

BY EMAIL

20 October 2020

Dear Deputy,

I write from the Irish Council of Civil Liberties to urge you to oppose the proposed extension, by a shortened debate, of the extraordinary ministerial powers under the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. As deputies will be aware, this legislation was rushed through in March in the face of the urgent and relatively unknown risk posed to public health by Covid-19. At that time, members of the Dáil secured an essential safeguard of a 'sunset clause' in the legislation. This proposal by Government to extend Part 3 of the Act without the opportunity for substantive review or amendment is a direct affront to that essential democratic safeguard.

Part 3 of the Act gives wide ranging powers to the Minister for Health to make regulations restricting our rights to move freely, to gather together with others both at home and in public places, to organise events and of course to earn a livelihood. The Minister for Health has used these extraordinary powers to restrict our rights on numerous occasions since March. Eight months on and we now know a lot more about the virus and the effect of lock-down on our society, our economy and our individual rights. The legislation must be debated to ensure that it is actually fit for purpose.

There are many outstanding recommendations and proposed amendments from March which should now be reconsidered. Government and the Oireachtas have now had the experience of legislating for and enforcing these measures and have the benefit of learning from the experience of other jurisdictions in responding to Covid-19. The Oireachtas Special Committee on Covid-19 Response has also reviewed the operation of the Act and has made a number of recommendations. It is essential that we learn from this experience and take into account all previous recommendations on this most important legislation.

ICCL made a comprehensive submission on this legislation in March, which you can find at this [link](#). At that time, we highlighted ways the legislation could be strengthened from a human rights perspective. Among the issues raised during the original debates on the Bill in March were:

- The need to include explicit reference to the requirement that all restrictions on rights must be necessary and proportionate and must be non-discriminatory.
- Sanctions must be proportionate.
- There must be pre-legislative scrutiny of all regulations.
- Better safeguards are needed for anyone detained under health legislation.
- Care must be taken to ensure the most vulnerable are protected.

The Oireachtas Special Committee on Covid response clearly recommended in its [final report](#) that:

- All sectoral committees should review the relevant Covid-19 legislation which is regulating activity in their sectors and
- Every proposal to extend regulations after 9 November 2020 should require approval by the Houses of the Oireachtas or the relevant joint committee.



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ICCL supports the public health effort and accepts that some restrictions on our rights are necessary in order to combat this highly contagious disease transmitted by human interaction. However, we have repeatedly called on government to use these powers sparingly and only in a manner that complies with Ireland's human rights obligations. This means all restrictions must be demonstrably necessary (in other words they must be linked to current needs and to trends of the virus); they must be proportionate to the aim of protecting public health and must be the least restrictive possible necessary to stem the spread of the virus; and these decisions made must be done in a democratically robust manner. Finally, any proposed penalties for not complying with restrictions must be proportionate to the actual harm caused by an individual's behaviour or clear risk of harm.

This legislation contains some of the most far-reaching ministerial powers ever provided for under Irish law. It is essential that there must be no extension of these extraordinary powers without a full and proper debate. Steam-rolling an extension through the Oireachtas without reflection, scrutiny or debate would be an affront to our basic democratic procedures and to the duty of our elected representatives to debate our laws.

Deputies, we urge you to insist on adequate time to debate the content of this legislation and we look forward to contributing to the comprehensive discussion which this serious matter demands.

Yours sincerely,

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Executive Director, Irish Council for Civil Liberties.