

GUIDANCE ON THE EXERCISE OF POLICE POWERS UNDER REGULATION 7(1) OF THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NO. 2) REGULATIONS (NORTHERN IRELAND) 2020

The following guidance in respect of the application of the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 has been **developed by the Department of Justice** and issued by the Department of Health. **Please direct any queries to the Department of Justice using the following email address: dojdocsitcell@justice-ni.gov.uk**

Introduction

1. This Guidance deals with the exercise of powers under Regulation 7(1) of the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020. ('the Regulations') which provides:

A relevant person may take such action as is necessary to establish whether a breach of these regulations has occurred or to enforce any requirement imposed by Regulation 4 to 6C.

2. This Guidance applies to any powers exercised by any 'relevant person' under this provision after 19.30HRS on 29th January 2021. A 'relevant person' means a constable or a person designated by the Department of Health for the purposes of these Regulations.
3. The purpose of this Guidance is:
 - a. To set out the basic principles underpinning the power of a relevant person to take action under Regulation 7(1);
 - b. To provide guidance to relevant persons with powers under Regulation 7(1) as to how and when they should exercise those powers;
 - c. To provide members of the public with information as to how they can expect Regulation 7(1) powers to be exercised.
4. Relevant persons exercising powers under Regulation 7(1) should be aware that any action taken thereunder will potentially impact on the rights of individuals. Relevant persons should be familiar with the provisions of the following:
 - a. European Convention on Human Rights ('ECHR');

- b. Human Rights Act 1998 ('HRA');
 - c. Convention on the Rights of the Child ('UNCRC').
5. In exercising any power under Regulation 7(1) the relevant person should be particularly cognisant of the following:
- a. The rights to respect for private and family life and the home under Article 8 ECHR;
 - b. The rights to freedom of peaceful assembly and freedom of association with others under Article 11 ECHR;
 - c. The prohibition on discrimination under Article 14 ECHR;
 - d. The right to peaceful enjoyment of possessions under Article 1 Protocol 1 ECHR;
 - e. The best interests of the child as a primary consideration under Article 3 UNCRC.

General principles governing the exercise of powers under Regulation 7(1)

6. The power in Regulation 7(1) provides for the relevant person to take any necessary action to either establish a breach of the regulations or enforce any of the requirements imposed by Regulation 4 to 6C.

Steps to be taken prior to exercising a power under Regulation 7(1)

7. Whilst the power in Regulation 7(1) is broadly construed relevant persons should adopt a graduated approach to enforcement of the Regulations, moving only to deploy the Regulation 7(1) power where they consider it necessary and proportionate to do so. Where a relevant person suspects either a breach of the regulations or considers there is a need to enforce any of Regulations 4 to 6C, they should adopt the 4 "Es" approach. In the first instance they should seek to engage with any individual who may be in breach of the regulations.
8. Engagement should be followed by the relevant person giving a clear explanation of the Regulations and their application to the circumstances of the individual(s). A relevant person should bear in mind that the Regulations have been subject to ongoing

change and members of the public may have difficulty in keeping up to date with their legal obligations. In most cases a clear explanation should be sufficient to ensure individuals take the necessary steps to comply with the Regulations of their own volition.

9. Where the relevant person encounters resistance, they should take all reasonable steps to encourage the individual(s) to comply. This may include explaining the risks to public health and ongoing pressures on the NHS. It may also include explaining the possible sanctions for breach of Regulations 4 to 6C in accordance with Regulation 8.

Exercising the power under Regulation 7(1)

10. Where the relevant person has taken all reasonable steps available to them to secure compliance with the Regulations, without success, they may then consider whether to utilise any powers under Regulation 7(1).
11. The power under Regulation 7(1) may only be exercised to achieve one of two aims. The first is to establish whether a breach of the Regulations has occurred. The second is to enforce any requirement of Regulations 4 to 6C. Any action purported to be taken under Regulation 7(1) which is directed at meeting any aim beyond this scope will be unlawful.
12. The action taken should not only be necessary to meet that aim as prescribed in Regulation 7(1) but should also be proportionate to achieving that aim. Relevant persons should take into account when assessing proportionality the full extent of the circumstances before them and the range of options available to them. The action taken should be commensurate to the public health risk in the circumstances. A relevant person should do no more than is necessary to meet their aim.
13. Where a Regulation 7(1) power is exercised to establish a breach, the relevant person should have a good reason for doing so. A good reason may include, for example: information previously provided to the relevant person; the behaviour of the individual(s) with whom the relevant person has engaged; or the circumstances immediately apparent to the relevant person.

14. Where the relevant person has alternative powers available to them which would achieve the aim sought to be realised they should exercise these instead of the power under Regulation 7(1).

Children

15. If the relevant person knows or reasonably suspects that a child or children will be affected by action taken under Regulation 7(1), the best interests of the child should be a primary consideration in deciding what, if any, action to take. An assessment of the best interests of the child may include consideration of the health risk posed to them. The relevant person should take any reasonable steps open to them to mitigate any negative effects of Regulation 7(1) action on the welfare of any child.

Record keeping

16. Any relevant person exercising a power under Regulation 7(1) should keep a record of:
 - a. The Regulation(s) in respect of which they considered it necessary to take action under Regulation 7(1);
 - b. Steps taken prior to exercise of the power to address potential non-compliance with that Regulation;
 - c. The reason(s) for exercising the power.
17. A clear record will be necessary to justify the necessity and proportionality of any action taken under Regulation 7(1).

Entry to private dwellings

18. Regulation 7(1) gives a relevant person the power to enter a private dwelling in order to establish a breach of the Regulations or enforce any of the requirements imposed by Regulations 4 to 6C. In most cases entry to a private dwelling will only be necessary to establish a breach of, or enforce, Regulation 6.
19. Relevant persons should recognise that in almost every case the entry of a private dwelling will constitute an interference with the Article 8 ECHR rights of an individual or individuals. Such an interference may be justified for the protection of health but only where the interference is necessary and proportionate to that aim.

20. Entry to a home is a particularly invasive use of the Regulation 7(1) power and therefore should be considered as a tool of last resort. A relevant person should consider whether there are any viable less intrusive options available to them to either establish a breach of the Regulations or enforce Regulations 4 to 6C.
21. In considering the exercise of Regulation 7(1) powers for this purpose, a relevant person should follow the guidance set out above, but in particular should do the following:
- a. Attempt to engage with the owner or occupier of the relevant dwelling and encourage voluntary compliance with the Regulations;
 - b. Take all reasonable steps to establish the circumstances within the dwelling without obtaining entry;
 - c. Enquire about the presence of children in the dwelling prior to entry and consider any potential steps that could reasonably be taken to protect the welfare of any children in line with paragraph 15 above;
 - d. Seek the consent of the owner or occupier to enter the dwelling.