread of Covid-19”.¹² We also questioned the power allowing the Minister to make orders relating to “such additional, incidental, consequential or supplemental matters as the Minister considers necessary or expedient for the purposes of giving full effect to the regulations.”¹³ ICCL considers this language gives exceptionally broad powers to the Minister that could have been tightened considerably to ensure all Regulations made under the emergency laws were necessary and proportionate.

Regulations

26. The public must have confidence in both public health advisors and in the government to respond adequately to the crisis. This is at the heart of democratic legitimacy. Transparency is a key rule of law requirement and is vital for a proper human rights proportionality assessment of each set of laws or regulations.

27. There were significant issues with accessibility when it came to the promulgation of each set of Regulations made under the Emergency Acts. The Regulations were not published in advance of coming into force and were difficult to find even after they had been signed by the Minister. Accessibility is fundamental to ensure that members of the public can be certain about what behaviour is legal and what is not. ICCL considers this was a significant failing and consideration should be given on how to remedy this in future.

28. As each set of regulations was promulgated, there were increasing difficulties regarding precision and clarity around what was in them. We consider that at times the Government deliberately obfuscated the line between what was a legal requirement and what was a guideline in order to ensure the widest compliance with the guidelines. ICCL considers this approach to be unacceptable. The government must ensure that there is clarity around what requirements are legal requirements and what is a guideline in future.

¹² S.31A(i), *Health Act 1947* as amended by s.10 of the *Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020*

¹³ S.31A(k), *Health Act 1947* as amended by s.10 of the *Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020*

Principle 3: Legislation should be subject to consultation and oversight

Primary Legislation

29. The need for government to respond urgently to the threat of the pandemic meant that the primary emergency legislation was not subject to the same level of parliamentary scrutiny that most legislation undergoes. It was rushed through the Dáil and the Seanad with very little time for debate. Should the Emergency Health Acts be renewed beyond 9 November, the proposed Act must be put before the Oireachtas in good time to allow for proper scrutiny, including at Committee stage.

30. Despite the clear and significant impact on a range of rights, there was no indication that the government conducted an equality and human rights impact assessment of the emergency legislation, as required under S.42 of the *Human Rights and Equality Commission Act 2014*. This is highly unfortunate and should be remedied in equivalent situations in the future. The Irish Human Rights and Equality Commission (IHREC) is a statutory human rights advisory body and, in our view, should have been consulted at every stage of law making, both primary legislation and with each set of regulations that significantly impacted on rights. It is open to the Government to request advice from this body or for the Commission to offer its advice. We call on both the Government and the Commission to ensure its resources are utilised more effectively in future, in particular to assist in human rights proofing legislation.

31. The creation of the Special Covid-19 Committee was a significant and positive advance in terms of ensuring oversight of the government's response to the pandemic. An equivalent Committee should be created at the outset of any similar emergency in the future. We also note IHREC's longstanding call for the creation of a Committee that would be specifically tasked with assessing the human rights impact of all legislation and we echo that call.

32. In addition, the Government might usefully consider introducing a 'certificate of compatibility' for all legislation to ensure that it conforms to Ireland's obligations under the European Convention on Human Rights. Such a certification is required in the UK, for example (though the UK government may also make a declaration of incompatibility).

33. The fact that the Courts remained available for a judicial review of legislation was positive. Judicial oversight is key and at least one case sought to test the constitutionality of the primary legislation. We would, however, note that the lack of legal aid for human rights cases and issues around standing for NGOs are obstacles towards effective use of the judicial review procedure in this country.

Regulations

34. There was a certain inevitability to the rushed passage of the primary legislation given the nature of the emergency but as time passed there was no reason the Oireachtas or other bodies couldn't have played a greater role in scrutinising the Regulations.

35. It is understandable that the Minister wanted to ensure that each set of regulations responded to the rapidly changing situation on the ground and therefore did not publish regulations significantly in advance. However, at this point in the pandemic response, ICCL considers that the Minister should be in a position to present any proposed regulations in good time to allow for additional scrutiny from members of the Oireachtas or indeed from bodies such as IHREC. This consultation surely can take place before new regulations are finalised and as the appropriate response is reflected upon. ICCL notes the latest set of Regulation underpinning health advice from 18 August were placed on a legislative basis on 31 August without proper public notice. ICCL became aware of them when the Minister of Justice announced they had been signed on [RTE](#) on 2 September.

36. There is also significant room for improvement on transparency of decision making and communication with the public. Transparency is necessary for proper oversight. This applies both to the decision-making processes of NPHET, which leads to its advice to government and to the decision making processes by government which leads to guidelines to the public and/ or regulations. Some improvements have been made as time went on such as the publishing of minutes by NPHET.

37. ICCL believes that at this point in the Covid response, a review of the operation of NPHET and its relationship to Government is essential. To protect the actual and perceived integrity and independence of NPHET from government, much clearer lines should be drawn between NPHET and government. Consideration should be given to holding at least some NPHET meetings in public. We also believe that the composition of NPHET itself could be improved by adding a broader range of experts such as mental health experts, sociologists and a human rights expert who can give a broader view on the impact of restrictions on public health and on rights. The Government should also ensure that NPHET has sufficient resources to support its work, transparency of its decision making and broader composition.

