130420 Legislation NPHET Subgroup on Legislation – Briefing


The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 amended the Health Act 1947, making exceptional provision, in the public interest, having regard to the manifest and grave risk to human life and public health posed by the spread of Covid-19, and in order to mitigate, where practicable, the effect of Covid-19. The 1947 Health Act amendments are necessarily time limited, ceasing to have effect on 9 November 2020 unless extended by resolution of the Houses of the Oireachtas. A copy of the 2020 Act is attached.

New provisions for Regulations and affected areas orders under the Health Act 1947

Section 10 of the 2020 Act inserts section 31A and section 31 in the Health Act 1947.

Section 31A provides for regulations for preventing, limiting, minimising or slowing the spread of Covid-19. These may include restrictions on travel, requiring persons to remain in their homes, prohibiting events, requiring safeguards to be put in place by event organisers and requiring safeguards to be put in place in premises and other places. Section 31B provides for affected areas orders.

Under section 31B, the Minister for Health may, having regard to matters specified in the legislation, by order declare an area or region in the State to be an area where there is known or thought to be sustained human transmission of Covid-19 or from which there is a high risk of importation of infection or contamination with Covid-19 by travel from that area.

Detention and isolation of persons in certain circumstances

Section 11 inserts section 38A in the 1947 Act, providing for the detention and isolation of persons in certain circumstances. Having regard to matters set out in section 38A(2), a medical officer of health may order in writing the detention and isolation of a person where the medical officer of health believes in good faith that a person is a potential source of infection and that such person cannot be effectively isolated, refuses to remain or appears unlikely to remain in his or her home or other accommodation arranged, or agreed, by the HSE. (The meaning of “potential source of infection” is set out in section 38A(10)).

The detention and isolation is until such time as the medical officer of health certifies that the person’s detention is no longer required for the purposes of section 38A. A medical officer of health who makes an order must keep the detention order under review and must ensure that a medical examination of the person who is the subject of the order is carried out as soon as possible and in any event no later than 14 days from the time the person is detained. A person who is the subject of an order may request that his or her detention be reviewed by another medical officer of health. This review must be carried out as soon as practicable.

It is crucial that medical officers of health are familiar with all the provisions and requirements under section 38A, that there is consistency in regard to the application of the new section, and that due consideration is given to all of the issues. The Department has written to the HSE asking that appropriate protocols and procedures and standardised forms be drawn up as a matter of urgency.
Note: Section 38A is in addition to the provisions under section 38 of the Health Act 1947. Section 38 provides for the detention and isolation of a person where a medical officer of health, on inspection, or consequent upon information furnished to the medical officer of health by a registered medical practitioner who has inspected the person, is of the opinion that the person is a probable source of infection and cannot be effectively isolated in their home. Section 38 continues to apply to persons who are a probable source of infection with Covid-19.

Regulations under section 31A and affected area order under section 31B now made
The Minister made an affected areas order on 7 April 2020, declaring 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. A copy of the Health Act 1947 (Affected Areas) Order 2020 (SI No. 120 of 2020) is attached. The Minister also made Regulations which came into effect on 8 April 2020 providing statutory underpinning for restrictions on leaving home without reasonable excuse - the Health Act 1947 (Section 31A-Temporary Restrictions)(Covid-19) Regulations 2020 (SI No. 121 of 2020). A copy is attached. Under SI No. 128 of 2020 (also attached), these Regulations will remain in operation until 5 May 2020.

The scenarios which constitute reasonable excuse for leaving home (place of residence) are set out in Regulation 4(2). The range of reasons in Regulation 4(2) is not exhaustive. Reasonable excuse under Regulation 4(2) includes providing or assisting in providing an essential service, accessing an essential service and going to an essential retail outlet. Related to this are the Schedules in the Regulations. Schedule 1 refers to Essential Retail Outlets and Schedule 2 refers to Essential Services. These Schedules reflect as closely as possible the Government’s guidance published on 28 March.

The Regulations also prohibit events (gatherings of people) unless the event is held for the purposes of a matter falling within the reasonable excuse provisions.

Leaving a place of residence without reasonable excuse or holding or participating in a prohibited event are penal provisions under the Regulations. Enforcement of these Regulations is for An Garda Síochána.

2. Emergency Measures in the Public Interest (Covid 19) Act 2020
Please note that separate legislation, the Emergency Measures in the Public Interest (Covid 19) Act 2020 was signed into law on 27 March 2020 to provide for measures in a number of Government Departments around planning and development, residential tenancies, re-enlistment of former members of the defence forces, civil registration issues, redundancy payments issues and a temporary wage subsidy scheme. Included in this legislation relevant to the Department of Health were amendments to the Mental Health Act 2001 around the composition and operation of mental health tribunals, and simplified restoration processes to the professional medical registers for a number of professions, and certain exemptions relating to complaints to the Medical Council.