38. Regarding the use of powers created by the Regulations by other state actors such as An Garda Síochána, it is important that the Policing Authority is in a position to monitor and analyse the use of such powers, as well as to make binding recommendations. The oversight role of the Policing Authority over the past few months has been positive and we recommend that close scrutiny of the use of existing or new powers in the future continues to be closely monitored by the Policing Authority.

Covid Tracker App – An Example of Positive Consultation

39. Steps taken by the HSE and the Department of Health before they launched the COVID Tracker App serve as an example of good practice in terms of consultation and transparency by the Government. Their efforts, previously [commended by ICCL](#), include responding to [calls for transparency](#); engaging with NGOs; implementing [key principles](#) highlighted by civil society; and making documents concerning the technical workings of the app publicly available pre-launch. We also appreciate how the Special Committee on COVID-19 Committee sought, and received, from ICCL and Digital Rights Ireland, a [written submission](#) on the app. As the app approaches the 90-day mark, we look forward to more of this kind of engagement from the Committee, HSE, and the Department of Health.

40. We would note, however, that it is still somewhat unclear to ICCL how effective this piece of technology has been in assisting the State's contact tracing and testing system and curbing transmission of COVID-19. There are also outstanding privacy and data protection concerns raised by placing health governance matters within big tech frameworks.

C. Examples of legislative approaches in other jurisdictions

France

41. Adopted on 23 March 2020, the [Emergency Law no.2020-290 to address covid-19](#) established a "state of health emergency" for two months under Article 38 of the French Constitution. The emergency was extended once, until 10 July. The French National Human Rights Institution, The National Consultative Commission of Human Rights, submitted [observations](#) on the draft of this law when it was submitted to parliament on 19 March. Under Art. L. 3131-13, the scientific data, on which basis a state of health emergency is declared, must be made public.

42. The Covid-19 Scientific Council provides advice to the government and, under Art. L. 3131-19, its opinions must be made public without delay. The Covid-19 Scientific Council is comprised of medical and scientific experts, as well as an anthropologist, a sociologist and the President of a non-profit organisation engaged in poverty alleviation (ATD Fourth World).

43. The state of health emergency under Law no.2020-290, in effect until 10 July, authorised the Prime Minister to issue decrees restricting individuals' freedom of movement and assembly, and to take "any other regulatory measure" necessary to address the health crisis.

44. Violations of lockdown measures are punishable by a €135 fine, a €200 fine in the case of a 2nd violation within 15 days, and up to six months' imprisonment and a €3,750 fine for more than three violations within 30 days. **This gradual approach towards heavier sanctions can be viewed as a positive example of an attempt at a proportionate response to infractions.**

45. Under [law no. 2020-856 to organize the exit from the state of health emergency](#), introduced on 9 July and in effect until 30 October, the Prime Minister can issue decrees authorising local authorities to introduce restrictions in areas where there is active circulation of the virus. **This can also be viewed as a more targeted approach, reflecting what perhaps was envisioned by the 'affected areas' provision in the first Emergency Health Act in Ireland.**

Germany¹⁴

46. Any statutory instrument introduced must be compatible with fundamental rights contained in the Germany's Constitution (Basic Law). Germany is also subject to international human rights obligations. It is assumed that German legislation complies with its constitution and with its human rights obligations. [The Protection against Infectious Diseases Act \(IDPA\)](#) entitles the state authorities to adopt different measures to prevent and control infectious diseases. It was amended on 27 March through the [Epidemic Protection Act 2020](#), which grants the Federal Government more powers to intervene in the event of an "epidemic situation of national relevance" and the Bundestag to pass delegated legislation without the consent of the federal representative body of the federal States, the Bundesrat.

47. As Germany has a federalised system of 16 States, only measures that State authorities translate into regulations are binding, which are legally based on the IDPA. Since the regulation of the States can vary, the federal Chancellor and the States' Health Ministers [agreed](#) on 12 March, via video conference, on common non-binding guidelines for the States to transpose into legislation for 2 weeks which were subsequently [extended](#) until 3 May. They also [agreed](#) on non-binding guidelines to introduce measures restricting gatherings of more than 1,000 people until "at least the 31 August". There is currently regional variation in the legal measures in effect because of the federalised system. The Robert-Koch-Institut, the federal scientific body that advises the federal government, published recommendations for the Pandemic Plan in March.¹⁵ Generally, the methodology of how scientific advice is translated into legislation is not made public.

New Zealand

Legislative approach

48. The New Zealand government already had a wide variety of powers available to assist with dealing with epidemics prior to the outbreak of Covid-19. The Health Act 1956 and the Epidemic Preparedness Act 2006 are the key pieces of legislation that provide such powers to the Government. The Civil Defence Emergency Management Act 2002 also provides powers if the situation becomes more severe. These laws gave the government the ability to: forcibly evacuate places and premises; allow requisition of both movable and immovable property; gain entry onto premises; inspect, secure, disinfect or destroy any property; give orders to people to do or refrain from certain acts; close roads or public places.

49. The COVID-19 Public Health Response Act 2020 provided a new legal framework for making and enforcing orders containing restrictions and requirements for businesses, gatherings, and movement

¹⁴ Covid-19 outbreaks in meat plants highlighted longstanding issues in the sector. A new law to come into effect in January 2021 will provide for new rules for the meat industry (including increased compliance checks & new standards for company-provided employee accommodation). Business & Human Rights Resource Centre: <https://www.hrw.org/news/2020/05/29/germany-protect-meatpacking-workers-better>

¹⁵ https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Ergaenzung_Pandemieplan_Covid.html

in response to COVID-19. The Act empowers the Minister of Health and Director-General of Health to make various orders related to, for example, the movement and association of people, physical distancing, isolation or quarantine, gatherings, medical examinations, provision of information for contact tracing, and specified actions that must be taken on premises or other places. **Such orders must be approved by a resolution of the House of Representatives** under section 16 of the act. **This level of oversight contrasts significantly with orders made by the Minister of Health in Ireland.**

50. The Act provides for various enforcement powers under sections 20 to 25, including powers of entry without a warrant, the power to give directions, powers to close roads and stop vehicles, the power to direct a person to give identifying information, and the power to direct a business to close.

51. The New Zealand Parliament established an Epidemic Response committee to scrutinise the government's action in lieu of the House's usual accountability mechanisms. The select committee **broadcast all its meetings publicly online** through the use of Zoom and was **broadcast to the public**. 52. **This level of transparency is noteworthy.** The Committee had an opposition majority in its 11 members and was chaired by the leader of the opposition and aimed to provide constructive criticism to the approach taken by the government. The Committee was disbanded on 26th May 2020 as New Zealand had moved to Covid-19 alert level 2, and parliament could function largely as it did pre lockdown.

53. The New Zealand High Court recently considered a challenge to the lockdown put in place by the New Zealand government in *Borrowdale v. Director-General of Health* [2020] NZHC 2090. The applicants sought declarations of illegality in relation to three matters relating to the Government's initial COVID-19 response. The first focused on the public announcements made by the Prime Minister and other officials during the first 9 days of the lock-down. The second challenge related to three orders made under the Health Act 1956 by the Director-General on 26 March (Order 1), 3 April (Order 2), and 27 April (Order 3). And the third challenge related to the definition of "essential services" contained in Order 1.

54. The High Court concluded that, reasonably interpreted, statements made by government conveyed that New Zealanders were required, backed by the threat of enforcement, to stay at home and in their "bubbles" when that was not, in fact, the legal position. As a result, until Order 2 came into effect (on 3 April) those **restrictions were not prescribed by law and were, accordingly, an unlawful limit** on the relevant New Zealand Bill of Rights Act rights and freedoms. The Court granted a declaration to this effect. The Court dismissed the rest of the challenges in this case.

55. The requirement for legal clarity when it comes to restrictions on rights is clear and it might be asked should such a challenge be made to the Irish High Court would a similar result emerge.

Australia

56. In March 2020, the National Parliament was suspended due to the ongoing pandemic. Parliamentary sittings were shut down but the parliamentary committees continued to sit using technology. The eight State and Territory governments were also shut down. On 13th March 2020, the Prime Minister established the National Cabinet to co-ordinate the national response to the pandemic. Although the group is called a cabinet, the National Cabinet is technically an intergovernmental forum. The group comprises the Prime Minister and all State and Territory Premiers and Chief Ministers. The inclusion of a range of representatives is noteworthy.

57. The group is advised by the Australian Health Protection Principal Committee for scientific advice and the National COVID-19 Commission Advisory Board for economic advice. The Cabinet does not have the power to pass legislation. Rather, it served as a mechanism to bring together information and intelligence sharing, and the capacity to pool and test ideas before locking in coordination and jurisdictional capacity.

58. On 18 March 2020 in response to the Covid-19 outbreak in Australia, the Governor-General declared that a human biosecurity emergency existed. Section 475 of the Biosecurity Act 2015 specifies that the Governor-General may declare such an emergency exists if the Health Minister is satisfied that a listed human disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale; and the declaration is necessary to prevent or control the entry of the listed human disease into Australian territory or a part of Australian territory or the emergence, establishment or spread of the listed human disease in Australian territory or a part of Australian territory. The Declaration gives the Minister for Health expansive powers to issue directions and set requirements in order to combat the outbreak.

59. It does not appear that there was a specific Human Rights Impact Assessment carried out by the parliaments prior to introducing restrictions. However in a statement dated 30th June 2020, the Human Rights Council stated that emergency measures to contain the spread of COVID-19 must be necessary, proportionate, non-discriminatory and reasonable. Significant human rights concerns were raised about the proposed use by the authorities of drones to ensure compliance with mask and social distancing requirements.

United Kingdom

60. The UK has been criticised for its initial slow response to the pandemic and adopting a policy aiming at achieving herd immunity. The Coronavirus Act 2020 received Royal Assent on 25 March, having been fast-tracked through parliament in just four sitting days. The Act contains 'emergency powers' to enable public bodies to respond to the Covid-19 pandemic. The Act aimed to give further powers to the government to slow the spread of the virus; to reduce the resourcing and administrative burden on public bodies to limit the impact of potential staffing shortages on the delivery of public services.

61. It provided a wide array of measures aimed at tackling the pandemic which included: provisions to indemnify individual health care workers from liability in relation to the diagnosis, care and treatment of coronavirus patient; the temporary closure of educational institutions and childcare

premises and powers to issue directions in relation to public gatherings. It also provided for sundry taxation and pension provisions, and provisions for the registration of health and social care workers and volunteers as well as certain eviction restrictions.

62. In England, the Act was followed by regulations introduced by the Secretary for State for Health and Social Care using his powers under the Public Health (Control of Disease) Act 1984.¹⁶ **These regulations must be reviewed at least once every 28 days. This requirement is positive from both an oversight perspective and from the predictability of law requirement.**

63. These regulations continued certain requirements to close premises and business during the emergency, created restrictions on gatherings, gave the Secretary of State the power to restrict access to public places and created a number of offences and penalties. Many of the powers were simply more relaxed forms of the previous regulations. It is perhaps interesting to note that the UK parliament has decided to adopt an approach of introducing the restrictions under previous legislative powers rather than those granted under the Coronavirus Act 2020. Equivalent (although not identical) measures were made in respect of Wales, Scotland and Northern Ireland.

64. Section 19 of the Human Rights Act 1998 provides that **a Minister** in charge of a Bill in either House of Parliament **must**, before Second Reading of the Bill, **make a statement to the effect that in his view the provisions of the Bill are compatible with the rights** contained within the European Convention of Human Rights (“a statement of compatibility”); or make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill. This statement must be in writing and be published in such manner as the Minister making it considers appropriate.

65. Apart from the s.19 Human Rights Act statement of compatibility, there are no references to human rights in the text of the Coronavirus Act. However, **the government also provided a statement on the impact of rights. The UK Parliament’s Human Rights Joint Committee examined the Government’s actions to assess its approach in light of human rights. This requirement of a compatibility statement and oversight by the Human Rights Joint Committee contrasts significantly with the Irish approach.**

66. The Scientific Advisory Group for Emergencies (SAGE) is a UK governmental advisory body that generally advises the UK government in emergencies. It has been advising government throughout the entire pandemic. The group was criticised for its lack of transparency as initially the list of members was not disclosed. There have also been questions raised about the independence of the

¹⁶ These regulations were made on 26 March 2020 by the Secretary of State for Health and Social Care under powers conferred by sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These regulations were replaced by The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 684).

group after there were newspaper reports that the Prime Minister's advisor Dominic Cummings attended a meeting of the group despite not being a member. As a result, a group of scientists set up a group called Independent Sage aimed at contributing to the discussion on the measures necessary to tackle the pandemic.

D. Recommendations for an improved framework in the future

i. Human Rights Impact Assessment of Legislation

67. A key change to the legislative framework that should be considered is the addition of a requirement that legislation should be human rights proofed to ensure it is line with the Constitution and the European Convention on Human Rights. This would require the government to demonstrate that the restrictions on rights it has enabled through legislation are necessary and proportionate to a legitimate aim (such as protecting public health). The proportionality assessment should show that restrictions on rights are the most minimal possible in order to achieve the aim. It should scrutinise the impact of the legislation on civil, political, economic, social and cultural rights as part of the assessment and ensure it will not have a disproportionate impact on vulnerable or marginalised communities. This scrutiny is already required by the public sector duty under S.42 of the Irish Human Rights and Equality Commission Act. Where such scrutiny does not take place, an oversight body such as IHREC or an Oireachtas Committee should be empowered to investigate why it has not taken place.

68. Many European national human rights institutions (NHRIs) have analysed and reported on the impact of legislative measures on human rights since the outbreak of the pandemic. This includes policy papers, statements and FAQs as well as making recommendations to government. Numerous NHRIs provided legislative analysis.¹⁷ The National Human Rights Institution of France, CNCDH, provided pre-legislative scrutiny of the Emergency Bill.¹⁸ The National Human Rights Institute of Estonia also provided observations on laws introduced as part of the government's response to Covid-19.¹⁹

ii. Greater Legislative Consultation

69. We consider legislation and regulations should be subject to greater consultation across a broader range of sectors representing different interests in society, as well as to greater consultation with members of the Oireachtas. Any proposed regulations should be notified in good time to the Oireachtas (or an appropriate Committee thereof); and formal consultation with the Oireachtas should be facilitated. Proposed regulations should also be published in advance of their introduction to allow the public, civil society, expert bodies etc to consider the regulations, and identify any potential difficulties they might present.

iii. Ongoing human rights impact assessment

¹⁷ <http://ennhri.org/covid-19/>

¹⁸ https://www.cncdh.fr/sites/default/files/cncdh-pm-pjl_etat_durgence_sanitaire-19.03.2020.pdf

¹⁹ Observations to the Auxiliary Police Act and Amendments to Other Acts – Measures Related to the Spread of COVID-19: <http://ennhri.org/covid-19/#Estonia>

70. When legislation is in place that provides for such a significant impact on rights such as the first Emergency Health Bill, a body such as IHREC should be tasked with conducting an ongoing human rights impact assessment, with a view to informing the developing governmental response. Such an impact assessment should focus particularly on vulnerable and marginalised individuals and communities in Ireland.

71. Groups who may be particularly impacted by a virus or other emergency should be identified very early on in the governmental response and appropriate resources made available to ensure they are protected and key needs are met. Issues that emerged in Ireland around congregated settings including nursing homes and Direct Provision centres should have been foreseen. An early impact assessment might have assisted in a better response.

72. Positive examples of appropriate governmental response include the protections put in place on social welfare and housing such as the ban on evictions and health and housing support provided to vulnerable homeless people. However, decisions around payment of the pandemic unemployment payment (PUP) raised issues of equality and fairness.

iv. Better process for translating medical advice into policy and guidelines:

73. NPHET or its equivalent future body should have a clear remit to identify relevant medical information and issue public health advice. This role must be supported and resourced and its independence from Government protected. Ensuring that guidelines and emergency law are informed by up to date and rigorous medical and scientific analysis provides the evidence basis needed to meet the necessity requirement for human rights restrictions. However, the function of analysis, providing information and issuing medical advice must be clearly distinguished and separated from the function of translating this medical advice into law and policy.

74. It is also essential that a broad range of public health expertise informs any public health advice. An open and transparent process by which human rights, and economic and social considerations are taken into account is necessary. We note, for example, that the French advisory body to the government contains a human rights expert, an anthropologist, a sociologist, and a mental health expert.

v. Consideration of how 'penal provisions' are considered and drafted

75. Ensuring the appropriate use of garda resources and criminal law in future responses is vital. One way of addressing this in future may be to place responsibility for drafting regulations under the remit of the Minister for Justice rather than the Minister for Health or create a joint remit rather than merely a requirement for the Minister for Health to consult other relevant Ministers (as is required by the First Emergency Health Act). In our view, the Department of Justice is in a better position to advise on human rights obligations, criminal law matters and issues relating to the

capacity or appropriateness of An Garda Síochána to enforce regulations that are classified as penal provisions. We note the draft Bill currently making its way through the Oireachtas places an obligation on the Minister of Health to consult the Minister for Justice when making regulations. We consider this as a positive development.

vi. Review of the Emergency Health Acts

76. If there is a proposal to extend or amend the Emergency Health Acts in force at the moment, the legislation should be put before the Oireachtas sufficiently in advance of 9 November to allow for proper scrutiny and consideration, including at committee stage. The government should consult with a broad range of stakeholders including a formal consultation with IHREC. Language should be tightened and the human rights test that all restrictions must meet the requirement of necessity and proportionality should be integrated into the primary legislation.

vii. Communication about Legislation and Regulations

77. While partly explained by the pressures on Government during the early phases of the pandemic, ICCL considers communication around the primary legislation and regulations to have been deficient in a number of areas. The content of the primary legislation was not well communicated to the wider public and the relationship between the primary legislation and the regulations was not well understood. As noted above, there was a general sense of confusion around what was in each set of regulations both in terms of restrictions and in terms of end date. Regulations were at times renewed without sufficient communication about the new start or end date.

78. ICCL was concerned at reports that legal requirements were deliberately ‘marketed’ to obfuscate what was a legal requirement and what was not to ensure greater compliance with the wider public health guidelines. Examples include the guideline to older persons to ‘cocoon’. Many older persons reported later that they believed this was a legal requirement. See further appendix 1 below containing a timeline of regulations and method of communication to demonstrate the above points.

79. ICCL recommends that a public information campaign should be undertaken to explain the statutory and regulatory framework for all Covid restrictions. ICCL also believes that clearer separation between the roles of NPHET and Government, articulated consistently by Government, is essential. Allowing time for Oireachtas and public consideration of any proposed regulations will also greatly enhance public understanding of the legal status of any proposed measures.

Appendix 1

Timeline of Law, Regulations and Guidelines affecting rights introduced in Ireland in the wake of the Covid-19 pandemic

1. On **13 March 2020**, the Taoiseach announced schools would be closed and advised anyone who could work from home to do so. There is no legislation associated with these measures.
2. On **18 March 2020**, the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020*²⁰ (the first draft of the first Emergency Health Act) was published. It was rushed through both the Dáil and Seanad as emergency legislation with no pre-legislative scrutiny and skipping the Committee stages. The Bill passed into law on the **20 March** giving the Minister for Health sweeping powers to make Regulations without Oireachtas oversight restricting movement and events, in addition to providing for social welfare supports and providing expanded powers of detention for medical officers. It also provided for expanded Garda powers to enforce regulations made under the Act, where provisions within such regulations were classified as ‘penal provisions’.
3. On **24 March** new measures were announced by government. Workers were asked to stay at home unless they were “essential”. Businesses, sports clubs and religious organisations were all closed. People were asked to limit their close contacts to a handful of people.
4. On **26 March**, the Dáil passed the *Emergency Measures in Public Interest Act 2020* (the second Emergency Health Act)²¹ to mitigate the economic effects of measures to curb the spread of COVID-19. This legislation also made changes to the Mental Health Act.
5. On **7 April 2020**, S.I. No 120/2020 was signed into law classifying the whole of Ireland as an Affected Area.²² This Order declared that the State (being every area or region thereof) is an area where “there is known or thought to be sustained human transmission of Covid-19”. This paved the way for regulations restricting movement and events to apply to the whole country.
6. **7 April 2020:** Minister Harris expresses his intention through the media to sign regulations into effect conferring extraordinary powers of enforcement on gardaí to restrict movements and gatherings, as permitted under the first Emergency Health Act. That evening he signed **S.I. No. 121/2020** into law.²³ These regulations were amended numerous times to extend their end date. They provided that no one should leave their place of residence without a reasonable excuse, and provided for restrictions on events.

²⁰ <http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/html>

²¹ <http://www.irishstatutebook.ie/eli/2020/act/2/enacted/en/html>

²² S.I. No. 120/2020 - Health Act 1947 (Affected Areas) Order 2020 - (7th April 2020), available at <http://www.irishstatutebook.ie/eli/2020/si/120/made/en/print>.

²³ Health Act 1947 (Section 31A -Temporary Restrictions) (Covid-19) Regulations 2020 - (7th April 2020, available at <http://www.irishstatutebook.ie/eli/2020/si/121/made/en/print>

These restrictions were classified as penal provisions, meaning failure to observe the restrictions could attract 6 months in prison or a €2,500 fine. The regulations came into effect on **8 April** and were specified to remain in operation until **12 April 2020**.

[RTE](#) carried lunchtime coverage of the regulations on **8 April**, which had been signed the night before. However, **the regulations were not publicly available on the day they came into effect.**

7. **10 April:** S.I. No. 128/2020 amended the Principal Regulations (S.I. No. 121 of 2020) to provide that the Regulations shall remain in operation until **5 May 2020**.²⁴
8. This was accompanied by a [government press release](#) from the Department of Health. **SI not easily accessible on day it comes into effect.**
9. **1 May:** S.I. No. 155/2020 extended, until 19th June, the operation of the amendments effected by Part 2 of No. 1 of 2020 to the Social Welfare Consolidation Act 2005. The effect of the extension was to allow the payment of enhanced Illness Benefit to those who are diagnosed with Covid-19 or who are deemed to be a probable source of infection of same.²⁵
10. On **1 May**, the Taoiseach announced a **phased reopening of society** from 18 May. From 18 May - phase one - amendments would be made extending the radius for exercise from 2km to 5km. Taoiseach Varadkar also said the over-70s would be able to leave their homes for exercise. Until this point, it had been advised that they would not leave their homes, although it later emerged that **many understood ‘cocooning’ was a legal requirement and not advice.**
11. Later that evening, Minister for Health Simon Harris [announced to reporters](#) at government buildings that he would sign legislation to extend the regulations currently in place until 18 May.
12. **2 May:** S.I. No. 153/2020 amended the Principal Regulations (S.I. No. 121 of 2020) to provide that the Regulations shall remain in operation until **18 May 2020** and extended the radius referred to in Regulation 4(2)(i) from 2km to 5km.²⁶
13. **5 May: Regulations (S.I. No. 153/2020) are not easily accessible on the morning they come into force.**
14. **17 May:** S.I. No. 174/2020 amended the Principal Regulations (S.I. No. 121 of 2020) to extend the end date to **8 June 2020** and expanded the activities that constituted a reasonable excuse to leave the home. It also allowed outdoor gatherings of 4 people.²⁷
15. **These regulations were signed on 17 May and published on 19 May though they came into effect from 18 May.**

²⁴ <http://www.irishstatutebook.ie/eli/2020/si/128/made/en/print>

²⁵ <http://www.irishstatutebook.ie/eli/2020/si/155/made/en/print>

²⁶ <http://www.irishstatutebook.ie/eli/2020/si/153/made/en/print>

²⁷ <http://www.irishstatutebook.ie/eli/2020/si/174/made/en/print>

16. **22 May:** Minister for Health Simon Harris announces plans to introduce passenger locator forms. The announcement receives [widespread media coverage](#).
17. **24 May:** Minister of Health signs regulations introducing legal obligation to complete & update passenger locator form upon arrival in Ireland. S.I. No. 181/2020 was signed into law providing for the imposition of a requirement that international passengers (including Irish citizens) arriving in the State at a port or airport from a place outside the State complete a COVID-19 Passenger Locator Form for the purposes of recording and verifying information regarding their contact details and place of residence for a period of up to 14 days following arrival.²⁸
18. **25 May: The online location of these Regulations is not clear until published on a journalist's social media account.** They are published officially on 26 May. They come into effect on 28 May.
Confusion documented in media as to whether new regulations legally require quarantine and what quarantine or self-isolation means²⁹. ICCL later hears passenger locator form regulations were 'marketed' to suggest quarantine was mandatory.
19. **5 June:** S.I. No. 207/2020 further extends, until 10 August, the period during which the amendments effected by Part 2 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 will apply.³⁰
20. **5 June:** Taoiseach [announces](#) travel restrictions will end on 29 June and reopening will be shortened from five to four phases.
21. **8 June: S.I. No. 206/2020** revokes the Principal Regulations (S.I. No. 121 of 2020) and provides for unwinding of certain restrictions provided for in those regulations including the reopening of retail outlets and extending the distance that may be travelled for specified purposes. The Regulations also provide for continued restrictions for some businesses or services and for penal provisions in relation to events.³¹ For the first time, there are no penal provisions for breaches of movement restrictions. These new regulations are in effect until **29 June**.

Regulations are unavailable online the morning they come into effect. New Regulations sent by Department of Justice Official on request to ICCL Executive Director Liam Herrick at 15:54.
22. **9 June - [media reports](#)** that gardaí invoked powers to enforce movement restrictions under emergency legislation 302 times before they lapsed on this day.
23. **10 June on [Newstalk FM](#),** Minister for Justice Charlie Flanagan says garda powers were not practical as the country opens up and that gardaí have other legislation available to them.

²⁸ Health Act 1947 (Section 31A – Temporary Requirements) (Covid-19 Passenger Locator Form) Regulations 2020 - (24 May 2020) - These Regulations were made under section 31A of the Health Act 1947, available at <http://www.irishstatutebook.ie/eli/2020/si/181/made/en/print>

²⁹ <https://www.irishtimes.com/news/health/coronavirus-in-ireland-where-do-we-stand-now-1.4307117>

³⁰ <http://www.irishstatutebook.ie/eli/2020/si/207/made/en/print>

³¹ <http://www.irishstatutebook.ie/eli/2020/si/206/made/en/print>

24. **13 June:** S.I. No. 209/2020 amends S.I. No. 206 of 2020 to allow all retail outlets to reopen. Amendments are also made in regard to access to certain sports facilities for the purposes of organising or holding outdoor sporting or educational gatherings (such as summer camps) of no more than 15 persons.³² Other restrictions under [S.I. No. 206 of 2020](#) continue to apply.

These regulations are signed on 13 June, **come into effect on the 15 day of June and are published on 16 June.**

25. **15 June:** S.I. No. 212/2020 amends S.I. No. 206 of 2020 to allow the use of premises in Schedule 2 of the Regulations for meetings of registered political parties (including parliamentary parties of those parties).³³
26. **17 June:** S.I. No. 217/2020 amend S.I. No. 181 of 2020 (which provided for the passenger locator form) to provide that it shall remain in operation until the **9 July 2020**.³⁴
27. **19 June:** S.I. No. 224/2020 extends the emergency period defined in [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) No. 2 of 2020 to **20 July 2020**.³⁵
28. **19 June:** the Taoiseach announces that phase 4 of reopening will be brought forward to phase 3. [Text of his speech here](#).
29. **26 June: S.I. No. 234/2020** revokes S.I. No. 206 of 2020, provides for restrictions on the numbers of persons attending indoor or outdoor events, and restricts access by the public to certain businesses and services. These are any business or service selling or supplying intoxicating liquor for consumption on the premises unless a substantial meal is also ordered. Access by the public to nightclubs, discotheques, casinos or Privates Members Clubs at which gambling activities are carried out and which are operated on a commercial basis is also restricted.³⁶

These Regulations come into effect on **29 June 2020** and remain in operation until **20 July 2020. They are signed on 26 June and published officially on 30 June.**

30. **8 July:** S.I. No. 243/2020 – extends regulation on passenger locator form to 20 July.³⁷
31. **13 July:** [media report on](#) high compliance with guidance on wearing face coverings on public transport. Meanwhile [garda representatives](#) warn making the guidance mandatory will be impossible to police without support from public transport staff, who have already signalled they won't be doing so. There is little public education around the science behind face coverings.

³² <http://www.irishstatutebook.ie/eli/2020/si/209/made/en/print>

³³ <http://www.irishstatutebook.ie/eli/2020/si/212/made/en/print>

³⁴ <http://www.irishstatutebook.ie/eli/2020/si/217/made/en/print>

³⁵ <http://www.irishstatutebook.ie/eli/2020/si/224/made/en/print>

³⁶ <http://www.irishstatutebook.ie/eli/2020/si/234/made/en/print>

³⁷ <http://www.irishstatutebook.ie/eli/2020/si/243/made/en/print>

32. **14 July:** S.I. No. 244/2020 provide that members of the public shall not, without reasonable excuse, travel by public transport without wearing a face covering. Public transport under the Regulations encompasses all bus and rail services provided under contract with the National Transport Authority (NTA), LUAS services and commercial bus services licensed by the NTA. It makes it an offence not to comply with a request by a relevant person to wear a face covering.³⁸
33. **17 July:** S.I. No. 251/2020 provides for the extension of requirements under S.I. No. 181 of 2020 (regarding passenger locator forms) to **10 August**.³⁹
34. **18 July:** S.I. No. 252/2020 provide that S.I. No. 234 of 2020 will remain in operation until **10 August**.⁴⁰
35. **20 July:** S.I. No. 254/2020 extends the emergency period defined in section 3 of Part 2 in No. 2 of 2020 to expire on **1 August**.⁴¹
36. **4 August:** S.I. No. 285/2020 further extends the amendments effected by Part 2 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 , to 31 March 2021 as respect to sections 4, 5 and 6, and to 17 September 2020 as respect to sections 7 and 8.⁴²
37. **7 August:** S.I. No. 294/2020 amend the Regulations on passenger locator forms to expire on **17 August**.⁴³
38. **7 August:** Second lockdown [announced](#) for three midlands counties.
39. **8 August:** S.I. No. 295/2020 provide for certain temporary restrictions in County Kildare, County Laois and County Offaly because of Covid-19. The Regulations remain in operation until 23 August 2020.⁴⁴
40. **9 August:** NPHET announce that face coverings will be mandatory in retail and other indoor settings from the next day.
41. **9 August:** S.I. No. 297/2020 amend the temporary Regulations for Kildare, Laois and Offaly to clarify that up to 25 people may attend a funeral.⁴⁵

³⁸ <http://www.irishstatutebook.ie/eli/2020/si/244/made/en/print>

³⁹ <http://www.irishstatutebook.ie/eli/2020/si/251/made/en/print>

⁴⁰ <http://www.irishstatutebook.ie/eli/2020/si/252/made/en/print>

⁴¹ <http://www.irishstatutebook.ie/eli/2020/si/254/made/en/print>

⁴² <http://www.irishstatutebook.ie/eli/2020/si/285/made/en/print>

⁴³ <http://www.irishstatutebook.ie/eli/2020/si/294/made/en/print>

⁴⁴ <http://www.irishstatutebook.ie/eli/2020/si/295/made/en/print>

⁴⁵ <http://www.irishstatutebook.ie/eli/2020/si/297/made/en/print>

42. **9 August:** S.I. No. 298/2020 provide that S.I. No. 234 of 2020 providing for restrictions on events will remain in operation until **31 August**.⁴⁶ This provides for 50 people indoors and 200 outdoors.
43. **10 August:** S.I. No. 296/2020 require the wearing of face coverings in certain premises. A person shall not, without reasonable excuse, enter or remain in a premises where goods are sold directly to the public or a premises set out in the Schedule to the Regulations, without wearing a face covering. The regulations do not apply to under 13s.⁴⁷

The regulations are in force from 10 August to **5 October**. They are published on 11 August. There is anecdotal confusion as to whether the requirement is a legal requirement.
44. **15 August:** S.I. No. 304/2020 amend the Passenger Locator Form Regulations so that they expire on **31 August**.⁴⁸
45. **18 August :** the Taoiseach announces new guidelines, including events allowed of no more than 6 persons indoors and 15 persons outdoors.⁴⁹
46. **19 August:** Government press release posted on MerrionStreet.ie confirming same.⁵⁰
47. **20 August:** Reports that Oireachtas Golf Society held indoor event on 19 August with more than fifty participants.
48. **21 August:** Minister for Health [Stephen Donnelly announces Kildare lockdown](#) to be extended for a further two weeks.
49. **22 August:** S.I. No. 314/2020 extends passenger locator regulations to the **9 November**.⁵¹
50. **22 August:** S.I. No. 315/2020 - amend S.I. No. 295 of 2020 (as amended by S.I. No. 297 of 2020) to remove restrictions under those Regulations in Counties Laois and Offaly, and to extend the restrictions in County Kildare until midnight Sunday, 6 September 2020. The Regulations also amend Regulation 4 of S.I. No. 295 of 2020 to include travelling to attend school and college and for childcare purposes within the reasonable excuses for travelling to or from Kildare. Regulation 6 is amended to refer to the Ladies Gaelic Football Association and the Camogie Association.⁵²

⁴⁶ <http://www.irishstatutebook.ie/eli/2020/si/298/made/en/print>

⁴⁷ <http://www.irishstatutebook.ie/eli/2020/si/296/made/en/print>

⁴⁸ <http://www.irishstatutebook.ie/eli/2020/si/304/made/en/print>

⁴⁹ <https://www.irishtimes.com/news/politics/key-restrictions-being-tightened-in-bid-to-combat-coronavirus-taoiseach-confirms-1.4333002>

⁵⁰ [https://merrionstreet.ie/en/News-Room/News/Statement on the introduction of new measures to limit the spread of Covid-19.html](https://merrionstreet.ie/en/News-Room/News/Statement%20on%20the%20introduction%20of%20new%20measures%20to%20limit%20the%20spread%20of%20Covid-19.html)

⁵¹ <http://www.irishstatutebook.ie/eli/2020/si/314/made/en/print>

⁵² <http://www.irishstatutebook.ie/eli/2020/si/315/made/en/print>

51. **31 August:** S.I No. **326/2020** comes into operation on 31 August until 14 September.⁵³ It provides for a limit of 6 visitors from 3 households to a private residence (not a penal provision), a limit of 6 people for indoor events and 15 people for outdoor events (penal provision). Cinemas, art galleries, auditoriums and museums can have up to 50 people. The Regulation also provides for strict requirements on pubs that serve substantial meal and restaurants to keep records of meals, and names and phone numbers of groups or solo clients.
52. **2 September:** Minister for Justice announces these Regulations are in force on RTE.
53. **2 September:** Dáil discusses Criminal Justice (Enforcement Powers)(Covid-19) Bill 2020⁵⁴. This Act will give Gardai extensive powers to shut down premises not complying with Regulations.
54. **3 September:** S.I. No. 326/2020 still not available on irishstatutebook.ie as of writing.
55. **3 September:** New Regulations S.I. No. 326/2020 cause uproar among vintners and restaurants association. Government criticised for lack of communication and overreach.

⁵³ <https://t.co/S5w7fXHmKq?amp=1>

⁵⁴ <https://www.oireachtas.ie/en/bills/bill/2020/22/>